

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
April 14, 2022

LET IT BE REMEMBERED, that the Collier County Hearing Examiner, in and for the County of Collier, having conducted business herein, met on this date at 9:00 a.m., in REGULAR SESSION at 2800 North Horseshoe Drive, Room 609/610, Naples, Florida, with the following people present:

HEARING EXAMINER ANDREW DICKMAN

ALSO PRESENT:

Michael Bosi, Planning and Zoning Manager
Raymond V. Bellows, Zoning Manager
Andrew Youngblood, Operations Analyst
Eric Ortman, Principal Planner
John Kelly, Senior Planner
Gabriela Castro, Principal Planner

PROCEEDINGS

HEARING EXAMINER DICKMAN: Good morning, everybody. Today is the 14th, right?

MR. BOSI: Correct.

HEARING EXAMINER DICKMAN: March [sic] 14th, 2022. This is the HEX meeting, Hearing Examiner. It's now 9:00, thereabouts, and we are going to convene this meeting and begin with the Pledge of Allegiance to our flag.

(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER DICKMAN: Okay. Let me start off with some preliminary information instead of just doing a cold start.

First and foremost, my name is Andrew Dickman. I am a Florida Bar attorney in good standing. I've been practicing for 22 years. My entire career, including before that as an urban planner, has been in Florida land use and zoning issues and law. I was hired by the Board of County Commissioners as a contractor to do this job to basically conduct these quasi-judicial hearings and render decisions. So I am not a county employee.

These hearings are, as I said, quasi-judicial. So what happens here is building of a record, and after the record is built, I will render a decision. There is nothing after this hearing that I can take into consideration.

So as -- the two parties here will be the applicant or petitioner and the county, then we have the public. And there may be interested or affected parties within the public, but the main parties are the county and the applicant.

Everyone who is going to speak here today and provide me with information -- it is a public meeting. You can say whatever you want within some boundaries of decorum, but I would ask that whatever information you're giving to me, whatever application it is, that you confine your information that you provide to me that is relevant to the criteria that I need to use to make the decision. That is the best way to do that, because then I'm getting information from you, and it makes your visit here more palatable.

This is quasi-judicial which means that while I am sitting here as a quasi-judge, the rules -- the formal rules of a court don't apply, the formal rules of evidence don't apply, but the structure of it is similar to a court as though -- so there are witnesses, expert witnesses, so forth and so on.

If you have any telephones or anything that makes noises or you want to have a conversation, step outside, please. For some reason the acoustics in here are very, very good, and if you're talking in the audience, it affects me. I can hear it, so I know that whoever's speaking can hear it as well.

These are informal proceedings. Some people really enjoy speaking publicly. If you're like me, I get nervous. So take your time, take a deep breath, relax, okay. This is just about you giving me information. Just don't worry. It will all -- my job is to make sure that everyone can provide me with the information. We do have some time limits, but I want to make sure that everybody gets their opportunity to say whatever they want to say.

The procedure that we're going to follow here for each petition or application is that I'm going to ask the county staff, whoever's going to present their staff report, to briefly get up, introduce the item, their staff report, how it was noticed so we can deal with the due process part of this, and then whatever recommendations the county has with regard to the petition.

I may have a few questions, but other than that, that will be the county starting it off.

They'll do it here at the gray podium. The applicant then will come up here to the larger brown podium and do their case in chief, present to me why they are requesting whatever they're requesting, then we'll open it up to the public. I'll allow for some additional time by the applicant if they need to have what's called rebuttal of anything that they heard from the county or from the public.

We'll close the public hearing, and then I'll begin possibly asking questions trying to ferret out things that I need to know in order for me to render a decision. No decisions will be made today. According to the code, I have up to 30 days to render a decision. It will be a written decision and signed and rendered and provided to everyone that's entitled to have it. It's a public record, but the main persons will be the applicant and the county and the other individuals that -- or entities that are listed in the code, but it is a public record and available to you.

As you can see, we have our court reporter here. She is taking down everything that's being said here today. I am from Florida, so I normally speak very slow, but I'm trying to speak clearly, not with my cracker accent which I lost, I think, somewhere in college. But our court reporter cannot understand or capture accurately if people are talking over each other. If two people are talking at the same time, she's going to stop everybody. She's actually in control of this whole thing, because we want a very accurate record of this proceedings. So she has authority to stop everything and say, hey, I didn't understand what you said or you're talking too fast or you're making hand gestures that I don't know how to spell or something. And if you get caught like that, you're going to have to put a dollar in the "I got caught" jar, and we'll -- I don't know. We'll buy pizzas for everybody at the end of the year.

But I give you full authority to do that, Madam Court Reporter, please.

I think that's about it.

Ray, we have our brilliant county experts here. We know we have a lot of other experts in the room. I will tell you that I am fully versed in the law of land use and zoning variances, setbacks, things of that nature. If I seem to be asking questions that you would think that I would know, it's really part of me getting things on the record and trying to make sure that that's being put on the record. And from -- so don't take anything based on that. Don't take -- don't try to read into anything that I might ask questions of. It's not an indication or telegraphing anything that, you know, I think is right or wrong. Again, my decision will be made later.

So I think with that, we're ready to go. We have six items now -- five items now.

MR. BELLOWS: Yeah. For the record, Ray Bellows. We do have a withdrawal. It's Item 3E, so that's an addendum to the agenda.

HEARING EXAMINER DICKMAN: Okay, great. Thank you for that.

I think we can get through these. So we're here, this is Land Use and Zoning 101 with a little peppering of civics in it. So let's all sit back, enjoy, take your time. This is not -- we're not in the chambers, so let's do this and get it done correctly and get started.

***So we've got 3A. Why don't we get started with that. I'll let the county introduce it, please. Thank you.

MR. ORTMAN: Okay. Good morning. For the record, Eric Ortman, Zoning Department, principal planner. This is petition VA-PL --

HEARING EXAMINER DICKMAN: Oh.

MR. BELLOWS: Swear in.

HEARING EXAMINER DICKMAN: Oh, yes. Thank you.

All right. So anyone who's going to testify here today, i.e., speak to me, needs to be sworn in. So if you would, I'm going to do it for everybody for every item. If you would stand and raise your right hand. I'll do the oath, if you don't mind, Madam Court Reporter.

Do you swear here today to tell the truth under penalty of perjury? The property answer is "aye."

(The speakers were duly sworn and indicated in the affirmative.)

HEARING EXAMINER DICKMAN: Okay. Great. Thank you. I sort of led everybody there. But either way, don't commit perjury to me. I expect the truth. And I won't ask you any private questions that you have to disclose here today.

All right. Thanks for reminding me, Ray. I appreciate that.

MR. BELLOWS: That was Gabriela Castro who reminded me.

HEARING EXAMINER DICKMAN: Gabriele, thank you. All right. Team work. Go ahead, sir.

MR. ORTMAN: Okay. This is Petition VA-PL20210002556, a request for a variance from Section 4.02.01.A, Table 2.1 of the Collier County Land Development Code to reduce the minimum front yard setback from 25 feet to 18.6 feet in the front yard facing 7th Street for a pool in an RMF-6 zoning district. The variance petition will correct an error on the part of the county in listing the incorrect setbacks on the building permit.

The subject property is plus-or-minus 0.22 acres located in the southeast quadrant of the intersection of 107th Avenue and 7th Street North in Naples Park, Section 28, Township 48, Range 25 of unincorporated Collier County.

The project complies with the Growth Management Plan and the Collier County Land Development Code; therefore, staff recommends approval of this petition.

The applicant has complied with all hearing notices by our operations staff. The advertising and mailers went out on March 17th. The hearing advertisement signs were placed on the subject property on March 18th and are included in Attachment 5 of the backup materials.

HEARING EXAMINER DICKMAN: Okay. Real quickly. This isn't stated in the staff report that this is to correct an error, and I think the difference is it's regarding, like, the difference between a corner lot and interior lot; is that correct?

MR. ORTMAN: That is correct.

HEARING EXAMINER DICKMAN: Can you put the -- just real quickly describe the difference between them.

MR. ORTMAN: Yeah. When the permit was originally issued, it was as if there was -- it was for an interior lot, meaning there was, facing the street, two side yards, one rear yard when, in fact, the property is facing two streets, so it has two front yards and two side yards and no rear yard.

HEARING EXAMINER DICKMAN: All right. So for those of you who have corner lots, be careful. All right. There you go. I want to -- thank you very much for that.

Let me first disclose that I live in Naples Park. This is several blocks away from my house. I did not visit the property. I don't even know where the property -- I know where it is. I have not gone by it. I have not looked at it. Don't know who owns it other than what's in the staff report. I have not done any investigation with staff, never talked with staff about it. I have not talked to the applicant about it. So I'm fully confident I can hear this as an unbiased decision-marker. But if anybody has an issue with that, please let me

know. But, again, this property, while it's in my neighborhood, it's not a neighbor, and I'm not even -- did not go over to the property and look at it. I'm here to see it for the first time and make a decision about it, so I wanted to put that on the record.

Okay. Does the county have any issue with that?

MR. BOSI: Mike Bosi, Zoning director. No, we don't.

HEARING EXAMINER DICKMAN: Okay, great. Thank you.

Thank you, sir.

All right. Is the applicant here? Come on up. Good morning.

MR. HAROLD: Good morning.

HEARING EXAMINER DICKMAN: If you could take the brown podium for me.

MR. HAROLD: My name is John Harold. I'm an engineer with FLA Surveys.

HEARING EXAMINER DICKMAN: Okay. Did you hear what I said about the disclosure? Does your client have any issues with that?

MR. HAROLD: No, sir.

HEARING EXAMINER DICKMAN: Okay, great. You'll probably have to speak up a little bit more.

MR. HAROLD: Sorry about that.

HEARING EXAMINER DICKMAN: That's all right.

MR. HAROLD: All right. So, basically, what happened is the pool company, Slusser Services, originally submitted the site plan for the pool, spa, and deck to Collier County, and the permit was accepted. Slusser Services began construction and completed the pool and spa shell. And once the spot survey was submitted to Collier County, the zoning official noticed that the lot was a corner lot, and it had incorrect setbacks; therefore, the zoning official required a variance for the pool and spa.

And that's pretty much it.

HEARING EXAMINER DICKMAN: That's about it.

