

September 8, 2022

TRANSCRIPT OF THE MEETING OF THE  
COLLIER COUNTY HEARING EXAMINER

Naples, Florida  
September 8, 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 Director  
Raymond V. Bellows, Zoning Manager  
John Kelly, Senior Planner

P R O C E E D I N G S

MR. YOUNGBLOOD: You have a live mic.

HEARING EXAMINER DICKMAN: All right. Okay. Good morning, everyone. This is the HEX meeting of September 8th, 2022.

Let's all rise and do the Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER DICKMAN: Okay, great. Thank you, everybody.

My name is Andrew Dickman. I'm an attorney in good standing with the Florida Bar. I've been practicing in the area of land use and local government for over 20 years. I am not a county employee. I'm hired by the Board of County Commissioners to basically act as the Hearing Examiner under the jurisdiction of the Code of Ordinances for petitions that fall under that jurisdiction.

My job is to conduct this quasi-judicial hearing and allow the parties, which would be the applicant or the applicant's representative, and the county to present competent substantial evidence that I can hear here today and apply to the criteria as it relates to each application or each petition.

We will also hear from the public. This is a public hearing and, under Florida law, the public has a right to speak at public hearings, and we have a procedure set up for that. Anybody who wants to speak that's here in person can fill out a card and provide it to Andrew over here. The county has also made arrangements for non -- for others who want to participate virtually over the Internet and will be making accommodations for that.

The procedures that we're going to follow here are that basically for each -- we have two items on the agenda today. Excuse me. I have the sniffles.

The county will present first and give me a quick summary of their staff report, findings, recommendations, and then we'll hear from the applicant, the applicant's -- or the applicant's representative over here, and then we'll open it up for the public.

Again, what I'm going to be looking for is expert testimony, competent substantial evidence that I can take and apply to the criteria for whatever application it is. Today we have a -- we have a boathouse and an after-the-fact variance. Both of those have different criteria, and so my job as a Hearing Examiner is to look for that evidence of whether it meets the criteria or doesn't, and then within 30 days I will be rendering a written decision.

All testimony here today will be given under oath, and in a second I'll have our court reporter administer the oath to anybody who's going to testify here today, and then we will go forward with each petition.

I want everyone, whoever's going to speak or present today, to take your time. This is an item where I have to hear everything here today. I have had no contact. I've had no special or independent or isolated ex parte, they say, conversations with staff or applicants or anybody about these particular things. I'm hearing them here today as an impartial decision maker.

And so what I want everyone, whoever's going to speak, is take your time, relax. This is an informal -- informal hearing and, most importantly, it's -- I may ask questions, but I want to be able to get as much information as I can because this will be the last time I'll be able to have that information.

Everything that I make my decision on is going to be on the record. So after today, I can't go back and ask questions and contact staff or contact the applicant. That's what a quasi-judicial hearing, the essential part of it is.

So with that, why don't we get started with administering the oath to anybody who's going to speak here today or anybody who's listening over the Internet who's going to speak. If you would please rise and take the oath, please.

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

HEARING EXAMINER DICKMAN: Thank you very much.

The other couple quick things. If you're going to -- if you need to take a phone call or have a conversation or something like that, please step out in the hallway so not to interrupt

anybody here that's trying to speak or I'm trying to listen to. Also, try to -- you know, when you come up, state your name clearly into the microphone so that we can capture it by the court reporter. And I'll do my best to talk as clearly and as slowly as possible and not talk over anyone, and hopefully everyone will do the same. We'll all be stopped if we don't, and we'll all be in trouble if we don't, so...

Anything else, Andrew? Did miss anything? We're good to go.

MR. YOUNGBLOOD: I just want to clarify, any members of the public who wish to speak during the public comment portion, we have a dedicated podium here at the front that they're welcome to use.

HEARING EXAMINER DICKMAN: Thank you very much. That's very good.

\*\*\*Let's go to the first one. This is 3A. Why don't we get started with that one.

They moved the podium back, it seems.

MR. KELLY: Good morning, Mr. Dickman.

