

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
March 9, 2023

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
(Appearing via Zoom)

ALSO PRESENT:

Michael Bosi, Planning and Zoning Director
Raymond V. Bellows, Zoning Manager
John Kelly, Senior Planner
Sean Sammon, Principal Planner
Andrew Youngblood, Operations Analyst

P R O C E E D I N G S

HEARING EXAMINER DICKMAN: Good morning, everyone.

Today is March 9, 2023. This is the hearing examiner meeting for Collier County.

My name is Andrew Dickman. I am the hearing examiner selected by the Collier County Board of County Commissioners.

I am not a county employee. I am retained by the board of county commissioners to fulfill the duties and the code of ordinances under the hearing examiner section.

Specifically, we will be conducting quasi-judicial hearings today. What that means is that we will be hearing petitions that fall under -- for various items.

The process that I'm going to follow, that I like to follow, is to have the County introduce the items first and then have the applicant or the applicant's representatives come forward and present their case in chief.

Then we'll open it up for public hearing. This is a hybrid meeting, meaning that there obviously are people there live and in person, and there are people that will be participating possibly virtually.

And then I will allow the applicant additional time, if needed, to address any issues that came up during the public hearing.

Anyone who is going to speak in front of the hearing examiner today has to do so under oath. And in a minute, I will ask the folks who are going to speak to stand up and be sworn in by the court reporter that's there.

I want everyone to just -- this is an informal meeting. So relax. Try to get your point across. Try to address the issues that are salient for the criteria for approval of your petition or commenting on any petition. But, again, take your time. You know, it's important that I get as much information today as possible, because after today the record is closed and I will no longer be able to take any more information.

I will be making a decision within 30 days. I do not render decisions today. I will be providing everyone with a written decision within 30 days.

So with that, why don't we go ahead and anyone who's going to speak today, please stand and take the oath.

(Oath administered.)

HEARING EXAMINER DICKMAN: All right. Thank you very much.

We've got -- well, first of all, let's -- why don't we all stand and do the pledge of allegiance before we get started. Should have done that first.

(Pledge of Allegiance.)

HEARING EXAMINER DICKMAN: Okay. Great. Thank you.

I see two items on the -- two petitions on the agenda. Has anything changed since then, or are we -- or are those items still going forward?

MR. BOSI: Mike Bosi, zoning director. No changes to the items for today's hearing.

HEARING EXAMINER DICKMAN: Okay, great.

Okay, all right. So why don't we just jump right in.

We have got -- the first petition is a petition for request for variance.

MR. SAMMON: Good morning, Mr. Dickman.

HEARING EXAMINER DICKMAN: Yes, sir.

MR. SAMMON: For the record, Sean Sammon, principal planner, zoning division.

Before you is agenda item 3 A. It's for a variance project number PL20220005310. This is a request for you to approve a variance from the Land Development Code Section 4.02.01.A to reduce the required principal front yard setback from 50 feet to 10.29 feet for the proposed maintenance building replacement on the south property line, and a second variance from Section 4.02.03.D to reduce the required accessory front yard setback from 50 feet to 39.62 feet for the proposed kayak cover for the benefit of the subject property located at 10 Shell Island Road, Naples, Florida 34113 in Section 17, Township 51 South, Range 26 East, Collier

County, Florida.

The petition was reviewed by staff based upon review criteria contained within the LDC Section 9.04.03.A through H, and staff believes this petition is consistent with the review criteria in the LDC as well as the GMP.

Two key points that arose from the review: The proposed replacement structures will be in a similar location as the existing structures they're replacing and will be as minimal as possible, to reduce any negative impact to the existing land.

And the land-related hardship and the primary reason to replace the buildings on the existing site is that they can't be relocated on site because of the overall parcel size and form, the other existing structures on site, and that there are sensitive mangroves that prohibit the replacing structures from being relocated to meet the legal setbacks. The rest of the required variance criteria was responded to as outlined in the staff report.

With respect to the public notice requirements, they were complied with as per LDC Section 10.03.06.F.

The property owner notification letter and newspaper ad were taken care of by the County on Thursday, February 16, 2023. And the public hearing signs were placed by the applicant on Tuesday, February 21, 2023.