MR. HAROLD: That's it, yeah. It's pretty straightforward.

HEARING EXAMINER DICKMAN: Yeah, it is straightforward. So this happens from time to time, folks, just so you know. There is a difference between interior lots and corner lots. Not everything's platted as straightforward. Sometimes these things happen, so that's why this is an after-the-fact request for a variance.

I have read the staff report with all the required -- the required criteria for the variance. I see everything that the staff in their professional opinion have addressed, each and every one of them. Do you -- have you -- have you reviewed the staff report or your --

MR. HAROLD: (Nods head.)

HEARING EXAMINER DICKMAN: Do you have any issue with the staff report?

MR. HAROLD: No, it all sounds good to me.

HEARING EXAMINER DICKMAN: Do you agree with the staff report?

MR. HAROLD: I do.

HEARING EXAMINER DICKMAN: Okay. So you accept everything the county is recommending, then?

MR. HAROLD: Yes.

HEARING EXAMINER DICKMAN: Okay. All right. Anything else from the county?

(No response.)

HEARING EXAMINER STRAIN: Let's open it up to the public. Anybody here

from the public to speak? All right.

MR. YOUNGBLOOD: Mr. Hearing Examiner, I have two registered speakers online, but we'll go with the ones in the room first. I don't have any speaker slips from anybody.

HEARING EXAMINER DICKMAN: Let's start with who's in the house.

MS. ROLWES: Okay.

HEARING EXAMINER DICKMAN: Come on up. Good morning. How are you?

MS. ROLWES: Good morning.

HEARING EXAMINER DICKMAN: Nice to see you.

MS. ROLWES: I need some of the paperwork.

HEARING EXAMINER DICKMAN: Are you the owner?

MS. ROLWES: I am the owner.

HEARING EXAMINER DICKMAN: Okay. So you're up there. You're on the brown side.

MS. ROLWES: Okay. I'm nervous. My name is Molly Rolwes. My husband and I, Dave, we own the property.

HEARING EXAMINER DICKMAN: Let me ask you a question. I live in Naples Park. You heard what I said. Do you have a problem with me deciding on this matter?

MS. ROLWES: No. No, sir.

HEARING EXAMINER DICKMAN: Okay, great. Thank you.

MS. ROLWES: Okay. So when we purchased the property in February of 2021, we wanted to, you know, put a pool in. And before we even hired a pool company, I came down here twice to the Growth and Development. I walked to the front desk and they sent me to, I think it was No. 2, the second one to the left. And the first time I came in, I came by myself, and I just was like, can we put a pool at this address?

And I didn't have the survey, and he's like -- and the guy was very nice. And he got on the computer and turned it around. We were kind of looking at the lot, and he said, it looks like you could put a pool here, which was, like, between -- like literally on the driveway. We would have had to change -- or put a different -- on the detached garage, we would have had to put a different entrance. And he goes, you could put one here, but then you could also put one in the spot that we now have the pool.

And so I came home, and I was real excited, and I told my husband, and he said, well, we have to be sure. So a few weeks later we came up with the survey, because the guy -- you know, your representative said, you know, I'm pretty sure, but we need that -- we need the survey.

So we showed him the survey, and it was a different individual this time, but he said, yeah, you could put the pool here and here. And so at that point -- I mean, we were so excited. At that point that's when we started calling pool companies, and we called four. One pool company said, oh, they're not going to let you put a pool here, but the other three said not a problem.

And so they went ahead and gave us, you know -- gave us plans. And we ended up choosing Slusser Services. And so, I mean, we're just homeowners. We're just -- I don't perceive to know, you know, all the legality with setbacks and zonings and all that stuff.

HEARING EXAMINER DICKMAN: Okay.

MS. ROLWES: So, you know, Kenny said we're good to go. He said -- and I could

be wrong, but I thought he said to me that it had been approved, like, in three different ways or three different -- three different departments approved.

And so we didn't -- so the pool was started, and then, like, it was August, I think. In August -- August was the first that we heard of it, and Kenny had written to Jonathan, I would like to schedule a meeting with you. I'm in possession of an approved pool that I cannot pursue on because Zoning is not approving the spot survey on this address. It happens to be on a corner lot in North Naples, and these drawings were approved.

The pool has been shotconcreted, plumbing is done, deck is formed up and ready to Collier's approved plans. The customers are wanting to know what the holdup is because, like, we weren't told anything. It was just, you know, the pool wasn't progressing.

And so, it says, I need help with an explanation. I just got off the phone with Maria Strada, and she is telling me that we have to apply for a variance, and that is the only way to rectify this situation. I personally don't feel that this is fair to have to put the customer through this. Please advise.

And then Kenny was -- gotten back with John that said, I just received the plans, comments, and resubmissions. I didn't see anything on an issue, so I reached out to Maria, and she informed me that the front yard setback is the issue, not the rear side as your redline survey indicates.

Unfortunately, it appears the permit was approved in error, as the zoning reviewer did not continue to comment on the front yard setback not meeting that required 25-foot requirement. As all plans, I would locate -- note that -- the front yard setback to be 18'6". This was an error, which an error violation will need to be corrected as outlined.

I'm happy to meet with you, but this is not a building-code item. It's a zoning, I believe. Direction has been given to you to follow and obtain a variance. The variance process can be further discussed and assisted by Planning. Respectfully, John.

So I don't know if all this is, like, important, but -- I wasn't really going to say anything today, but because you said after this decision is made there's no -- I thought I better get myself out there and say what -- you know. And then --

HEARING EXAMINER DICKMAN: Do you want to provide me with that information?

MS. ROLWES: Yeah, I'd be happy to.

And then there was another -- it says, hi, Thomas. This is from Jaime Cook. Per conversations with Jamie French, since this was a staff error during review, all fees for this petition will be waived for the applicant. The county will cover the costs of all advertising as well.

And then this one was, good evening, Kenny, from Jaime Cook. I apologize for any confusion. I tried to reach out to you Friday but wasn't able to speak to anyone. My planning manager, Cormac Giblin, and I have been made aware of the issue regarding the setbacks at 702 107th. As I believe Jonathan Walsh indicated, a variance is required, and Cormac and I will be handling the variance petition. There will be a couple documents we will need from you, the homeowner, but county staff will handle everything else.

And then --

HEARING EXAMINER DICKMAN: So it seems as though county is --

MS. ROLWES: It was an accidental error.

HEARING EXAMINER DICKMAN: Yeah, yeah. I get this. The county processes thousands if not hundreds of thousands of permits every year. These things do

tend to happen from time to time. It's -- you know, and it's perfectly acceptable for homeowners to not have to go out and hire lawyers or experts or things like that that have to come out and represent you. I mean, that's what those -- you know, that's what that whole process is out there for is to try to help you.

It's understandable that these types of things do happen from time to time. I do see them. The important thing, though, is that it's corrected. And I think the county is correcting that because, going forward, let's say you sell the house or something happens, that error would have been caught at some point. It would have had to have been corrected.

MS. ROLWES: Okay.

HEARING EXAMINER DICKMAN: And so it seems like everything is being done, handled correctly. I'm really pleased that the county is not charging you to be here today.

MS. ROLWES: Yeah, we really appreciated that.

HEARING EXAMINER DICKMAN: Yeah. So, you know, I understand how that works. And, sure, you could provide me with those emails. We'll get copies of them and circulate them around so I have that. Again, you can't send them to me after the fact or communicate with me.

I do want to correct one thing. I'm not with the county. These are not my employees.

MS. ROLWES: Okay.

HEARING EXAMINER DICKMAN: I don't -- you know, I'm a separate entity --

MS. ROLWES: Okay.

HEARING EXAMINER DICKMAN: -- here to make an unbiased decision. So I don't meet with staff and kind of go over all this. The whole point here is to make sure that I take all this in here today.

MS. ROLWES: Right.

HEARING EXAMINER DICKMAN: Use my own expertise and knowledge, run this meeting, and make that decision. So I wanted to make sure you understood that I am --

MS. ROLWES: Okay.

HEARING EXAMINER DICKMAN: -- not part of the -- although I like them very much, I am not part of the county permitting and zoning process.

MS. ROLWES: Okay.

HEARING EXAMINER DICKMAN: Okay. So I'm here to deal with this situation that you have.

MS. ROLWES: Okay.

HEARING EXAMINER DICKMAN: Did you want to say anything else? You're doing a great job, by the way.

MS. ROLWES: I just -- oh, thank you.

I just wanted to say that I felt like I -- I felt like -- I want the Court to know that I felt like I did -- as a homeowner I felt like I did do my due diligence in the beginning. I felt like if we had known right off the bat that we couldn't put a pool in, we would have made other decisions, and it wasn't until the pool had gotten as far as it had that it was caught. And at that point, you know, it would have -- you know, we were just told to go for the variance. That's what Collier County recommended.

HEARING EXAMINER DICKMAN: That's the only way you can correct this. I guarantee you --

MS. ROLWES: Okay.

HEARING EXAMINER DICKMAN: -- that this is the only way that -- the county has -- in each zoning classification or district you have what are called performance standards. Those are setbacks, ground cover, impervious surfaces, heights, things like that. Those are set, and everybody in that same zoning district has to abide by those same -- and that establishes your buildable area as of right.

So whether or not it's by accident or misinformation or something, the only way to change that is by variance. So this is the only option available to deal with that. So they have directed you to the right forum.

MS. ROLWES: Okay.

HEARING EXAMINER DICKMAN: Okay. They can't -- in other words, they can't turn a blind eye. They can't, you know, do that. They just can't, so...

MS. ROLWES: So by -- if by chance you grant us this variance, then we would be allowed in the future to sell the property?

HEARING EXAMINER DICKMAN: Yes. The variance will run with the land. It will be recorded. It runs with the land, and that means it's not a variance that inerts to just you as the property owner. It attaches to the land.

MS. ROLWES: Okay.

HEARING EXAMINER DICKMAN: Okay. Anything else for right now?

MS. ROLWES: No.

HEARING EXAMINER DICKMAN: Okay. Who else do we have to speak today, in-house first?

MR. YOUNGBLOOD: Nobody that I know of in-house.

HEARING EXAMINER DICKMAN: Okay.

MR. YOUNGBLOOD: But online I do have two speakers.

