

March 14, 2024

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
March 14, 2024

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, Planner III
Sam Kisner, Planner II
Ailyn Padron, Management Analyst I

PROCEEDINGS

HEARING EXAMINER DICKMAN: Good morning, everybody. Good morning.
Good morning.

This is the March 14th, 2024, Hearing Examiner meeting.

Let's all rise for the Pledge of Allegiance, please.

(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER DICKMAN: All right. Once again, good morning. My name is Andrew Dickman. I'm a Florida Bar attorney in good standing with the Florida Bar for over 20 years. My area of practice has been in land use, zoning, environmental law, local and county government.

I am not an employee of the county. I was retained by the Board of County Commissioners to fulfill the duties of the Hearing Examiner which are prescribed by ordinance in the Collier County Code of Ordinances.

My job is to essentially conduct these quasi-judicial hearings on petitions that are directed to the Hearing Examiner. What I will be doing is conducting these hearings, having testimony/evidence presented. And after the hearing's over with, the record will be closed, and I'll have 30 days to issue a written decision.

I have not had any outside conversations about any of the applications that are here. I do that specifically so that you know that I'm here as an impartial, neutral decision-maker. I come here basically to gather information from not only the county, the applicant, but also anybody in the public who wishes to speak.

This is a hybrid meeting, which means that the county has set up technology so that individuals can participate via Zoom or be here in person. And if you do want to speak, please fill out a speaker's card and provide it to this young lady over here.

The process that we're going to take is the county will introduce the item. They'll go through their staff report. They'll give us their analysis. They'll provide any recommendations and conditions that they may have. They'll also talk about the advertisement and any due process issues.

Then we'll have the applicant speak over here at the other podium. They used to be different colors so it was a little easier for me. But they're both brown now. But the applicant or the applicant's representative will be over there.

Then we'll go to the public and have any public comment, if there is any. I'll allow the applicant to have a few minutes of rebuttal time in the event that questions come up during the public hearing part.

I do want you to know that the county does have a court reporter here. They provide a court reporter at all of these meetings in order to have verbatim transcripts of everything that is said here today. So what that means is that -- try to speak a little slower. If you're a fast talker or -- you know, try to enunciate everything as carefully as possible; otherwise, our court reporter here is going to stop the meeting and say, "Slow down. I need to capture everything."

Sometimes these minutes -- or these transcripts come in very handy for me because sometimes we have hearings where a lot is said, a lot of information is presented. And I will actually request the transcript so that I can review what exactly happened. So -- and then it's also a good record for posterity going down the road to be able to -- if someone needs to research something, believe it or not, you know, a couple years from now. So with that, no head shaking for answers and things like that. Verbalize everything, and everything will go fine.

If you have the need to have a conversation with someone you're sitting next to, please just step outside because I want to make sure that I can hear everybody and what they're saying. It's very important that I do that.

If you're speaking and I'm looking down, please don't take offense to that because I'm probably taking notes and I'm always reading the file at the same time. I don't want anybody to think that I'm ignoring you. I'm definitely listening. That's a big part of my job, to be here to

listen to you.

This is an informal proceeding. I want everyone to relax. You know, this is an opportunity for you to speak and express your opinions on things. It would be helpful if at least the members of the public, to focus your comments on the criteria that I have to look at in order to approve or deny or approve with conditions one of the petitions.

So you can say whatever you want. It's a public hearing and, by law, you can, you know, talk about anything under the sun, but it would be more helpful for me as a decision-maker if you would just focus your comments on factual issues that would -- that might assist me in understanding the situation with regard to the petition.

So other than that, if anyone is going to speak here today, they must do so under oath. And so for all the items, if anyone is going to -- planning on speaking today, go ahead and stand up, raise your right hand, and I am going to ask our court reporter to administer the oath.

THE COURT REPORTER: Do you swear or affirm the testimony you will give will be the truth, the whole truth, and nothing but the truth?

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

HEARING EXAMINER DICKMAN: All right. Thank you, everybody. I appreciate that. I believe I've covered everything.

***And we have four items on the agenda. We're just going to go right down the line starting with Item 3A.

PLANNER KISNER: Good morning, Mr. Dickman.

HEARING EXAMINER DICKMAN: Good morning.

PLANNER KISNER: For the record, Sam Kisner, Planner II with the Zoning division.

Before you is Agenda Item 3A for Petition No. PL20230014987. This is a request for a variance from Land Development Code Section 4.02.01.A, Table 2.1, to reduce the required side setback from 30 feet to 15.03 feet on the north property line for an accessory swimming pool.