HEARING EXAMINER DICKMAN: Don't be afraid.

MR. KELLY: Before you is Agenda Item 3A. It's Boat Dock Extension PL20210002702. It's a request for you to approve a boathouse to be constructed upon or simultaneously with the single-family dock facility pursuant to Section 5.03.06.F of the Collier County Land Development Code for the benefit of the subject property at 152 Heron Avenue, also described as Lot 21, Block T, Conners Vanderbilt Beach Estates, Unit No. 3, in Section 29, Township 48 South, Range 25 East, Collier County, Florida, which happens to be located within a Residential Single-Family 3 zoning district.

There is a correction to the staff report on Page 6 of 8, the staff recommendation. The size of the boathouse should be 25.7 feet by 40 feet inclusive of a 3-foot roof overhang. Said size is not referenced elsewhere within the report, only in that section.

HEARING EXAMINER DICKMAN: On the -- if I'm looking at 6 of 8 at the bottom where it says "staff recommendation," is that where you're referencing?

MR. KELLY: Correct.

HEARING EXAMINER DICKMAN: Where it says 19 foot by 25.7, it's actually --

MR. KELLY: It's 25.7 by 40. And that was not part of the formal advertisement either, so...

Okay. With respect to the public notice requirements, they were complied with as per LDC Section 10.03.06.I. The property owner notification letter and the newspaper ad were taken care of by the county on August 19, 2022, and the public hearing sign was placed by me on August 23rd, 2022.

This petition was reviewed by staff based upon the review criteria contained within LDC Section 5.03.06.G and was found to be consistent with the Growth Management Plan and the Land Development Code. The principal structure, a two-story single-family residence, at that location has received a temporary certificate of occupancy, and the dock upon which the boathouse is to be constructed was built by means of Permit No. PRBD20210943505, which remains in "inspect" status.

I've received no public comment pertaining to this petition, and staff recommends that you approve the petition as described in accordance with the map and site plan survey as well as the boathouse plans provided with Attachments A and B with the following conditions:

One, Attachment A and B represent the most current plans for the subject dock facility;

Two, plans for Building Permit PRBD20210943505 that has already been issued for the subject dock will be revised to demonstrate protrusion was measured from the property line, which is the most restrictive point;

Three, a permit for the boathouse will not be applied for until Condition 2 is satisfied; and,

Four, a certificate of completion for the boathouse and dock with lift cannot be issued until a certificate of occupancy is issued for the principal structure.

That concludes staff's presentation.

HEARING EXAMINER DICKMAN: Thank you, John. Appreciate it.

There we go. Thank you.

Who's here for the applicant? There he is. Good morning, sir.

MR. NELSON: Good morning. My name's Bill Nelson, and I'm representing the owner.

HEARING EXAMINER DICKMAN: Hi, Bill.

MR. NELSON: Hello. Good morning.

I didn't plan on going through a presentation, but I'm happy to go through anything or any questions.

HEARING EXAMINER DICKMAN: Okay. All right. You realize --

(Background noise over Zoom.)

HEARING EXAMINER DICKMAN: You got that under control?

MR. YOUNGBLOOD: That's Heather.

HEARING EXAMINER DICKMAN: Okay. You realize there are -- there's a criteria that has to be met for a boathouse, right, when you're here?

MR. NELSON: Yes, we have the criteria here.

HEARING EXAMINER DICKMAN: Okay. And have you read the staff report that John just referred to?

MR. NELSON: Yes.

HEARING EXAMINER DICKMAN: You've read the whole thing; you agree with it?

MR. NELSON: Yes, yes, we definitely do.

HEARING EXAMINER DICKMAN: Okay. So let me help you out here. Minimum side setback requirements, 15 feet. Those are met, correct?

MR. NELSON: Yes, all side setback requirements are met. We're within the allowable protrusion. We're also within the height restriction.

HEARING EXAMINER DICKMAN: Okay. It's only one boathouse. I could see that. The roofing material is?

MR. NELSON: The roofing material will match the primary residence.