HEARING EXAMINER DICKMAN: Let's hear from them. By the way, the folks at the county here have generously offered a hybrid meeting. You could be here in person, or you can come online. For those people that -- you know, during this time of the COVID situation, they may not feel comfortable being here, so that's why we're doing that. So it's worked pretty well. So let's go ahead and hear from those two folks, okay.

MR. YOUNGBLOOD: All right. Our first speaker is going to be Kim Finer, and she's going to be followed by Macie Clark.

HEARING EXAMINER DICKMAN: Okay.

MR. YOUNGBLOOD: Kim, are you online with us?

MS. FINER: Yes, I am. Can you hear me?

MR. YOUNGBLOOD: Yes, ma'am. Go right ahead. You have five minutes.

MS. FINER: All right. What I'm about to say is predicated on the fact that I did not know that the county made this mistake, so I want everyone to remember that.

I'm speaking today against the requested variance. As many of you may know that we are undergoing a public utilities project in Naples Park, and this has been going on for several years.

All residents and property owners --

HEARING EXAMINER DICKMAN: I'm sorry. Ma'am, can you give me your address, please.

MS. FINER: 723 106th Avenue.

HEARING EXAMINER DICKMAN: Okay. Thank you.

MS. FINER: Sure.

So we've been undergoing this public utilities project. All residents and property owners have been keenly aware through meetings, flyers, et cetera, about property setbacks and the 25-foot right-of-way. So the 25-foot right-of-way is not a mystery. So I can't believe that the county made this mistake.

I've seen some documents associated with this project, and on 6/29/2021, when attempting to pull permits, Slusser received notification from Collier County that said this project was not approved, and that was on 6/29. The reason it wasn't approved is because, quote, improvements do not meet required setbacks. This was a zoning review by Emily Bishop. Their plan was revised on 7/9. Permits were issued on 7/23. So I don't understand where the breakdown occurred.

The requesting parties were clearly made aware of the project parameters requiring certain setbacks, but there was a failure to comply, and I guess it's by the contractor. But according to the story you're hearing today, it has to do with the county making a huge mistake.

This variance is for six-and-a-half feet. That is a huge variance. That's greater than a 25 percent error. You know, a lot of people have been building pools in Naples Park. Mine was built in 2019. People are putting up fences, people are putting up cages, yet somehow -- and these are corner lots -- the setbacks are appropriate. So, again, I really cannot understand how the county could make such a mistake.

The bottom line is, we went through a lot of aggravation, a lot of effort and increased costs to abide by code and setbacks. We followed the code which exists for a particular reason. You know, you can't keep giving variances to code. Naples Park is very, very problematic regarding development and putting in pools and cages and all sorts of things. Our lots are postage stamps. They're extraordinarily small. We live very, very, very close to our neighbors. Sightlines are problematic, particularly on corner lots where they put in hedges. You can't see when you're driving.

So any variance is just extraordinarily unacceptable. It impacts the neighbors. It impacts the county right-of-way. You know, with this piece they've got here with this pool, I'm not sure how they're going to do public utilities renewal off of 7th Street once it's time to do that, because they're so close to the swale, but I guess the county will figure that out.

Now, this sounds to me a little bit like a done deal, which I think is unfortunate, because it's the county's error. But we have to be very, very, very careful when we allow variances, particularly one this large in a neighborhood like Naples Park.

HEARING EXAMINER DICKMAN: Okay. Tell me, in proximity, is your property abutting this particular property?

MS. FINER: It is not. You would walk around the corner towards 7th.

HEARING EXAMINER DICKMAN: And how would you be adversely acted by this?

MS. FINER: Me, personally?

HEARING EXAMINER DICKMAN: Yes, you personally.

MS. FINER: Well, yes, if you don't abide by code, I'm personally affected. I've been involved in a lot of code issues. I attend North Naples Task Force. I talk to all sorts of people, and every time there is a variance regarding code, it's problematic. You're setting a standard here. You're setting a precedence for what's to come in the future. So, yeah, I do think it personally impacts me, because who knows what the heck my neighbor's going to

do with, historically speaking, these variances in place. So yes.

HEARING EXAMINER DICKMAN: Let me -- let me just make a quick -- thank you for that. I appreciate it. First of all, this is not a done deal by any means. As I've said repeatedly, I'm here as an independent decision-marker. I'm an attorney. Before that I was an urban planner. I know how these things work, so any reference to a done deal, I hope, wasn't directed at me.

Secondly --

MS. FINER: It was not.

HEARING EXAMINER DICKMAN: Thank you, I appreciate that. I know it wasn't.

Secondly, under case law for variances, everything regarding a variance is taken on a case-by-case basis. There is no precedent set. So when I make my decision, I don't look at -- you know, there's nothing here being presented to me saying here are all the variances that have been granted in this neighborhood. The law says I have to review each variance on a case-by-case basis. They do not set precedent under the law.

But I understand what you're saying as a layperson. So I appreciate -- your comments were very germane. I really appreciate. You did a really nice job. Thank you.

MS. FINER: You're welcome.

MS. ROLWES: May I say something?

HEARING EXAMINER DICKMAN: I'll give -- after we get public comment, I'll give you a chance.

Who's the next speaker, sir?

MR. YOUNGBLOOD: Our next speaker is Macie Clark.

Macie, you are being prompted to unmute your microphone. Can you hear us?

MS. CLARK: Yes, I can. Can you remember me?

MR. YOUNGBLOOD: Loud and clear. You have five minutes, ma'am.

MS. CLARK: Okay. Super. Thank you.

Kim did such a fine job there. I don't know what else I can say except my question is why did the owners continue --

HEARING EXAMINER DICKMAN: Ms. Clark? Ms. Clark, I hate to interrupt you. Could you give me your address, please.

MS. CLARK: I'm at 798 107th Avenue North.

HEARING EXAMINER DICKMAN: Okay.

MS. CLARK: I walk by this property every single morning; it's usually in the evening as well. One thing I want to point out, if you look down the street, it really -- those -- it really blocks sight view from those two streets, 106th and 107th, going down the street if you're going to turn.

But my real point I wanted to ask and make known is why was this project continued with fast shrubs, et cetera, when they knew there was an issue with it? This is my big point that I want to point out. It should not have continued until their variance was approved [sic], and it wasn't, but yet they continued to put shrubs in, a fence in, et cetera, et cetera. So this is probably about all I have to say. Thanks.

HEARING EXAMINER DICKMAN: Okay. Ms. Clark?

MS. CLARK: Yes.

HEARING EXAMINER DICKMAN: Is there a four-way stop at that intersection or not?

MS. CLARK: No. There is a stop sign at 107th and a stop sign at 106th.

HEARING EXAMINER DICKMAN: Okay.

MS. CLARK: And I have to say -- and if you do not pull beyond that stop sign, you cannot see oncoming traffic with that, let's just say, shrubs, et cetera, that's sticking out there.

HEARING EXAMINER DICKMAN: Okay. Thank you for that, Ms. Clark. I appreciate it.

Any other speakers?

MR. YOUNGBLOOD: That's all the registered speakers I have.

HEARING EXAMINER DICKMAN: Okay. So I'm going to let the applicant address the issues that she heard, please. Go ahead.

MS. ROLWES: Okay. I did want to mention that this is about a pool variance, not a fencing variance and not a shrub variance. This is about a pool. And the fencing, which is not on the corner, it is -- it is not -- there is no obstruction on the left side when you're facing the house. There is no obstruction of any -- none of that took place. There isn't a fence there, which we would be allowed to put a fence on that corner. There is no fence on that corner where the stop sign is.

This is just -- this fencing and these shrubs have nothing to do with the actual pool. The pool is very small, and it took the place of a side little driveway. When you pull in the driveway, you would pull into the detached garage, but then as you're pulling out, there's, like, a little wing in front of the garage where you could back your car. That's where we put the pool.

The pool -- the pool is up -- way, way up where the side little driveway was if you look at, you know, the drawings. There's actually -- in the pool area there's actually a grass area, and then the fence is beyond that. So this fencing does not just encompass a pool. It encompasses a yard, and the fence goes all the way out to where we were allowed to put the fence.

So what their complaints are -- and I dually respect their concerns as a homeowner as well. Their issues, what I was to believe, had to do with the fence that was out too far or the shrubbery that we put around it to beautify and hide the fence. We felt that was a good thing. And it's not on the corner. It's, you know, a section that comes out, like, towards the street. There's, like, a berm there. We're not in the berm. We're not -- we're feet from that.

HEARING EXAMINER DICKMAN: Okay. Let me ask you a question. Because one of the criteria -- and I'm going to read it to you -- will granting the variance be in harmony with the general intent and purpose of the Land Development Code, meaning the zoning in that area --

MS. ROLWES: Yeah.

HEARING EXAMINER DICKMAN: -- and not be injurious to the neighborhood or otherwise detrimental to the public welfare? I get that this is about a pool. Sometimes putting in a pool and the pool -- the associated pool deck will then necessitate a fence, because pools have to be fenced in, and then a hedge. So the question I have for you is, is the hedge and fence placed in such a manner because of the pool?

MS. ROLWES: You know, you have to have a fence around a pool. And so we decided to -- we wanted some green space, a little bit of green space. And so we, you know, put some green space and then put the fence around that.

HEARING EXAMINER DICKMAN: Okay. So the point being is -- that I'm

thinking about is -- and I'll ask the county the same question -- is the line of sight when -- you're at an intersection, so the line of sight pulling up to the intersection or going by there, whether you're a pedestrian or whether you're in an automobile, would that -- would the hedging and fencing that are caused by the pool be somehow injurious to pedestrians and cars? There are -- is there a sidewalk on this property anywhere?

MS. ROLWES: Yes, there is a sidewalk.

HEARING EXAMINER DICKMAN: Along 7th -- along 7th?

MS. ROLWES: Would you allow me to pull up a picture of it on my phone to show you, or I believe there was -- the appraiser was out the other day and did take pictures for this variance for today.

HEARING EXAMINER DICKMAN: Let's see if the county can do that or not. They're pretty good. They're smart over there. They can pull up almost anything.

MR. YOUNGBLOOD: Mr. Hearing Examiner, I'm pulling up an aerial of the property. Bear with me just one second here.