The property is a vacant corner lot zoned RSF-1 at the northeast corner of the intersection of Yarberry Lane and Anthony Court located in Section 2, Township 49 South, Range 25 East, unincorporated Collier County, Florida.

The petition was reviewed by staff based upon review criteria contained within 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.

With respect to the public notice requirements, they were complied with as per LDC Section 10.03.06.F. The agent letter was distributed by the owner on Wednesday, January 18th, 2024. The property owner notification letter and newspaper ad were completed by the county on Friday, February 23rd, 2024, and the public hearing signs were placed by the agent on Wednesday, February 28th, 2024.

I have received no public comment in support or opposition to this petition.

Today we brought new material to introduce as part of your decision, so I'm going to hand you a copy.

HEARING EXAMINER DICKMAN: Thank you. Thanks, Sam.

PLANNER KISNER: This document is representative of the model floor plan that was requested by staff. Because staff believes this petition is consistent with the LDC and GMP, staff recommends you approve this petition as described in the attachments to the staff report, specifically Attachment B, with the following conditions: One, the applicant obtains a building permit for the principal structure prior to construction of the accessory pool and, two, no construction of the pool may occur prior to issuance of the building permit for the single-family home.

This concludes staff's summary.

HEARING EXAMINER DICKMAN: One question, Sam -- and maybe this is for the applicant. Attachment C refers to letters of no objections. So I guess there were some letters that were submitted not objecting to this, correct?

PLANNER KISNER: Yeah. Thank you for that point of clarification. So there were two letters of no objection submitted. One from Collier County Transportation --

HEARING EXAMINER DICKMAN: Okay.

PLANNER KISNER: -- and one from Il Regalo HOA.

HEARING EXAMINER DICKMAN: Okay. Thank you very much. Nice job. Thank you.

Is the applicant here or the applicant's representative?

Good morning.

MS. PASSIDOMO: Good morning. Francesca Passidomo, for the record, 4001 Tamiami Trail South [sic].

With me today is Mr. Gunther, the owner and general contractor for Imperil Homes, the owner of the subject property.

Thank you. I'll just -- I'll be as brief and efficient as possible. We adopt staff's findings with respect to the criteria.

The request, once again, is a variance for the accessory swimming pool from the north property line. The existing setback is 30 feet due to the corner lot. And I'll explain a little bit more in detail how setbacks are applied for this specific property, a variance to 15.03 feet. The purpose is to accommodate -- because, again, the setbacks are very constraining on this lot -- to accommodate the model floor plan that is in front of you today.

HEARING EXAMINER DICKMAN: Thank you.

MS. PASSIDOMO: Next slide. This is -- next slide.

This is a depiction of the proposed pool location, and this is -- this is basically dimensionalized to show the 15.03 feet and also the extensive setbacks from the east and west property lines.

Next slide.

This is the subject property, locationally. Critically -- and I will show you -- on a subsequent exhibit, you will see that to the north of this property is over 400 feet of open space. That was an important consideration by staff as far as mitigating the variance. That's a substantial buffer that's particular to the subject property.

Next slide.

A lot of this is repetitive, and it is part of your materials. Essentially, this -- and I'll really go -- I'll show this graphically.

So next slide.

The buildable area here is substantially constrained. The lot coverage maximum due to the setbacks -- there is no lot coverage standard in the Land Development Code, but due to the setbacks from right-of-way easements within the property, I, essentially, have 80 feet front yards from Yaberry and Anthony Court, which is extremely extensive, then 30-foot setbacks from the north and east property lines.

Due to those setbacks, the owner has situated the home on the property such that, with its model floor plan, it can fit within all of those setbacks, but in order to accommodate the pool would frustrate that model floor plan. Again, this is a custom homebuilder.

HEARING EXAMINER DICKMAN: Francesca, so north is up, right?

MS. PASSIDOMO: That's right.

HEARING EXAMINER DICKMAN: And if I recall, so there's a -- I think a retention pond or something north?

MS. PASSIDOMO: That's correct. That's correct.

HEARING EXAMINER DICKMAN: There aren't any other houses north of that?

MS. PADRON: That's absolutely correct.

Next slide we'll show that.

HEARING EXAMINER DICKMAN: Okay. Thank you.

MS. PASSIDOMO: Next slide.

Oh, so this is just an example elevation to show that model plan in front of you.

Next slide.