I have received no public comments for opposition pertaining to this petition, and staff recommends that you approve this petition as described in accordance with the attachments in the staff report.

There is one condition in association with recommendation to approve. This variance applies only to the replacement maintenance building and aluminum kayak structure as depicted on the attached site plan, Attachment E -- or Exhibit E.

Thank you.

HEARING EXAMINER DICKMAN: All right. Thank you very much.

Is the applicant or representative of the applicant here?

You get the big podium.

MS. PALMER: Hi. Good morning.

HEARING EXAMINER DICKMAN: Good morning.

MS. PALMER: Hi. My name is Robin Palmer. I'm a licensed professional engineer in the state of Florida. I work with Weiler Engineering, and I am the agent for this project.

HEARING EXAMINER DICKMAN: Okay. Good morning.

MS. PALMER: Pleasure to be here today.

Hopefully we can make this project clear to you and what our intent is for this.

So, as I said, with Weiler Engineering. We're -- we are a small company out of Punta Gorda, so this is our first time here speaking with you. But we are representing our client, which is the Florida Department of Environmental Protection, as well as their umbrella, which is the Rookery Bay Reserve.

And I do have them here as well. I have Donna Pace, who is the operations manager for Rookery Bay. If you have any additional questions, she's happy to speak to that.

We also do have the project manager from Tallahassee, Mr. Garland Sandel, who is representing the --

(Clarification by reporter.)

MS. PALMER: Garland Sandel. He is the FDEP project manager for Tallahassee.

HEARING EXAMINER DICKMAN: Okay.

MS. PALMER: So, again, I'll run through this project with you.

Next slide, please.

HEARING EXAMINER DICKMAN: Yeah.

MR. YOUNGBLOOD: Sorry. Doing about four things at once here.

MS. PALMER: Sorry.

Okay. So when we were completing this application process, we went through the criteria for a variance, one of those items being no unnecessary hardship for the applicant; no special privileges are allowed for us; and we have to have a reasonable land use; as well as it being a -- in -- harmonious with the intent of the LDC and not having a negative impact on the public welfare.

And go ahead, next slide, please.

Okay. So as Mr. Sammon mentioned earlier, what we are trying to do is we are trying to replace an existing structure out there at Rookery Bay. This is essentially their maintenance yard. And I will have a planned -- an aerial view so you can kind of get a better idea in an upcoming slide.

They are trying to replace their maintenance building. It's kind of at its end of life currently. It had some damage from Hurricane Irma back in 2017. So they would like to rebuild that.

They did receive a grant for funding for this project, which will allow them to build a new, more resilient building. The existing building is below flood. So the new one will be up to the Florida Building Code and we will flood-proof the building. So it will just be a better overall building to protect their important equipment that they have there for their -- their research.

The first one, as mentioned earlier, is the -- the building itself, the -- the maintenance building. We are proposing it to be relocated just to the side of the existing building. That existing building will be demoed and that concrete slab will remain.

And as such, we are requesting a variance for the front setback. It is 10.29 feet on their -- you can go to the next slide, if you would. Ah, thank you. Which has an encroachment of 39.62 feet. And I will show you on the aerial. You can kind of get a better idea.

We do have some restrictions because of the odd shape of the parcel, as well as a large mangrove fringe that kind of restricts the area that we can develop.

And then the secondary item they are trying to replace, they have an aluminum kayak cover where they store all of their kayaks as part of their research there at Rookery Bay. That one is a little further back, but that one also will have a variance that will have an encroachment of 10.38 feet on the front setback. But both the kayak cover and the maintenance building will meet the rear and side setbacks.

You can go to the next slide, please.

So, again, just -- I just want to stress the importance of this project and what it is that Rookery Bay does for Collier County.

They do own -- I believe it's 110,000 acres of property that is for conservation. They really strive to work on education and resiliency. I think they own 40 percent of the coastline of Collier County. So they are very mindful of the environment and would like to continue their research and their educational programs, and this building is vital for that.

This is where they store their boats for going out and doing all their research and all their lab equipment, so it is a very important structure for them.