HEARING EXAMINER DICKMAN: Okay. Is there any way to zoom in on that a little bit? Yeah, there is. Okay. So 7th goes north and south. 107th goes east and west. 6th -- okay. All right.

MS. ROLWES: May I?

HEARING EXAMINER DICKMAN: Yeah.

MS. ROLWES: May I?

HEARING EXAMINER DICKMAN: Wait, wait. Here you go. I've got a better idea for you. Here, come over and take this. It's a little pointer, but be careful with it. Don't shoot anybody with it. Just press that button. Go on over back to the podium and do that. Have fun.

Speak into the microphone.

MS. ROLWES: Okay. So this right here is the detached garage. We put the pool right here, okay. And there's the fence that comes, like, right in -- right in this little section right here, okay. So the fence goes here, and then it goes to here and over to here and back.

So the stop sign would be up here, and here's this corner lot. There's nothing here. There's no shrubs, nothing. All we have is this pool here. Here's the house, okay. Here's the detached garage. And normally you would pull in and go into the garage here, but here's this little turnaround right here, and that's where we put this very small pool. And then the fence just comes out so there's, like, about 10 foot of green space.

MR. YOUNGBLOOD: I'm going to zoom in on this picture a little bit more.

MS. ROLWES: Okay.

HEARING EXAMINER DICKMAN: What's that big green thing on the top?

MS. ROLWES: That's a shadow. That's a shadow of the garage.

HEARING EXAMINER DICKMAN: Okay. Gotcha.

MS. ROLWES: Yeah. So here's where this pool is right here. Just -- and it's very small. And then we had -- we extended the fence from here -- sorry, I'm shaking -- from here down to here and then over.

HEARING EXAMINER DICKMAN: I got you.

MS. ROLWES: So anybody coming down the street, there is no obstruction. There's no obstruction on the corner. And if you go all the way down the street, you're going to see other homes that have green space, fences, shrubbery in the same --

HEARING EXAMINER DICKMAN: Okay.

MS. ROLWES: In the same plane, if you look down the street, you're going to see other people that have done the same thing with their fencing.

HEARING EXAMINER DICKMAN: I get it. Can I have my pointer back? Thanks for that. It seems like you enjoyed it.

All right. Thank you for that. It helps a lot.

So your ingress/egress to your home is off of 7th, not off of 107th, your driveway; is that what you're saying?

MS. ROLWES: Correct. It's off of 7th, not 107th.

HEARING EXAMINER DICKMAN: Okay. Thank you.

Let me ask the county a couple questions. How far along were they in -- how much construction had taken place by the time this particular oversight was understood?

MR. ORTMAN: The pool shell and spa shell had been constructed, a spot survey was taken, and that is when the error was discovered.

HEARING EXAMINER DICKMAN: Okay. Right. So that sounds like, what, about 80 percent of the pool? Was decking -- any of the decking put in?

MR. ORTMAN: I don't know if it's 80 percent or what, but --

HEARING EXAMINER DICKMAN: A significant amount.

MR. ORTMAN: If you have to tear down the pool, you have to have -- you'll have no undisturbed ground to put a new pool in.

HEARING EXAMINER DICKMAN: I understand. So but for the fact that -- if 7th Avenue wasn't there, this would be considered a backyard?

MR. BELLOWS: Correct.

HEARING EXAMINER DICKMAN: That's Ray Bellows saying "correct."

MR. BELLOWS: For the record, Ray Bellows. You are correct, if this was an interior lot, those were the setbacks the county applied and would have worked. But this is a corner lot with two front yards.

HEARING EXAMINER DICKMAN: Gotcha. Okay. Thank you. That's all I have. I appreciate it.

Anything else the county wants to say?

MR. BOSI: Mike Bosi, Zoning director.

I did want to say that if you would look at our Land Development Code related to sightlines, the intersection of 107th and 7th, this would not be inside the sightlines --

HEARING EXAMINER DICKMAN: That's exactly --

MR. BOSI: From county's code requirements, this would not violate the sightlines of that intersection. It's back further enough from that property line -- from that intersection towards where it wouldn't be considered within the sightlines based upon our code.

HEARING EXAMINER DICKMAN: I gotcha, okay. That was another question I was going to ask. So if the pool was actually in the front yard and the hedges were being put up, you would certainly look at the triangulation and the turning and sightline to make sure it was safe?

MR. BOSI: Correct. That would be a direct safety issue that we would say that we couldn't have those obstructions within the sightlines.

HEARING EXAMINER DICKMAN: Perfect. That's the other question I was going to ask. All right. I have nothing else.

Any other speakers we have signed up or no?

MR. YOUNGBLOOD: I don't have any registered speakers, but I do have a

question for the court reporter.

Would you like for the property owner to complete a speaker slip?

THE COURT REPORTER: No, you just need to spell your name. If you can just spell your last name.

MS. ROLWES: Oh. Yeah, it's Molly. And the last name is Rolwes. It's R-o-l-w-e-s.

HEARING EXAMINER DICKMAN: Thank you.

MR. BOSI: Anything else, sir?

MR. ORTMAN: Mr. Dickman, if you would like, I will go and make copies of the emails.

HEARING EXAMINER DICKMAN: That will be great. I'm going to admit into evidence the emails that she read, that he was referring to, so I have those for my file. So, yeah, that would be great. Thank you. If you could allow the county to have those, and they'll make copies and provide them to me and provide those back to you.

MS. ROLWES: I will.

HEARING EXAMINER DICKMAN: You don't have to do it right now, but, you know, sometime -- you could even send them to Heather, my parallel, if you want. But as of right now, I'll accept those into the record, okay.

All right. Thank you very much.

MS. ROLWES: Thank you.

HEARING EXAMINER DICKMAN: I will review everything, including the public speakers' comments, and get a decision out within 30 days. Thank you very much for being here.

MS. ROLWES: Thank you.

HEARING EXAMINER DICKMAN: ***Okay. This one is 3B, correct? Okay. Here comes the infamous Mr. Kelly.

MR. KELLY: Howdy, howdy. Good morning, Mr. Dickman.

HEARING EXAMINER DICKMAN: Good morning.

MR. KELLY: This is going to be Agenda Item 3B, project BDE-PL20210001685. It's a request for you to approve a 17-foot boat dock extension over the maximum permitted protrusion of 20 feet for waterways greater than 100th feet in width to allow a boat docking facility that will protrude a total of 37 feet into a waterway that is 1,311 plus-or-minus feet wide pursuant to Section 5.03.06 of the Collier County Land Development Code for the benefit of the property located at 109 Pago Pago Drive West, further described as Lot 217 Isles of Capri No. 2, in Section 32, Township 51 South, Range 26 East, Collier County, Florida.

It's located within a Residential Single-Family 4 zoning district.

Public notice requirements were pursuant to Section 10.03.06.H. Property owner notification letter was sent out by the county on March 25th, newspaper ad run by the county on March 25th, and the public hearing sign was posted by me on March 29th, 2022.

The review was conducted pursuant to LDC Section 5.03.06.H. Of the primary criteria, the petition satisfied five of five, of the secondary criteria, satisfied four of six, with the sixth being not applicable, the Manatee Protection Plan, and has been found to be consistent with the Growth Management Plan and the Land Development Code.

No public comments have been received. And it's our recommendation that you approve this petition as described in accordance with the proposed dock plans provided

within Attachment A.

HEARING EXAMINER DICKMAN: Thank you. Is the applicant here? Come on up. And your professional designer's here. Come on up, too. He's going to show us his picture, I'm sure.

Come on up. Yeah, why don't you let him handle it, and then -- yeah, you can stand there or wait for him to finish. Usually we -- if you have an expert here, it's preferable that you let him handle it, and then if you have any additional question -- information you want to provide to me, that helps, okay. Unless you don't want him to speak.

MR. MERKLING: No, we're fine just like this.

HEARING EXAMINER DICKMAN: That's right. Okay. All right. He's previously done a really good job, so I think you're in good hands.

MR. PEARSON: Good afternoon. For the record, Nick Pearson, Turrell, Hall & Associates.

HEARING EXAMINER DICKMAN: Okay.

MR. PEARSON: Next slide, please. Got my picture there just for you.

HEARING EXAMINER DICKMAN: You haven't aged a bit. So you are an expert, by the way. I mean, that's the reason why he put that up there, because he's being recognized as an expert, sir.

MR. PEARSON: Thank you.

So just a little rundown of what's there now on the subject property. There's a seawall shoreline with an existing dock and a canopy and one single boatlift. The current protrusion is 19 feet. The overwater structure with the canopy amounts to approximately 600 square feet.

Next slide.

So here is the basic proposed plan. As you can see, there's a 4-foot access with a terminal platform for, you know, basic storage, recreational use, and that will allow for ample loading/unloading from the boat and otherwise maintenance to the boat as well.

Also worth pointing out, the current square footage of overwater decking for this is 221. It's a substantial reduction from what's there now, and continued use is also for one vessel.

The next slide, please.

So this is kind of an overview of the waterway. As you can see in that top right photo, the actual bay area is very large. There is -- the fire department dock is probably the nearest structure, but there is also nearly 200 feet of space between our proposed dock and that dock. So we shouldn't be impacting navigation, really, in any way.

The bottom right photo is a depiction of the aquatic preserve in this area. So that is a state designation that basically prohibits dredging almost entirely, barring a few, I guess, extreme circumstances, like, if, like, accretion were to occur very quickly.

That's also the reason why we have the current configuration of the dock proposed. There's a lot of restrictions as to decking, width of access walkways, the terminal platform. The access can't be more than four feet wide. The terminal platform cannot be more than 160 feet in total area, so -- and that would basically entail anywhere where you could be loading and unloading from the boat.

Next slide, please.

Here is just a basic section of what's proposed. It follows the plan that you just saw basically exactly. And as you can see, the property line is what was deemed to be the most

restricted point in this case. It does fall almost exactly on top of the mean high-water line, but for the sake of this hearing, we'll use the property line as the most restricted point.

Next slide, please.

So this is an overview of some of the neighboring docks in the area. As you can see, especially on the south side of the peninsula of West Pago Pago Drive, there are a lot of docks that exceed the 20-foot, 25 percent protrusion restriction. There's also a few on the north as well. The fire dock, obviously, exceeds that also, I know that's a different use but still worth pointing out.

Next slide.