So there -- this is a compatibility slide, essentially, to show that the properties just immediately to our east have a 10-foot pool setback from that northern property line to show that our 15.03 feet is very consistent from a cadence perspective.

Next slide.

This is -- Mr. Dickman, to get to your question, Il Regalo is the nearest residential property to our north. They actually submitted a letter of no objection. We reached out to them voluntarily, and they -- their, excuse me, board responded with no objection.

So you can see that extensive mitigation to the north. Also, just as far as other locationally-specific considerations, to the west there's a significant lake buffer and to the northwest is a conditional use. So there are some very unique aspects about this property.

HEARING EXAMINER DICKMAN: So but for it being a corner lot, you enjoy the benefits of the other -- the neighboring pool?

MS. PASSIDOMO: That's exactly right. That's right. And, intriguingly, the RSF-1 standards are extremely extensive as far as setbacks. So not only do I have right-of-way easements, but I also have extensive setbacks.

The PUD immediately to our west has about, I believe, 5-foot setbacks, and the PUD to our north has 0 to 12-foot side setbacks. So this is also -- not only is it a unique corner lot, but it's also a unique zoning district in this kind of patchwork quilt of zoning.

Next slide.

So this is just, again, to show you that extensive buffer to our north.

Next slide.

So this is just, once again, a summary. The important consideration is that this is a custom homebuilder, and the model floor plan, again, was situated on the property to conform with setbacks. But in order to accommodate a pool, we would either need to completely revamp the model floor plan -- and that has a crippling impact on the builder's reputation. This is a standard floor plan that it issues.

And also the -- as you may know, in the market, a lot and home package is critical to marketability. So either I gut the floor plan and try to accommodate a pool, which cripples the builder, or I -- or I eliminate a pool all together, which, under the circumstances of the extensive buffer and there being no harm, there being actually letters of no objection from our immediate neighbor, we believe that there is no harmful impact, and the impact, if any, is mitigated.

With that -- next slide -- we adopt, again -- once again, staff's findings. If I need to go through those criteria, Mr. Dickman, please let me know.

We have no objection to staff's conditions.

HEARING EXAMINER DICKMAN: Okay. We'll just see if there's any public comment.

But I do want to thank whoever made the decision to give me the floor plan because it does help. I know we had -- I had one case before that I had a variance somewhat like this on a residential lot, and I didn't really have the floor plan in front of me. So this helps quite a bit.

Anybody here from the public signed up to speak?

MS. PADRON: Good morning, Mr. Dickman. We have no registered speakers.

HEARING EXAMINER DICKMAN: Okey-dokey. Do you want to rebut any of that?

MS. PASSIDOMO: I do not. You'll find that the model floor plan's also in our presentation, which is part of the record. So with that, we close.

HEARING EXAMINER DICKMAN: I really appreciate that. Good work. Have a nice day.

MS. PASSIDOMO: Thank you.

HEARING EXAMINER DICKMAN: I'll get a decision out as quickly as possible.
Thanks.

***Okay. Are we ready to go to 3B?

MR. KELLY: Good morning, Mr. Dickman.

HEARING EXAMINER DICKMAN: Good morning, John.

MR. KELLY: For the record, John Kelly, Planner III with the county.

This is Agenda Item 3B. It's BLCD-PL20230010282. The petitioner requests the Hearing Examiner consider a boatlift canopy deviation to increase the allowable length from 35 feet to 49 feet and to increase the allowable height from 12 feet to 15 feet for a boatlift canopy measuring 49 feet long by 17 feet wide, and 15 feet in height in addition to a second code-compliant boatlift canopy measuring 11 feet long by 13 feet wide and 12 feet in height on a bayfront lot pursuant to Section 5.03.06.G.3 of the Land Development Code.

The subject property comprises 0.59 acres located at 219 Malibu Cove and is also known as Lot 19, South Port on the Bay, Unit 1, in Section 6, Township 48 South, Range 25 East, unincorporated Collier County Florida. The subject property is located within Tract H, a residential component of the Lely Barefoot Beach Planned Unit Development.

The applicant desires to construct two boatlift canopies, one of which requires deviation approvals for additional length and height and would otherwise be allowable in a residential bayfront lot.

The newly constructed dock facility required both a variance, which was VAPL20210000098, sorry. There's five zeros in that number.

HEARING EXAMINER DICKMAN: That can be confusing, yes.