HEARING EXAMINER DICKMAN: And is it going to be completely open on all four sides?

MR. NELSON: Yes, it will be open on all four sides.

HEARING EXAMINER DICKMAN: And is it designed in such a way as to minimize the -- minimize the impact to adjacent neighbors to the greatest extent practical?

MR. NELSON: Yes. We're within all allowable protrusions, setbacks, and height restrictions.

HEARING EXAMINER DICKMAN: Okay. And, Bill, will you give me your -- you've been here plenty of times, but just for the record, will you just give me your relationship with the marine contractor and your experience with boathouses.

MR. NELSON: Yes. I've been working with Greg Orick Marine Construction for about 10 years now. In that time I've handled permitting, project management, and basically every aspect of the business.

HEARING EXAMINER DICKMAN: Okay.

MR. NELSON: I've been involved with these types of hearings with the Hearing Examiner for Collier County, Naples City Council, and also many different neighborhood associations and whatnot.

HEARING EXAMINER DICKMAN: Okay. Yeah, so I'd see you as an expert and view you as an expert here. I just wanted to get that on the record so that -- you've been here plenty of times before. I know you know this area of application.

Okay. Is there anything else? The requirements here, you noted that there is a change on the staff report. It's 40 instead of 19 feet, right?

MR. NELSON: Yeah. That was just a mistake, apparently.

HEARING EXAMINER DICKMAN: Yeah, okay. All right. So why don't you hang

around, and let's go to the public and see if anybody here from the public's here to speak.

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

HEARING EXAMINER DICKMAN: Okay. All right. Then I have everything I have that I need, and here you've answered the questions that I wanted answered, and I will get a decision out as quickly as possible.

MR. NELSON: All right. Thank you very much.

HEARING EXAMINER DICKMAN: Thanks.

MR. NELSON: Appreciate your consideration.

HEARING EXAMINER DICKMAN: \*\*\*All right. We're going to 3B.

John, engage.

MR. KELLY: Thank you.

Okay. Before you is Item 3B. It's a Variance Petition PL20220003470. It's a request for you to approve an after-the-fact variance from Section 4.02.01.A, Table 2.1 of the Collier County Land Development Code, to reduce the minimum side-yard setback from 7.5 feet to 6 feet on the west and 7.5 feet to 5 feet on the east and to allow for the further encroachment of a 2-foot roof overhang on both sides pursuant to LDC Section 4.02.01.D.8 for an existing single-family dwelling and for a variance from Section 4.02.03.D of the LDC to reduce the 7.5-foot west side yard from 7.5 feet to 6 feet to allow for an accessory attached one-family pool screen enclosure for the benefit of the subject property, which is located at 741 93rd Avenue North, also known as Lot 15, Block 55, Naples Park Unit No. 5, in Section 28, Township 48 South, Range 25 East, Collier County, Florida, and that's located within a Residential Multifamily 6, RMF-6, zoning district.

The public notice requirements per LDC Section 10.03.06.F.2, which comprised an agent letter which was effected by the -- by the property owner's agent on August 8, 2022.

The property owner notification letter for this meeting and newspaper ad were satisfied by the county on August 19, 2022, and a public hearing sign was posted by me on the property on August 23rd, 2022.

This petition was reviewed by staff based upon the review criteria contained within LDC Section 9.04.03 A through H and was found to be consistent with the Growth Management Plan and the Land Development Code.

There has been no public comment provided to me on this application, and it is staff's recommendation that you approve this petition to reduce the minimum side-yard setback to 6 feet on the west and to 5 feet on the east with allowance for a 2-foot roof overhang on both sides thereby allowing for the continued existence of a lawfully permitted single-family dwelling and to allow a new one-family attached screen pool enclosure to be constructed 6 feet from the west side property line so as it may be aligned with the existing residence as depicted within Attachment A with the condition the applicant must satisfy the requirements for issuance of Building Permit Application No. PRBD20210841716 and obtain a certificate of completion upon the completion of construction for the subject pool screen enclosure.