So the main concern for us was basically the north neighbor, whether they would be able to navigate in and out of their existing slip.

Mr. Merkling did speak to all the neighbors. He, as far as I know, hasn't received any objections to the proposal. I don't think we have letters, do we?

MR. MERKLING: No.

MR. PEARSON: No written letters, but he did speak to them.

MR. MERKLING: Including the firemen.

MR. PEARSON: Yes.

HEARING EXAMINER DICKMAN: Okay.

MR. PEARSON: My opinion -- my opinion is that the neighbors should have ample room to navigate in and out of his slip still. It is angled and there's, you know, more than enough backing distance. So I don't really foresee this as an issue, but I did want to bring it up nonetheless.

HEARING EXAMINER DICKMAN: To this point, let me ask you a question. So the current -- so this vessel, your neighbor pulls in and out this way at an angle. And then, sir, your vessel here is set up so you're pulling in, backing up into that vessel; is that right?

MR. PEARSON: Currently, yes. He is coming in and out of his slip basically from that northern angle. So it is actually a pretty tough angle. And that's honestly the case with that kind of shore parallel U-shaped dock. Those are popular, and they are tough to navigate in and out of.

HEARING EXAMINER DICKMAN: That's the point that I want to make is that it's almost as though this is -- and that is a criteria that I look at, not only the decking, but also the waterway and navigability but also the neighboring docks, and that seems to be improving the safety factor in terms of the being able to -- both boats being able to avoid each other in terms of ingress/egress onto their dock facility.

MR. PEARSON: I would agree. Also worth pointing out, I did go to this site. The neighbor's dock, I think, was -- I think it was a pontoon boat; is that correct?

MR. MERKLING: Yes.

MR. PEARSON: So I didn't go onto their property, but my understanding is that it probably is not 30 feet long, as the lift -- as the slip length might suggest there. That's kind of why I included the 25-foot as well.

HEARING EXAMINER DICKMAN: I understand. Okay.

MR. PEARSON: Which he, obviously, adds to the backing distance and what you'd need there.

HEARING EXAMINER DICKMAN: Okay. So in your opinion, the configuration that you're proposing, does that give safe access to the vessel for maintenance and just to get on and off it, in your opinion?

MR. PEARSON: I believe so.

HEARING EXAMINER DICKMAN: It's just going to be on one side of the vessel?

MR. PEARSON: I believe so. Obviously, you'd like to be able to have access to the other side. Actually, going back to the aquatic preserve rules, you're not allowed to have two docks, two separate dock facilities for -- in the aquatic preserve, so -- and that's a state code.

HEARING EXAMINER DICKMAN: Okay. Sir, do you have anything else you want to add, or did your expert cover it all?

MR. MERKLING: If I may. I was very concerned with the --

HEARING EXAMINER DICKMAN: Could you put your name and address, please -- please, just into the microphone, state it for the record.

MR. MERKLING: George Merkling, 109 West Pago Pago, Isles of Capri.

HEARING EXAMINER DICKMAN: Thank you.

MR. MERKLING: When I started this project, I hadn't hired a professional. I was thinking I could do it myself, but I soon learned that it was beyond my limit.

I did talk with every neighbor. I'm friendly with every neighbor. They all said, "Go for it. We've seen you struggle getting in and out of your dock."

And it wasn't until last year when I got a new neighbor with a bigger boat than the previous resident -- and although he's got a very deep dock, his boat is quite short, but the entryway from his boat to his dock, if he pulls it all the way up, there's a piling right where they would enter and exit the pontoon boat. You know, it has railings and a gate. So he leaves his boat sticking out of his boatlift further, which made it nearly impossible for me to back out without having somebody in the back of my boat keep on pushing off.

This is -- then I went further -- I'm an engineer, and I can make a drawing, and I made a layout of the path that my neighbor uses to -- excuse me -- to get his boat out. And he always comes in in an arced fashion. And I laid out his exit path and entrance path with the new configuration, and it gives him more room to get in and out. So he really was all for it. He knew he was causing me a problem. We're friends. We worked with it.

And when he goes up north for the summer, he pulls his boat way up, and it's a lot easier for me to get in and out. But they're soon thinking about moving down here permanently. I just wanted to make sure that I didn't interfere in anyone's way to use their boat.

HEARING EXAMINER DICKMAN: Yeah. No, I understand that, and I do appreciate you speaking personally with your neighbors. They all receive notices anyway, but that's good that you spoke to them all about this. And that is -- I do see that to be a challenge for both you and your neighbor to navigate your vessels in and out. And it doesn't -- you know, that vessel could change. Your vessel could change. So either way, you know, looking at the navigability of any vessel that would fit on that, you know, would be a concern of mine. So thank you for that information. I appreciate it.

MR. MERKLING: Thank you.

HEARING EXAMINER DICKMAN: Do we have anybody signed up for the public to speak?

MR. YOUNGBLOOD: Mr. Hearing Examiner, I don't have any registered speakers for this item.

HEARING EXAMINER DICKMAN: Did we receive any letters of support or no objection or opposition?

MR. KELLY: For the record, John Kelly.

No correspond, no phone calls pertaining to this project.

HEARING EXAMINER DICKMAN: Very good, very good. All right. I understand your situation. I have 30 days to render a decision. Thank you for being here. Well done, and I'm glad you hired someone to help you out with that.

MR. MERKLING: I am, too. Thank you.

HEARING EXAMINER DICKMAN: Worth the money, I guarantee you.

MR. PEARSON: Thank you.

HEARING EXAMINER DICKMAN: Yeah. Take care of yourself.

***All right. 3C, right? 3C. Who do we have? Oh.

MR. KELLY: Item 3C. This is going to be Petition VA-PL20200001985. It's a request for you to approve an 8.5-foot after-the-fact variance from the side-yard setback of 15 feet as provided for in Land Development Code Section 5.03.06.E.5 for dock facilities on lots with water frontage of 60 feet or greater to allow a dock facility that was built 6.5 feet from the west side property riparian line on a combined lot with 80 feet of water frontage for the benefit of property at 199 Eveningstar Cay, further described as Lots 3 and 4, Eveningstar Cay at Port of the Islands in Section 9, Township 52 South, Range 28 East, Collier County, Florida, which is located within a Residential Multifamily 16 zoning district, RMF-16.

Public notice requirements for variances are contained in Section 10.03.06.F.2. The agent letter was sent by the applicant's agent on or about January 19. Property owner notification letter of this hearing and a newspaper ad were taken care of by the county on March 25th, and a public hearing sign was posted by me to the front of the property on March 29, 2022.

Reviews for variances are based upon the criteria contained in LDC Section 9.04.03, A through H. And this project has been found to be consistent with the Growth Management Plan and the Land Development Code.

With respect to public comments, at the time I was drafting the staff report, I received eight letters of no objection which have been formed into Attachment F. If I could get that placed on the screen, please.

MR. YOUNGBLOOD: I'm working on it.

MR. KELLY: I tried to provide the exhibit and aerial photograph depicting where these letters came from.

HEARING EXAMINER DICKMAN: That helps very, very much. Thank you.

MR. KELLY: The letters came from the properties in green. The subject property is circled in yellow. And just last evening I obtained a letter of no objection from 203 Eveningstar Cay, which is the corner lot to the left. So there is no circle over it, but you'll see 203.

HEARING EXAMINER DICKMAN: 203?

MR. KELLY: Yes.

HEARING EXAMINER DICKMAN: Okay. Gotcha.

MR. KELLY: I mention that because the location, it's very much germane to this project.

HEARING EXAMINER DICKMAN: Okay.

MR. KELLY: It's staff's recommendation that you approve this petition as described in accordance with the map of as-built survey dated February 15, 2021, that has been

provided in Attachment A, with the stipulation that the property owner obtain a certificate of occupancy or completion, whichever is applicable for the existing dock facility.

I'll mention that the existing dock facility was constructed at a time that permits had been applied for but were not issued. So then, to further complicate issues, the property transferred and, additionally, this property comprises two lots that have been combined for development. Prior to combining the properties, they would have had less than 60 feet of water frontage. So the setback would have been seven-and-a-half feet from the side property line. As it is, they combined the properties. Now they have 80 feet of water frontage which requires a 15-foot side setback.

HEARING EXAMINER DICKMAN: Okay. Let me first ask a couple questions before you go away.

I see that the original developer of this area did a great job with the waterway, but the lots seemed a little odd.

MR. KELLY: They do. And I provided the Site Development Plan as an attachment as well so that you can see how this was designed. It's going to be Attachment C. Rather than placing it on the screen, I believe you have access to it.

HEARING EXAMINER DICKMAN: Yeah, I do. I just wanted to point out that these lots are a little unusual. They have some unusual characteristics to them in terms of, like -- the side yards are not straight, in other words. I'm not quite sure how that happened, but it's very interesting. I've never seen that before, or I have, but not quite like this in uniformity.

I do understand also in joining the lots -- just so we're clear here, in joining lots, since it's common ownership, it's simply going to the Property Appraiser and saying we want to put this under one folio for tax or ownership purposes. It's not re-platting anything, correct?

MR. KELLY: Correct.

HEARING EXAMINER DICKMAN: Okay. And lots of people don't understand when you do that, there might be some affects that the Property Appraiser in no way, shape, or form has any -- well, they may have knowledge, but they have no regulatory or -- or influence on the actual zoning performance criteria that the county does. They're two separate agencies. So all they do is do for tax evaluation. Lots of people, unfortunately, do go to the Property Appraiser and look at the land use and think that that's the zoning, and they get confused, and -- but I see that this would be an unintended consequence where you're thinking, like, great, I'm going to add both of these lots, I'm going to combine them into one ownership, and then, you know, you have these other situations that you don't know about.

MR. KELLY: Correct. And to further complicate things, based upon the Site Development Plan, the house was constructed using a zero setback, which was compliant with the Site Development Plan; however, in trying to line up the dock, if it was a single property -- they had issues with this one.

HEARING EXAMINER DICKMAN: Okay. Well, let's go ahead and move on. Is the applicant here?

Thank you, John.

MR. KELLY: I would also mention that the property owner is here if he would like to come up.

HEARING EXAMINER DICKMAN: Come on up, sir. Welcome to the big podium, the big brown one, so we can see eye to eye. How are you this morning?