MR. KELLY: And that was HEX Decision No. 2021-57, to reduce the required side riparian setback for dock facilities on lots with a water frontage of 60 feet or greater from 15 feet to 5 feet, and a boat dock extension, which was BDPL20210000039, HEX Decision 2021-58, to allow a protrusion of 63 feet into a waterway that is 325 feet wide. Said dock facility was built per Building Permit No. PRBD20220101094 issued on October 20, 2022, and which remains in inspect status.

The provided as-built survey produced by Agnoli, Barber & Brundage dated November 29, 2023, demonstrates that the dock facility is consistent with zoning and building approvals despite a certificate of completion having not yet been issued.

Public notice requirements were as per LDC Section 10.03.06.H. The property owner notification letter and newspaper ad were satisfied by the county on February 23, 2024, and a public hearing sign was posted by me to the front of the property on February 23, 2024.

The boatlift canopy deviation was reviewed by staff based upon the review criteria contained within LDC Section 5.03.06.G.1 and .2, and found that it complies with all but the length and height addressed by this deviation request.

No public comment was received in response to advertising for this petition, and staff recommends that the Hearing Examiner approve this petition as described in accordance with the canopy and site plan provided within Attachments A and B subject to the following conditions: One, that the boatlift canopy is to be removed upon the issuance of a hurricane warning affecting the general vicinity of the referenced location and, two, a certificate of completion shall not be issued before the issuance of a certificate of completion for the underlying dock facility.

That concludes staff's presentation.

HEARING EXAMINER DICKMAN: Okay. Thank you very much.

MR. KELLY: Jeff Rogers representing the applicant.

HEARING EXAMINER DICKMAN: Okay. Thank you. Thank you, John.

MR. ROGERS: Good morning. For the record, Jeff Rogers with Turrell, Hall & Associates. Here today representing -- the applicant, as John stated, is Michael Fasching, and he resides at 219 Malibu Cove. Basically, just south of Bonita Beach Road is this development on Little Hickory Bay.

Move forward with the slide. Thank you.

As John stated and went through -- I won't go through all that, but this dock is currently

existing and constructed, and I'm being told by the applicant this morning that they actually have received their CO at this point. I haven't looked into that nor verified, but it sounds like, potentially, they have received their CO.

Just to get in the weeds with that, the CO wasn't issued, from my understanding, due to electric issues. The house is being constructed, so they didn't have power run to the dock.

So, basically, this is a single-family docking facility which, per code, is allowed either a boathouse and/or a canopy; two canopies if it is located on a natural bay. And per our pre-app meetings and meetings with staff, this was considered to be on a bay so, therefore, we were able to propose two lift canopies; one meeting the criteria and the other requesting the deviation.

Move forward, please.

Here's some existing conditions for you, just to get a perspective of the waterway. Why is this important? A, it's important because views are affected by docks, vessels, and canopies, and this development is unique in that the shoreline is a 20-foot conservation easement, and the mangroves provide a natural buffer for views of the waterway and, you know, also the elevation and the heights of the mangroves do vary, but they do provide visual obstruction -- natural visual obstructions to the waterway.

Moving forward.

As John stated, we did receive an as-built survey. This is an awful copy of it on the screen, but that is it. Really not very clear for you to see. But it was constructed consistent with the deviations from the protrusions as well as the encroachments of the side-yard setbacks. So it is consistent with those approvals.

And also, I do want to stress that the vessel proposed to be moored there was a 43-foot vessel, and the proposed canopy is 49 feet for that vessel. So it does slightly extend past the vessel to provide additional shade on the north side.

So moving forward.

That's the existing dock with the setbacks shown, and the consistency.

Next slide.

HEARING EXAMINER DICKMAN: Oh, wait.

MR. ROGERS: Yep.

HEARING EXAMINER DICKMAN: Well, that's fine. This one's fine. So, Jeff --

MR. ROGERS: Move forward one.

HEARING EXAMINER DICKMAN: -- speak to me for a minute about the riparian lines, because I always understood that when you have a straight property boundary line that you go straight out with the riparian lines.

MR. ROGERS: Okay. So we're going to get into the --

HEARING EXAMINER DICKMAN: It looks like you're going to the center of the cove.

MR. ROGERS: Correct. So when you're on a cove or a bay --

HEARING EXAMINER DICKMAN: Yes.

MR. ROGERS: -- circular-shaped bay, basically, what -- the surveyors and judges are the ones that basically establish riparian lines. So we get a surveyor to do the -- establish those lines, and that's what they came up with. How did they come up with that? Basically, they pick a center point in the bay, and everyone's lines then go out to that point, creating pie-shape riparian lines when you're on a cove or a terminus end of a waterway that's not square.