And that concludes staff's presentation.

HEARING EXAMINER DICKMAN: Okay. So, in short, this is really all about the screen enclosure and, in permitting the screen enclosure, it was found that the structure encroaches into the current Land Development Code yards, and now that's what's causing the after-the-fact. It's not the fault of the property owner.

MR. KELLY: Correct. The house was properly permitted and constructed at the time that it was permitted.

HEARING EXAMINER DICKMAN: Okay. Great. Thank you.

All right. Who do we have -- Mr. Lombardo, how are you today?

MR. LOMBARDO: I'm good. How are you?

HEARING EXAMINER DICKMAN: It's nice to see you, as always.

MR. LOMBARDO: I have a PowerPoint, because I like PowerPoints.

HEARING EXAMINER DICKMAN: Love them.

MR. LOMBARDO: And then also in the audience with me are Mr. and Mrs. Celadon. They are managers of Celadon Giorda FL, LLC, which is the property owner.

HEARING EXAMINER DICKMAN: Welcome.

MR. CELADON: Thank you.

MR. LOMBARDO: Next slide. And, again, next slide.

Quick background, although I believe this was thoroughly covered by staff. This is an after-the-fact variance. So, briefly, RMF-6 zoning non-waterfront, non-golf course lot.

If we can go to the next slide, and next slide.

This is a survey showing the current existing structure and pool cage. There's, as you see on the west side, a 6-foot differential between the structures and the property line. On the east side there's a 10-foot for the pool cage, but for the house it kicks out to 5 feet closer to the road.

If we can go to the next slide.

So as a result, we're looking for 2.5 feet for the structure on both sides and 2.5 feet for the pool cage only as to the western side.

If we can go to the next slide.

And this is just to confirm that the house itself was CO'ed in 1986. The permit documentation has been submitted as part of our application to indicate that the county approved the setbacks at the time.

If we could go to the next slide. And we'll go to the next slide again.

I'll come back to this in the elements, but there are four other variances for pool cages in Naples Park, which I think indicates that this isn't exactly a special condition.

If we can go to the next slide.

So into the elements here, staff is recommending approval on all elements, as you heard. And as far as special circumstances, the primary special circumstance here is not necessarily a property circumstance but a structural circumstance. The building was approved with the setbacks, and the pool cage is coming off the line of the building itself. And as far as going to the preexisting conditions and whether the applicant created these, they did not build this house, certainly did not participate in the setback change.

But one thing I wanted to point out was when the pool cage was -- when the pool permit was applied for, you'll see that there are two permit numbers associated with this. For whatever reason, the contractor did not select "pool cage" on the first permit, so when they went to go get the inspection on the pool cage permit, the county said, this isn't a pool cage permit. So they pulled the pool cage permit, at which point it was noticed that the setback was not appropriate on the western side.

And so there was not -- it wasn't sort of an intentional creation of this issue. It was something that was discovered through the permitting process.

If we go to the next two. Thank you.

Literal interpretation would create an unnecessary and undue hardship mainly here -- and I think what we'll get to an aerial towards the end. Having a pool cage in line with the structure of the house is what is throughout the whole neighborhood from looking at the Property Appraisers' measure tool, which I acknowledge is not a survey.

It appears that this is a fairly common occurrence, and I cited in the materials four pool cage variances. There are more variances in Naples Park, but those are just for pool cages in Naples Park.

And as far as minimum possible usage, we're not going beyond the line of the house. And, importantly, 10 feet will remain between all the structures at all times, and the roof overhang issue is not part of the pool cage. It's part of the structure itself.

So if we can go to the next slide.

On E, on special privilege, here's the list of the resolutions 91-250, 95-380 and 99-298 and 2020-61. These are all resolutions granting specifically pool cage variances in side yard setbacks for Naples Park only.

And it seems to be something that is happening a good bit here. In part, this is because it seems that when a lot of these structures were built, it was a 5-foot setback. I believe in 2014, somewhere in there, it was switched to 7-and-a-half feet setbacks, and so there's a lot of nonconformities in Naples Park as a result.