MR. McNEIL: I'm good, thank you. My name is Randy McNeil. I'm with Naples Marine Construction.

HEARING EXAMINER DICKMAN: Okay.

MR. McNEIL: And the owners of the property, Jerald and Cheryl Rampe, have hired us to try to resolve this issue.

HEARING EXAMINER DICKMAN: Great.

MR. McNEIL: The original dock was put in in 2000 -- 1991, I'm sorry. And when the -- the original was put in in 1991. When the new dock was put it, it was in a similar footprint, but we can't find any historical record to prove -- to show that.

So when the new dock went in, it was built in a similar way, and it ended up six-and-a-half feet off the property line, allowing -- it's supposed to be 15 feet. They were going under the assumption it was seven-and-a-half feet, so it was -- either way it was off. It didn't matter.

It never got permitted. The people building the dock never followed through. Closed -- got a permit issued. They applied for it, but it never was issued. This went on, and then the property sold, and that's when it became apparent that the permit wasn't issued. There wasn't a settlement on the CO or anything like that. So we've since been working on this to try to get it resolved.

As John mentioned, the letter went out to 53 people, and -- I'm sorry -- 58 people. We got eight responses and now nine responses of no objection, and no objections from that letter. We do have a letter in the package in your paperwork showing the president of the HOA association clearly supports this project.

And if we could pull up Attachment E, Page 21. Is it Attachment E, isn't that? Maybe I'm -- maybe I have the wrong one.

MR. YOUNGBLOOD: Oh, B.

MR. McNEIL: It's the backup, my backup that I sent in. My apologies. I thought it was there.

HEARING EXAMINER DICKMAN: Take your time.

MR. McNEIL: D. I'm sorry. Page 21. Well, there's the front of the property, but there is a picture of the property from the water. There's the letter from the owners and the president.

There. So there's a picture of the property. The property to the left is what was acquired and increased the side setback -- I'm sorry. I'm not talking into the mic.

HEARING EXAMINER DICKMAN: Go ahead. So you're referring to this --

MR. McNEIL: The property to the left, which was added to this property, and now the property on the right is -- the neighbor in the corner is looking to buy that. There is a separate owner now. They've tried to reach out to get ahold of them. There's been no response. But the owner in the corner that just called John last night or this week to say that he supported the project is trying to buy that.

The owners, the Ramples, intend to homestead this property. They'd like to get this resolved. They'd like to put a canopy cover over it. But you can see the dock sets enough away. It's a natural egress from their house right onto the dock. It doesn't protrude over the side that much. And this is final construction. Like I said, this has been built, and there's no changes. We're not applying for any changes.

HEARING EXAMINER DICKMAN: Okay. So in your professional opinion. This is a safe navigable way. It's not interfering with the neighbors' boats or --

MR. McNEIL: No, that's within the original property dimension, and then they added the other 40 feet --

HEARING EXAMINER DICKMAN: Got you.

MR. McNEIL: -- with the new property.

HEARING EXAMINER DICKMAN: Okay.

MR. McNEIL: Which is part of the Rampes' property.

HEARING EXAMINER DICKMAN: Okay. Thank you very much.

Did your client want to say anything or -- I think that was enough for me, anyway.

MR. McNEIL: Okay. It's up to them if they want to say something.

HEARING EXAMINER DICKMAN: It's up to them. It's open mic, if you want.

But I did hear enough that -- if you want to, you're welcome to --

MS. RAMPE: Just a quick little point then.

HEARING EXAMINER DICKMAN: Okay. Come on up.

MR. McNEIL: By the way, Mr. Kelly did a great job of presenting that.

MS. RAMPE: Yes, he did.

MR. McNEIL: He saved me.

MS. RAMPE: Cheryl Rampe. This is Jerry.

The only quick thing we wanted to add to this is we found out about this problem six days before we bought the property.

HEARING EXAMINER DICKMAN: Ooh.

MS. RAMPE: So we were in the process, and they were closing when they came back to us with it. So we were blindsided, to say the least.

We picked the property because of the dock. I have rheumatoid arthritis. I have days when I'm on crutches, days I'm not. We could see this was something that I could actually get to the water. I could get to my boat and actually enjoy it.

And there's more neighbors that wrote letters that may not have gotten into the system or whatever, but everyone out of all those neighbors all say there's not a problem. They were all surprised that there was an issue, so...

HEARING EXAMINER DICKMAN: Okay.

MS. RAMPE: That's basically where I'm going. Is there something?

MR. RAMPE: I'm Jerry Rampe.

I just wanted to also say when we were getting ready to close -- and we bought a house sight unseen. We had just seen pictures, and that's why we saw the dock, and we thought, this is perfect, you know, so that we could come down. And we want to, you know, make this our home, our permanent home.

But what we were told at the time of the closing -- at the time of the closing by a title company that all that was needed -- because this, you know, sent up a red flag -- was the final approval or final inspections for C of O and all that it was going to be was a phone call, and that's what we were told when we were at -- from the title company when we were -- and so this was kind of like a --

MS. RAMPE: Two years ago.

HEARING EXAMINER DICKMAN: I understand. This does happen from time to time.

I have a question for you. Are you sure you want to move from New York to Florida?

MR. RAMPE: Absolutely. Absolutely.

MS. RAMPE: That's a no-brainer.

MR. RAMPE: And I'll also say that the dock situation is a little bit funny in that corner of the property. In the lot that's to the west of us -- it's vacant at this time. The next-door neighbors, again, to the west are trying to purchase. The water comes up, and it's very shallow in that corner in front of that vacant lot. And I would be more than happy to, if somebody else ends up purchasing that, to work with them to get their dock, you know, whether there's a variance needed or whatever, that would parallel ours so they would have deep water to get in and out and easy ingress --

HEARING EXAMINER DICKMAN: Okay.

MR. RAMPE: -- and stuff from their dock.

HEARING EXAMINER DICKMAN: Thanks for coming all the way down from New York for this.

MR. RAMPE: Oh, it was -- we were here, but we did stay a couple extra weeks just so we could be here.

HEARING EXAMINER DICKMAN: All right. Thanks for being here, and thanks for that explanation. It helps a lot. It does seem as though the dock configuration, the way it's set up, is safe and easy for you to access it. That's something that I do look at. So thank you for putting that on the record.

MR. RAMPE: And we do have -- if it isn't in there, I think we brought it -- there is a picture of the old dock that was black and white. Unfortunately, with the stairs that come right down, if the dock wasn't there, the steps would come down. You'd end up right into the water over the seawall.

HEARING EXAMINER DICKMAN: I understand. Thank you for that.

MR. RAMPE: Thank you so much.

MS. RAMPE: One other little thing. The homeowners association, because of our problem, have figured out that any new dock that goes in is going at a 45-degree angle along with the riparian.

MR. RAMPE: To parallel the riparian lines.

HEARING EXAMINER DICKMAN: Thank you.

MR. RAMPE: Thank you so much.

MR. McNEIL: I'd just like to add that there is a permit put in for this, the follow-up permit, and the only requirements left -- and this is in all the documentation. The only follow-up would be to get this approval, get the final survey, and then get the CO. And I do have those pictures that he was referring to. I'll leave them. I've got plenty of copies, so I'll leave them --

HEARING EXAMINER DICKMAN: Anything you want to put in the record right now you could provide it to the county. They'll make copies, give it to me, and they'll provide you back whatever you can --

MR. RAMPE: I've got copies.

HEARING EXAMINER DICKMAN: Okay. Could you just give it to --

MR. RAMPE: Give it to John?

HEARING EXAMINER DICKMAN: Yeah.

MR. RAMPE: Thank you very much.

HEARING EXAMINER DICKMAN: Yeah. Yes, sir. Thanks for being here. Do we have any -- we don't have any public comment, do we?

MR. YOUNGBLOOD: No, sir, not for this item.

HEARING EXAMINER DICKMAN: Okay. What's up, John?

MR. KELLY: I just wanted to add for the record that there is a permit application in the system, and it's PRBD20180529249. That permit has likely expired at this point, so I'm uncertain if it can be renewed or if they need to get a new permit. So the stipulation is that they obtain a certificate of completion.

HEARING EXAMINER DICKMAN: So let me ask you about that. I mean, how long do your permits stay open? A year? Six months? Ninety days?

MR. KELLY: It really depends. People can apply for an extension. I'm uncertain if that's been done in this case, but that's really outside of my realm.

HEARING EXAMINER DICKMAN: I understand that. But I guess maybe you should look into whether applying for a variance would stay or extend that permit time. I know some executive orders were issued. Sometimes the executive orders from the Governor, if it covers jurisdictions, it extends that. So you may want to just check that out. But either way, that's not in my world, but just pointing it out.

MR. KELLY: Applicant --

MR. McNEIL: My understanding, because I work on this for Naples Marine Construction --

HEARING EXAMINER DICKMAN: Your name again?

MR. McNEIL: Randy McNeil, I'm sorry.

HEARING EXAMINER DICKMAN: For her.

MR. McNEIL: The extensions have expired. They did offer several extensions because of COVID. But to get it extended, you know, you put in an extension application and a \$50 fee, and they can extend it 90 days, and you can -- that can be ongoing. So I would just come in once -- and I actually opted to wait until this hearing was over to reinstate it rather than let the days run.

HEARING EXAMINER DICKMAN: I don't blame you. I'm sure you guys will all work that out. Thank you for being here.

Anything else, John?

MR. KELLY: That completes the presentation.

HEARING EXAMINER DICKMAN: All right. We're all done with that one. Thank you, everybody.

Madam Court Reporter, you good over there? You need a break, or are you okay?

THE COURT REPORTER: I'm okay.

HEARING EXAMINER DICKMAN: ***All right. We're moving to 3D, 3D. And who do we have? Who's the county -- oh, Gabby. Come on up.

MS. CASTRO: Hello. 3D, that's the Naples Classic Car, correct?

HEARING EXAMINER DICKMAN: Yes.

MS. CASTRO: All right. Gabriela Castro with Collier County, principal planner. So 3D is Petition No. PL20210002480. It is a request for approval of the site plan with deviations from LDC 4.02.16.B, Table 7, to reduce the eastern minimum side yard from 10 feet to zero feet, and LDC 4.02.16.E.2.a.ii to reduce the retired shared landscape buffer from 10 feet to five feet and reduce the minimum -- property's minimum landscape buffer contribution from five feet to zero feet for the redevelopment of Naples Classic Car at 3066 Terrace Avenue.