So the riparian lines go to a central location in the middle of the waterway, and every line -- everyone's lines from the property line go directly straight out to that point. That's why our, let's say, southeastern riparian line is so sharp. It's -- the center waterway is, you know, pretty close to where we are. It's not a huge bay. So it did get restrictive on our southeast side more so than our northwest side, as you can see.

And, also, this is a natural waterway, so it is state lands. The state does require 25-foot setbacks. Obviously, we met that on one side and didn't meet it on the other. So setback waivers and no objections were received from the affected property that we encroached on when we went

through the boat dock extension, so those were provided during that process, however not provided in this. But it was approved, and the neighbor's not objecting to this petition either.

And our petition, basically, as John said, is in regards to the big boat and the size of the canopy. The allowable size is 35 feet. We're proposing 49 feet, which is a 14-foot extension request. The lift -- the canopy will not extend out further into the waterway than the dock and vessel do. The canopy will extend northward towards the actual residence in this case.

All the other criteria that's outlined in the application, basically, pertaining to the total width of the canopy, we meet -- we're consistent with that. The lift itself, as you can see, is a 16-by-16 lift, so 16 wide by 16 long. The proposed canopy width is 17 feet, so we're -- we have a 6-inch overhang on either side.

The length, obviously, is 14 feet past the allowable, for a total of 49 feet. So that's one of the deviations on the criteria.

And the other deviation is D, the height of the boatlift canopy shall not exceed 12 feet as proposed. We are asking for a 15-foot allowable height overall, so that is a 3-foot additional increase.

And the driving force behind that is the vessel is a relatively larger vessel, and the height of it and the T top associated with it.

If you could go back a couple slides, if you would for me, to a picture of the boat. Keep going. There you go.

You can see it's got some antennas and radars on it, so that's, again, what's driving the increased elevation in this.

So the vessel is on site and it is there, and the applicant does own it. I just want to get that on the record.

And the sides of the canopies, we will have a drop-down of -- we're allowed 18 inches, and we'll be consistent with that.

So, really, the only deviations that we are asking for is for length, which is a 14-foot extension request, for a total of 49 feet, and a height extension of 3 feet for a total of 15 feet above decking.

With that being said, I'm happy to answer any questions. If not --

HEARING EXAMINER DICKMAN: Okay.

MR. ROGERS: -- I appreciate it.

HEARING EXAMINER DICKMAN: Okay. John.

MR. KELLY: I just checked the county's record. Jeff is correct, a final was placed on the dock permit on February 24, so we can eliminate Condition No. 2.

HEARING EXAMINER DICKMAN: All right.

MR. ROGERS: I guess one quick thing. We do agree with all the conditions staff has outlined in the staff report, so...

HEARING EXAMINER DICKMAN: Any speakers registered?

MS. PADRON: There are no registered speakers.

HEARING EXAMINER DICKMAN: Okay. All right.

All right. This is pretty straightforward. I understand it. I will get a decision out within 30 days. Thank you very much.

***So Item 3C.

MR. KELLY: Good morning, once again. Before you is Agenda Item 3C. It's a sign variance, SV-PL20230010282 [sic]. It's a request for the Hearing Examiner to approve the sign variance from Land Development Code Section 5.06.04.F.2.A and 5.06.04.F.4, to allow a third wall sign not to exceed 60 square feet for a single-occupancy outparcel with double frontage.

The applicant seeks the subject sign variance to increase the visibility of the 4,005-square-foot building that has been re-purposed from a bank to a restaurant.

The subject property is a 1.08-acre parcel located at 5795 Airport Road North within the Promenade at Naples Centre Development and is also known as Lot 4, Pine Air Lakes, Unit 5 in

Section 11, Township 49 South, Range 25 East, unincorporated Collier County, Florida.

It's located within the mixed-use retail office component of the Pine Air Lakes Commercial Planned Unit Development, Ordinance No. 07-32, as amended.

Per Section 5.06 of the PUD document, signage is to be as permitted or required by the Land Development Code in effect at the time the permit is requested.

Public notice requirements were satisfied per LDC Section 10.03.06.F.2. An agent letter was sent by the applicant on or about January 31, 2024, as per a notarized affidavit.

The property owner notification letter and newspaper ad were run by the county on February 23, 2024, and the hearing signs -- two large signs were post by the applicant on or before February 27, 2024, again per a notarized affidavit.

This petition was reviewed by staff based upon the review criteria contained within LDC Section 5.06.08 and is consistent with both the Land Development Code and the Growth Management Plan.