As I mentioned, they did receive a grant for this because of Hurricane Irma, so they do have the funding in place to do this project. And this is a little bit time-sensitive. We have been working with Collier County, who has been fantastic, but their grant does expire this coming August, so they are anxious to get this project approved and move forward with it.

Okay. Next slide, please.

Okay. So this is the aerial. You can kind of see that there is a long rectangular piece. The area with the blue circle kind of shows the area in question. You can see the existing rooftop, the brown rooftop there, the existing maintenance building. It's a 40-by-40 structure. And you can also see how there's significant mangroves that prohibits us from pushing the building further back in order to meet the County setback requirements.

Next, please.

And here's kind of a zoom-in of the existing conditions. You can see the building is very close to Shell Island Road as it is. They have a fenced-in area and then a little grass base separating from the road. But you can see the mangrove fringe does come directly behind the building.

Currently that kayak cover is sitting adjacent to that existing maintenance building. And so under the proposed conditions - next slide, please - we'll now shift that new building just over to the left there. They will keep that concrete slab, so they'll have a useable area for some of the work that they do out there, as well as the cost savings associated with not having to demolish that slab. And then we'll rebuild that kayak cover just a few feet closer on top of that kayak cover.

That's basically my summary. Again, thank you very much for your time.

If you have any questions, I would be happy to answer them.

HEARING EXAMINER DICKMAN: That was a very nice presentation.

I recognize -- so this is a -- more or less this is -- it seems like a -- the constraints are due to the -- mainly due to the mangroves. Obviously want to maintain the mangroves and --

MS. PALMER: Exactly.

HEARING EXAMINER DICKMAN: -- and upgrading the building to a more resilient structure is important, I recognize that.

So let's go to the public speakers.

Nice job.

Let's see if there are any public speakers registered.

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

HEARING EXAMINER DICKMAN: Okay. All right.

Anybody have -- I don't have any questions. This seems pretty straightforward to me. I understand it. I have all the materials in front of me that -- that were published, so I don't have any other questions.

You did a very nice job.

MS. PALMER: Thank you.

HEARING EXAMINER DICKMAN: I'm sorry everybody had to come down -- down from Tallahassee.

But I will get a decision out as quickly as possible.

MS. PALMER: Thank you so much. I appreciate it.

HEARING EXAMINER DICKMAN: Thank you.

MS. PALMER: Thanks.

HEARING EXAMINER DICKMAN: Okay. So next we have another variance; correct?

Good morning, John.

MR. KELLY: Good morning, Mr. Dickman.

Before you is agenda item 3 B. It's variance petition PL20200002603. It's a request for you to approve an after-the-fact variance from Section 2.03.01.B.2.d of the Collier County Land Development Code to reduce the required side yard setback from 10.5 feet to 5.8 feet, and Section 4.02.01.D.8, to increase the allowed roof overhang from 3 feet to 6.97 feet on the north side to allow for the continued existence of a 37.6-foot by 14.5-foot storage shed with up to 1.17 feet of roof overhang on a legal nonconforming property measuring 105 feet by 630 and comprising 1.59 acres.

The subject property is located at 2890 68th Street Southwest, approximately 600 feet north of Golden Gate Parkway and is also known as the -- or legally known as the west 105 feet of Tract 52, Golden Gate Estates, Unit Number 29, in Section 30, Township 49 South, Range 26 East, Collier County, Florida.

It's located within the Estate's zoning district.

Public notice requirements were as per LDC Section 10.03.06.F.2. The required agent letter was sent by the applicant on or about February 2, 2023, per a notarized affidavit. The property owner notification letter for this hearing, as well as the newspaper ad, were satisfied by the County on February 17, 2023. And the public hearing sign was posted by the applicant on or about February 20, 2023, again, as per notarized affidavit.

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

With respect to public comment, I have received approximately six phone calls in response to the advertising. Upon having provided the callers with greater explanation of the project, each of the callers informed me that I could treat their calls as informational only. To this date, no letters of objection have been received. And the petitioner did provide four letters of no objection from neighboring property owners, which are contained within the staff report, Attachment C.