Advertisement and mailers went out on around March 25th, and the project is compliant with the GMP and LDC and, therefore, staff recommends approval.

HEARING EXAMINER DICKMAN: Gabriele, a couple questions for you.

MS. CASTRO: Yes.

HEARING EXAMINER DICKMAN: So this particular parcel was obtained -- I'm just going to try to make sure I understand the chain of events here. They're under a much prior zoning code. Before I was born this structure -- the structure on this was built, right?

MS. CASTRO: Correct.

HEARING EXAMINER DICKMAN: So they want to use the same footprint from that structure even though the structure's demoed. Has it been demoed already?

MS. CASTRO: No, the structure is still on site.

HEARING EXAMINER DICKMAN: Okay.

MS. CASTRO: It still shows up on the aerial. It's been there since the 1970s.

HEARING EXAMINER DICKMAN: So it would be a legal nonconforming use; is that correct?

MS. CASTRO: Correct.

HEARING EXAMINER DICKMAN: Okay. So they want to demolish this, obviously, and put a more modern structure on the property, correct?

MS. CASTRO: Correct.

HEARING EXAMINER DICKMAN: But using the same footprint that was in place under a prior zoning code, and then the new zoning code has different setbacks and performance standards; is that a fair statement?

MS. CASTRO: Correct. And the old code, they were allowed to use party walls, which would require a 0-foot setback, and there was no landscape buffer requirement at the time, and now we have landscape buffer requirements and a 10-foot side setback requirement.

HEARING EXAMINER DICKMAN: Okay. So let's all hear what a party line -- a party -- yeah.

MS. CASTRO: A party wall?

HEARING EXAMINER DICKMAN: Yeah.

MS. CASTRO: It's where they share -- each property owner shares a common line -- wall.

HEARING EXAMINER DICKMAN: A common -- a party, okay. Right. Good, that's what I wanted to know. Let's go. Thank you very much. Good job.

Who do we have here today? All right. Welcome.

MS. KLUTTZ: Good morning.

HEARING EXAMINER DICKMAN: Come on up.

MS. KLUTTZ: Good morning, everybody. My name is Jessica Kluttz, for the record. I'm a planner with Davidson Engineering. I've been working there for about a year and also have my masters in urban planning from Florida Atlantic.

HEARING EXAMINER DICKMAN: Yes. And I have had the pleasure of seeing and meeting you before, and I deemed you an expert at that time, so you are an expert as of today as well. So thanks for being here. Do you need a pointer, by the way?

MS. KLUTTZ: I don't think so.

HEARING EXAMINER DICKMAN: You can deal without? Let me know.

MS. KLUTTZ: Yeah, I've got arrows.

HEARING EXAMINER DICKMAN: Okay.

MS. KLUTTZ: Great. So I'm here to present the Naples Classic Car site plan with

deviations.

Slide, please.

So here's our location. We are just northwest of the intersection of Airport Road and Davis Boulevard at 3066 Terrace Avenue and 3045 Davis Boulevard.

Slide, please.

And then our subject building here is outlined in yellow. And just to give you some area context, we have car condos to the north, a funeral home and parking lot to the east, an auto body shop to the south just over Davis Boulevard, and then a marine sales boat storage area to the west.

Slide, please.

So, as previously discussed, we do have this existing building that was permitted in 1973 and conformed to the code at the time, which is a 40-by-100-foot steel building, 18 foot tall, and here is the view as of today from Terrace Avenue.

Slide, please.

So we have those two deviations for redevelopment. The first one is a deviation from that 10-foot side-yard setback in the C-5 zoning district with the GT-MUD MXD overlay. This will allow for the redevelopment of the existing structure with the current yard of zero feet without any addition of hoods, canopies, or roof overhangs that would protrude.

And then our second deviation is a deviation from that shared 10-foot Type A landscape buffer between commercial uses, which would allow for the redevelopment of this existing structure with the zero-foot side yard along the east side of the property.

And in addition, with the code-required plantings elsewhere on the property, we are going to be mitigating this deviation with four mitigation trees that will be a minimum of 10-foot high when planted, and those will be along the north facade facing the street.

Slide, please.

Here is the visual of the site. There are two previously approved site plans for the development of the rest of the site, and then in red here is our proposed redevelopment structure, and you can see those four 10-foot trees to the north as well as how the building sits right along the property line.

Slide, please.

And just to give you some context, here's a side-by-side with the aerial.

And next slide.

HEARING EXAMINER DICKMAN: Can you stay there for a minute.

MS. KLUTTZ: Oh, sure.

HEARING EXAMINER DICKMAN: So the new structure is going to be used for what, like, bays, like, car bays or what?

MS. KLUTTZ: It's going to be used for car renovation, car bays. I don't know the exact purpose. It's part of this larger Naples Classic Car complex which is going to be restoring cars.

HEARING EXAMINER DICKMAN: So they would be accessing it through this way, right?

MS. KLUTTZ: Yes.

HEARING EXAMINER DICKMAN: Not anything up here; it's just part of this whole complex?

MS. KLUTTZ: Yes, the access would be internal.

HEARING EXAMINER DICKMAN: Gotcha.

MS. KLUTTZ: And part of the reason for the redevelopment is to raise the floor seven inches so that it is a straight transition from one building into the next.

Next slide.

And here we have a little bit more on that. So for Deviation 1, some of our justifications involve the safety function and aesthetics of the site. For safety, the new building will be built to current hurricane codes, and the foundation will be raised seven inches for better flood resiliency, and the functionality of the site will be improved by having that internal circulation as well as the raising the foundation to match the SDPs previously approved so that all of the buildings are on the same level. And for aesthetics, the footprint is going to be moved four feet and seven inches south to create articulation along the facade as the code requires, which will enhance the architectural value and, again, there's going to be no hoods, canopies, or overhangs projecting into the side yard.

The next slide.

And Deviation 2, our zero-foot lot line does not allow for any sort of landscape buffer, so we're going to have enhanced landscaping along the north building facade with those four 10-foot-tall mitigation trees on top of the other required buffers.

Next slide.

And that's it. And I have the aerial up here, again, for your review.

HEARING EXAMINER DICKMAN: Okay. Yeah, let me hear from the public first if there is anything, and then go from there.

Anybody registered to speak?

MR. YOUNGBLOOD: I have one registered speaker.

HEARING EXAMINER DICKMAN: Okay.

MR. YOUNGBLOOD: Let me remember who it is. Neal Horrell.

Let's see. Neal, are you with us, sir? You're being prompted to unmute your microphone. I see you're unmuted. Neal, can you hear us? Looks like Neal is having some issues with his audio.

HEARING EXAMINER DICKMAN: All right. Let's give him a minute.

MR. HORRELL: Okay. Good morning. Can you hear me?

MR. YOUNGBLOOD: Loud and clear, Neal. You have five minutes, sir.

MR. HORRELL: Actually, I have no comments. I just was here in observation of this. I'm the general contractor associated with the project, so I was just --

MR. YOUNGBLOOD: Okay.

MR. HORRELL: -- watching the presentation.

Thank you, Jessica.

MS. KLUTTZ: Thank you.

HEARING EXAMINER DICKMAN: Everyone's so polite. All right.

MR. YOUNGBLOOD: That is the only registered speaker I have, sir.

HEARING EXAMINER DICKMAN: Okay. All right. So I guess what I want to talk about real quickly is that -- you heard what I spoke with Gabriele about the legal nonconforming use, and I know you know about, you know, that area of law.

So taking down the structure -- you or Gabriele, somebody can answer that -- does that -- does that -- well, let me put it this way: Usually the policy is to eliminate legal nonconformities. And so does this demolition of the structure, even though the foundation's going to be there -- and I understand you're going to raise it for the new standards. So

you're asking for variances only because you have to legalize it because you're -- you're not able to retain the legal nonconformity just by -- you're taking way more than 50 percent of the structure. Is that a fair statement -- or do you understand what I'm asking?

MS. KLUTTZ: I think that's fair. It's mainly just so that -- the reason they want to keep that setback is so they can turn the cars around in the building. If it's any smaller, they'd have to do, like, a 20-point turn to reposition the cars. So it just makes it function because the building was built to that specific size for a reason.

HEARING EXAMINER DICKMAN: Okay. I'm going to turn to the county and ask -- well, they heard my question, so maybe they can jump in on this. Anybody over there? What would be the setback -- tell me again, just for the record. I want to hear it. So on that, if they didn't do this on that building, if they were to -- they're keeping the foundation. They would have to pull it back how far?

MS. CASTRO: So they're located in the Gateway Mixed-Use Overlay, so the side setback would be 10 feet.

HEARING EXAMINER DICKMAN: So it would be 10 feet less deep. So in other words, the way they want to use it, they would lose 10 feet of being able to use for their automobiles and --

MS. CASTRO: Correct.

HEARING EXAMINER DICKMAN: -- that potentially could be unusable for what they want to do?

MS. CASTRO: Correct.

HEARING EXAMINER DICKMAN: Okay. All right. So they are losing their legal nonconformity which makes them be in front of me; is that correct, Ray? Ray, do you want to say something?

MR. BELLOWS: For the record, Ray Bellows.

This process was design to help redevelopment of older areas where it's a -- instead of -- make it cost infeasible to bring these old sites up to code, and instead of allowing it to deteriorate further, this is the way to get improvements to these old buildings. And we decided that the process could utilize the development standards at the time of the original construction, and this would eliminate any nonconforming status with this approval, if it's approved.

HEARING EXAMINER DICKMAN: Okay. All right. I just wanted to clarify that.

Even though I am still required to fit that policy, which is a good policy, into the criteria for a normal variance, or deviation I should say, but that's a fantastic policy because you want an area to be functional, redevelop, used, not remain stagnant. The building is noncompliant, hurricanes, structures and things like that. So I understand that. I just want to get that on the record and make that clear.

Do you have anything else you want to say?

MS. KLUTTZ: No, that's it from me.

HEARING EXAMINER DICKMAN: Okay. Great job. Nice presentation.

MS. KLUTTZ: Thank you.

HEARING EXAMINER DICKMAN: And your GC seemed to like it as well.