As far as F is concerned, in harmony with the surrounding areas, this is where looking at the aerial will help. Every single house around this house has a pool cage, as we'll see in the aerial, and the immediate neighbors, who are not objecting, and specifically filed letters of no objection, are also -- appears to be within that, kind of, 5-foot tolerance from the property line.

Next slide, please.

Let's see here. And on the Growth Management side of the house, there's no impact on density, intensity, or compatibility here. Every single house in this area has a pool cage, has a pool. A lot of these houses are 5 feet from the property line, and sometimes the pool cages are as well.

If we can go to the next slide.

That just confirms that.

Next slide.

This is the aerial I was referring to. So this is the reference to the letters of no objection in your packet. So the side yard neighbors that are going to be impacted have submitted letters of no objection. The across-the-street neighbor has. As part of the reach-out process with the letter, I did receive a phone call from the rear yard neighbor. I don't have a writing from him, but he did not have an objection and, obviously, if he shows up here, we'll see, but it's not going towards the rear yard.

So I would submit that the two most important objectors are 737 and 745, and they've submitted letters of no objection, which in part may be because both of them are also very close to the property line with their pool cages.

Next slide.

So there's a big green checkmark. We're looking for an approval here. I'm here to answer questions. I probably need to really re-think my PowerPoint clip art situation.

Next slide.

HEARING EXAMINER DICKMAN: No, actually, the only other thing I would recommend is putting your picture on the first page. I mean, it seems to be --

MR. LOMBARDO: I really thought about it.

HEARING EXAMINER DICKMAN: It seems to be commonplace now. It's a good practice.

MR. LOMBARDO: I wanted to avoid that. So, anyway, we -- staff is recommending approval. They analyzed all the elements. We've analyzed all the elements. We've provided all the documentation on the 1985/86 permit as to the house. And I'm here for any questions.

HEARING EXAMINER DICKMAN: Okay. Let's go to the public first and see if there's anybody here.

UNIDENTIFIED SPEAKER: You clarified all the questions I had. I appreciate it.

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

HEARING EXAMINER DICKMAN: Okay. Nobody online. Okay, great.

MR. YOUNGBLOOD: No, sir.

HEARING EXAMINER DICKMAN: So you have no -- nobody here to speak.

All right. So the way I understand this is that, obviously, Naples Park is, like, one of the only -- one of few grid pattern kind of neighborhoods, and they're very tight, and you want to have the pool cage in line with the structure. The structure is -- you know, is -- you know, otherwise, it would be off kilter if you followed the structure.

I think what I've gathered here is that the information that you've presented, the legal arguments are well taken, and I understand that this is a -- this happens from time to time. We see it. You know, maybe every other agenda there's some type of after-the-fact variance that has to be

done just because of the nature of building and construction, and this is an existing structure. There's not going to be a house built. You're just dealing with a situation of how the house is structured on the lot. So I have everything I need.

John, is there anything else you want to add before I close this?

MR. KELLY: Just the letters of no objection were received by the applicant, and they're contained within the applicant's backup, which is an attachment on your staff report.

HEARING EXAMINER DICKMAN: Yeah, I have those. Thank you for that, and thank you for getting those in.

So I have everything I need to render a decision on this, and I'll do so as rapidly as I can.

MR. LOMBARDO: All right.

HEARING EXAMINER DICKMAN: Thank you. Nice job. And thank you for being here. Thank you. Appreciate it. Take care.

Anything else today?

(No response.)

MR. BOSI: Nothing other from staff.

HEARING EXAMINER DICKMAN: No new business? Nothing.

(No response.)

HEARING EXAMINER DICKMAN: Okay. All right. Then we're going to adjourn the meeting. It's 9:29. We're adjourned. Great. Thank you, everybody.

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There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 9:29 a.m.

COLLIER COUNTY HEARING EXAMINER



ANDREW DICKMAN, HEARING EXAMINER

9/22/22

These minutes approved by the Hearing Examiner on \_\_\_\_\_, 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.