Staff recommends that you approve this petition as described and depicted within Attachments A and B subject to the following condition of approval: An after-the-fact building permit must be applied for and obtained for the construction of the subject storage shed; required inspections must be completed; and a certificate of completion must be issued upon completion of construction.

At this time -- the property is homesteaded, so at this time I would like to bring forward the property owner, Mr. Jaen, who will tell you how this came to be.

HEARING EXAMINER DICKMAN: John, before you sit down, you said you've received those letters of no objections. Are those the adjacent property owners, or --

MR. KELLY: Yes.

HEARING EXAMINER DICKMAN: Okay. All right, thank you.

MR. JAEN: Good morning.

HEARING EXAMINER DICKMAN: Good morning, sir.

MR. JAEN: Yes, Mr. Dickman. Thank you so much, Mr. Kelly, and all -- everybody present here.

My name is Ulysses Jaen. I have been residing at the property at 2890 68th Street for over a decade. I have been raising my family there, and I have had no issues with any of my neighbors ever since I have been here except for an issue that occurred - if you could show photo 1 - with respect to a shed that we utilize to store all of our equipment and to be able to work on the properties, about 1.6 acres. And, obviously, I need a place to put my equipment, et cetera.

This is the actual shed that I began to build a better structure on the north side. If you can see, that is not -- it's higher elevation and it's closer and it's -- it's not subject or prone to flooding; whereas in photo 2, which, if you can show photo 2, you can see the image of what's happening to my shed, my -- my shed that I have for over ten years and had no issues until the next-door neighbor built a gigantic structure and the flooding started to come.

I asked him several times to please help me to mitigate the damages, but instead he called the County on me and we -- and began this whole entire process.

If you can show the video, then you can probably see a little better what I'm -- we're going through in our property.

Every time it began to rain, the water started coming through, underneath the fence. I started putting sandbags and anything I could to protect it. And it became a river, until all my stuff was just basically flowing away. You can see how close the -- the -- my shed is to the property line. And I began to worry that, if I didn't do something to move my stuff, that it was going to cause damage to the house.

So judging from the property and the size of the property, I contacted my neighbor next door, which is the next-door neighbor. And she had two structures, one of which was just a

carport -- a carport that was in my property before I bought it. That property, he had put four feet of gravel in -- in foundation for it, but because I bought the property, he had to remove it.

So I asked the new neighbor if it was okay for me to put my shed there, and she agreed. She signed the letter, one of the letters that you will see in the exhibits. And because actually her house is closer to the property line than my shed is, I thought we were fine, until I got the complaint.

And I tried to get the building permit as an after-the-fact permit, and I found out that it was, in fact, short a few inches. And, therefore, I started the whole variance process.

I ask Mr. Dickman to please help me to correct the issue and to let me keep the current structure so I maybe have a place to store my -- my materials and to avoid the flooding that is -- continues to come in from the south side.

I asked the city engineer to come out. He did, but it was no require.

I also asked the department of protection for a -- the permitting. That took a long time.

So all these complications have basically turned it into today, coming in for you -- you to -- for you guys to allow for the variance to -- to occur.

HEARING EXAMINER DICKMAN: It sounds like you have put a lot of time and effort into this.

So both -- the neighbor that initiated the code enforcement, is -- that neighbor also is -- has provided a letter of no objection; is that correct?

MR. JAEN: No, he did not. In fact, he insisted that he doesn't like working with the County and that he didn't do it, that it was his contractor who had called, even though it has his name and his address on the complaint. And he said that he was -- he didn't want to deal with it, because he is untied this.

But, either way, it's costing a lot -- a tremendous amount of harm, and it still continues to flood the property on the south side, but I now have created a little trench so I can keep the water away from my house.

HEARING EXAMINER DICKMAN: Okay. I understand.

All right. Is anyone there from the public to speak? Anyone registered?

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

HEARING EXAMINER DICKMAN: Okay. Very good.

Okay. So I understand what's happening here. It sounds like -- so the neighbor that -- was that new construction on the other side of the white fence? Is that new construction, so they elevated their property in order to -- for FEMA purposes or whatnot, flood purposes? And then, obviously, that topography is going to change and create -- you know, gravity is what it is and pushes water into your -- into your side yard.