MS. KLUTTZ: Thank you.

HEARING EXAMINER DICKMAN: All right. Anybody else wants to -- anything else? We're all good?

(No response.)

HEARING EXAMINER DICKMAN: All right. Well, I think I have enough information on this one. I appreciate it. I will get a decision out within 30 days. Enjoy the rest of your day.

MS. KLUTTZ: Thank you. You, too.

HEARING EXAMINER DICKMAN: ***Okay. So 3E was the one that withdrew, so we're moving on to the last one, which is 3F. Gabriele.

MS. CASTRO: Me again. This is petition number --

HEARING EXAMINER DICKMAN: Go ahead and state your name for her.

MS. CASTRO: Oh, Gabriela Castro. Sorry.

Petition No. PL20210002729. It's a request for an insubstantial change to modify Section 12.4, active community recreation area, of the Lely Beach -- Lely Barefoot Beach Planned Unit Development, Ordinance No. 8583, as amended, to change the maximum building height from two habitable floors to 39.25 feet for zoned height and 57.08 feet for actual height.

The subject tract is located at 105 Shell Drive. The project is compliant with the LDC and GMP and, therefore, staff recommends approval.

The applicant has complied with all hearing notices. Advertisements and mailers went out on around March 25th. The property signage was constructed by the applicant, and sign affidavit is located in Attachment G of -- G of the staff report.

HEARING EXAMINER DICKMAN: Okay. Stay there, please.

Mr. Arnold, could you come up, please. So when I was hired by the County Commission in 2020, I disclosed to the County Commission that I had two land-use matters that I had prior to them that were still active for me. They were fully disclosed. They're in my contract. One has to do with a license agreement with the county that has to do with mangroves involving a client to the north of this. It does not involve this particular property, but it is just to the north. So that is one of -- ironically, one of two matters that I have; were fully disclosed to the county. It does not involve this property, but it is in that development. It involves working with the county to be able to access mangrove areas and things like that to deal with the mangrove.

So I'm going to ask Mr. Arnold first. Do you have any problems with me handling this case at all?

MR. ARNOLD: For the record, I'm Wayne Arnold with Grady Minor & Associates, and we have no objection to you hearing the matter.

HEARING EXAMINER DICKMAN: I don't know if you're the right one to state this, but anyone -- I did disclose it to the County Commission; they understand that.

MR. BOSI: Mike Bosi, Zoning director. And with that disclosure, staff has no objection to you hearing the petition.

HEARING EXAMINER DICKMAN: Okay. For the record, I have not spoken with anybody about this. My client on the matter that I just disclosed, I have not, you know, had any conversations with them about it, whether they oppose or support. They've never lobbied me for this.

So I feel absolutely comfortable that I'm able to compartmentalize things and be able to look at this on its own merit. So given the fact that everybody has said they trust me -- didn't say that, but it's implied -- that I will go forward with this hearing.

So thank you, Gabby.

So come on up, Mr. Arnold. And just so you know, you may have heard that we used your name and infamy. At the last hearing people were saying how notorious you were, but I said you were actually infamous or your reputation, you know, is impugnable, so...

MR. ARNOLD: I appreciate your confidence.

HEARING EXAMINER DICKMAN: I hope you didn't take offense to that.

MR. ARNOLD: None taken.

So I have a short presentation. Again, Wayne Arnold, for the record. Joining me today is Randy Rosal, the project architect --

HEARING EXAMINER DICKMAN: Okay.

MR. ARNOLD: -- and Michael Herrera, who's our civil engineer who's working on the site plan for the project.

HEARING EXAMINER DICKMAN: Okay.

MR. ARNOLD: So this, again, as Gabby mentioned, is -- it's a PDI. It's a little unique because we are changing the height standard for this tract within the PUD. The building, as it's currently configured and constructed, functions as a three-story building. So we've eliminated the two-story reference in favor of seeking a zoned and actual height of the building, and there's an exhibit in your file that demonstrates that.

So, Andrew, if you could scroll forward to the aerial photograph, that would be great. It should be a couple slides forward.

MR. YOUNGBLOOD: There we go.

HEARING EXAMINER DICKMAN: Take your time.

MR. ARNOLD: Can you move forward to the aerial -- there you go -- location map.

So as you can see, this is the existing Lely Barefoot Beach Club, and it's an existing clubhouse. And you can even see from that image that it's three stories. If you go into the building -- I know Gabriela had a chance to attend our neighborhood information meeting. It's functionally a three-story building. If you go in the elevator, it has a number "3" inside. That was a clear indication to me.

So I'm not sure exactly the permit history. None of us was involved but, effectively, they created two stories over what may have previously been some form of storage, but because it's a nonresidential use, it can be flood proofed, and we can deal with that.

So, Andrew, if you could advance, please. Another one, please.

So this is the actual language that's stricken and replaced in the code. It references the two habitable floors, which would be stricken. Then we've added a zoned height and an actual height which reflects the existing building that's there today.

Next slide, please.

So this is an exhibit showing you the various heights on this one. Here we have established the zoned and actual heights for the project. There are other reference points to various parts of the building, but those are the two as you measure height. So the midpoint reference is going to be the zoned height above FEMA and then the actual height, which we would all the tippy top height, is measured from the elevation of the road that services the project.

Next slide, please.

So this is a closer-up image of the existing building. The image on the left, that is the main entrance from the parking area into the facility downstairs for an existing bar, dining tables. It moves out into the pool deck areas, and then it has two floors above which

contain kitchen, dining space, club amenities, things of that nature.

Next slide, please.

This is just an overall site rendering showing you the existing clubhouse. They're in progress of making a lot of site improvements here, as many of these clubs do. We've been involved in a number of them. This is, like, the critical time of year to try to get all their approvals in place so they can do work off prime time during the summer months and then come back for season and the residents and the guests have an actual finished space.

So this one was kind of a timing issue for us, but, again, they're making other improvements to the project. But, obviously, we're here to change the reference to the height.

And if you'd go forward, Andrew.

They're going to make some changes to the exterior skeleton of the building, renovate kitchen space, add some kitchen spaces downstairs and, overall, modernize the project.

But in a nutshell, that's where we are. We conducted our neighborhood meeting. We had no attendees other than a few of the club board members who were there in support if we opened the meeting, but we did not open the meeting because we had no members of the public present. As far as I know, there have been no letters or calls in support or objections to the project.

MS. CASTRO: I'm curious. I got one -- for the record, Gabriela Castro.

I got one phone call from a neighbor, but I think she might be listening in. I'm not sure.

HEARING EXAMINER DICKMAN: Okay. Real quickly, so the -- so the base flood elevation, BFE plus one, I guess, that's freeboard, right?

MR. ARNOLD: Yes.

HEARING EXAMINER DICKMAN: So that's where you're measuring height from while grade would be at the street level; is that right?

MR. ARNOLD: Yes.

HEARING EXAMINER DICKMAN: So that's the difference between the different heights; is that right?

MR. ARNOLD: Yes.

HEARING EXAMINER DICKMAN: Okay. These are the new FEMA maps under the new FEMA. Have the new FEMA maps gone into effect yet?

MR. ARNOLD: I don't think they have. These are based on current FEMA elevations.

HEARING EXAMINER DICKMAN: Okay. All right.

MR. ARNOLD: And I'm not sure how you would find your order, but if you care to attach the exhibit, you know, for reference, we're fine with that.

HEARING EXAMINER DICKMAN: I just wanted to make sure I understood. So in other words, I get what's happening. I mean, you know, the original was possibly to leave -- to basically have the first floor to be open and not habitable. I guess it would still be under air, I'm not sure, but now it's going to be used and under air, and that requires this decision, okay.

MR. ARNOLD: Well, it reflects the actual condition of the building in terms of its height reference, because if you go out there today, I don't think anybody's going to say that's a two-story building, which is what the current PUD actually allows.

HEARING EXAMINER DICKMAN: It's a good thing the elevator company

numbered it correctly.

MR. ARNOLD: Exactly. I didn't feel like I was on the second floor for the meeting.

HEARING EXAMINER DICKMAN: That's a done deal. Good argument on that one. Was that Otis?

All right. Andrew, anybody here to speak on this?

MR. YOUNGBLOOD: I don't have any registered speakers for this item.

HEARING EXAMINER DICKMAN: Mr. Arnold, do you have anybody from your team that wants to speak?

MR. ARNOLD: Mr. Herrera's approaching. I'm not sure if he wants to speak or wants to remind me of something.

So he just reminded me that there's active permits pending your notice, and I guess we would just certainly hope that you can render your opinion within 30 days.

HEARING EXAMINER DICKMAN: Okay. I'll put it on top of the stack.

MR. ARNOLD: I didn't ask for that, no.

HEARING EXAMINER DICKMAN: I know what you mean. Okay. I don't have anything else.

Gabby, anything else you want to add?

MS. CASTRO: No.

HEARING EXAMINER DICKMAN: Okay. Both of you guys did a great job.

MR. ARNOLD: Thank you.

HEARING EXAMINER DICKMAN: And thank you very much. I'll do my very best.

MR. ARNOLD: Thank you.

HEARING EXAMINER DICKMAN: All right. And that's it for today. Any business we need to put on the record or anything else? We're good to go?

MR. BELLOWS: For the record, Ray Bellows. No, I think we covered it all. No other new business that I know of.

HEARING EXAMINER DICKMAN: Okay. Thank you, Madam Court Reporter. Your staff at the county did a wonderful job, so kudos to them --

MR. BELLOWS: Thank you, Terri.

HEARING EXAMINER DICKMAN: -- I really appreciate.

Andrew, thank you for your help on everything. You did a great job.

MR. YOUNGBLOOD: Always a pleasure.

HEARING EXAMINER DICKMAN: Good to see you, too. Thanks for the water. We're adjourning the meeting. Adjourned.

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 10:47 a.m.

COLLIER COUNTY HEARING EXAMINER



ANDREW DICKMAN, HEARING EXAMINER

These minutes approved by the Hearing Examiner on 5/18/22, as presented or as corrected _____

TRANSCRIPT PREPARED ON BEHALF OF FORT MYERS COURT REPORTING,
BY TERRI L. LEWIS,
REGISTERED PROFESSIONAL REPORTER, FPR-C, AND NOTARY PUBLIC.