MR. JAEN: That's exactly what happened, Mr. Dickman.

HEARING EXAMINER DICKMAN: Okay. So --

MR. JAEN: It's a gigantic truck and auto repair place, and he's got a lot of parking spaces that doesn't absorb the water. And -- and he knew it. I mean, I asked him to help me, but then he turned on me. He used to be my friend.

HEARING EXAMINER DICKMAN: Oh, well, miracles happen. You may be friends again; you never know.

MR. JAEN: I'm wishing.

HEARING EXAMINER DICKMAN: All right. Well, that was a -- I understand. Thank you for the presentation. The material's very thorough in the packet. I have all that. And I don't have any further questions for you.

Does the County have anything else that you would like to add?

MR. KELLY: No, sir. You have -- you have the story correct.

HEARING EXAMINER DICKMAN: Okay. Great. Thank you.

Then I will get a decision out to you as quickly as I possibly can. Hopefully this situation will get resolved.

MR. JAEN: Okay.

HEARING EXAMINER DICKMAN: I do have -- I do have a question for the County. John, real quickly.

So the code enforcement action, has that -- has that been stayed, pending outcome of this proceeding?

MR. KELLY: I can't say that it formally has. They have been working with the applicant, so I --

HEARING EXAMINER DICKMAN: Okay.

MR. KELLY: -- I believe they are waiting to see what transpires here.

HEARING EXAMINER DICKMAN: Okay. All right.

All right, I understand.

MR. KELLY: They were invited to this hearing; however, no one is in attendance.

HEARING EXAMINER DICKMAN: Okay. Mr. -- is it Mr. Jaen?

MR. JAEN: Jaen.

HEARING EXAMINER DICKMAN: Jaen.

MR. JAEN: Jaen.

HEARING EXAMINER DICKMAN: Have you actually gone to a code enforcement hearing, or has it just been contact by code enforcement staff?

MR. JAEN: I went, and they both delayed it because they wanted to wait for this to take place first.

HEARING EXAMINER DICKMAN: Okay. That's what I -- that's what I thought. Okay. So you're -- you're in a pause position until I decide what to do here. Okay.

MR. JAEN: Yes, sir.

HEARING EXAMINER DICKMAN: Gotcha. Okay, I understand.

Thank you very much. Have a nice day. Thank you for being here.

MR. JAEN: Thank you.

HEARING EXAMINER DICKMAN: All right.

Do we have any other business? Ray, Mike, anybody want to talk to me?

MR. BELLOWS: Good morning.

I was just going to maybe follow up with an email about the determinations to be issued from the last meeting, what the status is. We have some people asking.

HEARING EXAMINER DICKMAN: There are people asking? Yes, they will be heading your way shortly.

MR. BELLOWS: Okay. Thank you.

HEARING EXAMINER DICKMAN: Okay. I believe our deadline is Friday. I apologize for not getting that to you sooner, but you will be getting them shortly.

MR. BOSI: Mike Bosi, zoning director. Appreciate that, Mr. Dickman. And we're not putting any pressure on you. Just -- we're just -- I guess Ray had a couple calls and they -- they were asking, so we just wanted to --

HEARING EXAMINER DICKMAN: Yeah, I understand. I feel the pressure, Ray. Thank you.

MR. BOSI: Other than that, we have -- we have nothing.

HEARING EXAMINER DICKMAN: Okay. Very good. You guys have a great day, and see you next time.

MR. BOSI: You too, Andrew. Thank you.

HEARING EXAMINER DICKMAN: All right. Bye.

(Proceedings concluded.)

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 9:28 A.M.

COLLIER COUNTY HEARING EXAMINER



ANDREW DICKMAN, HEARING EXAMINER

4/14/23



These minutes approved by the Hearing Examiner on _____, as presented _____ or as corrected _____.

TRANSCRIPT PREPARED ON BEHALF OF FORT MYERS COURT REPORTING, BY MARIANNE E. SAYERS, COURT REPORTER AND NOTARY PUBLIC.