No phone calls or correspondence has been received subsequent to advertising for this project, and staff recommends that the Collier County Hearing Examiner render a decision to approve the subject petition to deviate from LDC Sections 5.06.04.F.2.A and 5.06.04.F.4 by allowing a third wall sign not to exceed 60 square feet as depicted within Attachment A of the staff report.

That concludes staff's presentation, and I believe we have Zach Lombardo for the applicant.

HEARING EXAMINER DICKMAN: Okay. Thanks, John. Appreciate that.

Good morning, Counselor.

MR. LOMBARDO: Good morning.

HEARING EXAMINER DICKMAN: How are you?

MR. LOMBARDO: I am good. Zach Lombardo, for the record, here on behalf of GLL Selection II, Florida Limited Partnership.

Sorry. I'm waiting for the PowerPoint here. We can go on to the next slide right off the bat here.

This is some graphical imagery to show you where the proposed sign will go on the left side of the building and then a location of the property inside the Pine Air Lakes PUD in a location of Airport Road, Naples Boulevard, in the parking lot through which most traffic passes through to enter the building.

Next slide, please.

I think this was covered by staff, so we'll scoot along to the next slide.

Again, the proposed sign location is shown here in its current state with no sign and a graphical image depicting the exact location, as long [sic] as all other existing signs, is on the left and in the package as well.

Next slide.

This is showing the size of the proposed sign here. We're looking at 60 square feet. It's actually 59.36 square feet when built. This addresses all other sign requirements. For example, the clear area, the location of the sign as compared to the rest of the wall, and the percentage of the sign space as compared to the rest of the wall.

And at this point I wanted to point out the sign code's intent is minimum control to allow -- to prevent, essentially, health and safety through unsightly and detrimental signs. And so what is important, I think, here -- it's noted in the staff report, it's noted in our PowerPoint several times -- is that there is about 300 square feet of allowable by-right signage on this building. What we're proposing in total is something closer to 150 square feet.

So we're looking at half the required signs, which should lead to the question, well, why are we here asking for a variance? And it has to do with the front sign. In repurposing this building from a bank, the bank had -- let's see if it's on the next slide, please. Nope.

Let's go to the next slide again. Eventually we'll find a great picture of this. Let's just

keep going. Next. There. Perfect.

So the bank had built this sort of interesting architectural feature on the front that turns the front into two fronts, and so two signs were used when this was converted, taking up the two signs available to this building. And so to get a third sign, a variance was required. But these signs are quite small. These signs are, essentially, 35 feet square feet apiece for a total of 70. When we add the new one, we're at 150.

And if we can go to the next slide.

The way this subdivision is laid out, which I think many are familiar with this subdivision, most of the access -- even though it's on Airport, most of the access is coming from Naples Boulevard through the parking lot, and every single business in this entire plaza has a sign facing the parking lot, and we've got some photographic documentation of that.

HEARING EXAMINER DICKMAN: There's a couple other restaurants and -- if I recall, like, there's a couple other restaurants in there, right?

MR. LOMBARDO: Yes, sir.

HEARING EXAMINER DICKMAN: Like, the same kind of outparcels and things like that?

MR. LOMBARDO: So Lot 2 is a Panera with an Airport sign and a rear-facing sign. Lot 3 is a Chick-fil-A with an Airport sign and a rear-facing sign. We are lot 4. And Lot 5 is a Culver's with an Airport sign and a rear-facing sign.

HEARING EXAMINER DICKMAN: Gotcha.

MR. LOMBARDO: And the reason that those didn't have sign variances is because the front of their buildings were flat, and so they have one sign there, one sign on the back; code compliant.

HEARING EXAMINER DICKMAN: Gotcha.

MR. LOMBARDO: So if we can go to the next slide.

And that plays right into the literal interpretation issue. We agree with staff, every other similar outparcel restaurant, which are the three we just discussed, has this ability and, as the applicant didn't build the base building and is instead remodeling, repurposing, redeveloping, we think that it is appropriate for a variance.

If we can go to the next slide.

Similar argument for special conditions. There's nothing unique to this building as compared to the others. And I will note staff worked with us quite a bit on this. We initially proposed a larger sign, and we downsized it to 60 square feet to fit more into the outparcel-style second sign. So we made some concessions there to try to make sure we were truly achieving the minimum.

If we can go to the next slide.

I think my PowerPoint here has just incredible amounts of saying the same thing. But what I want to point -- here's the pictures of all the signs. These are the rear signs for the similar situated three restaurants.

If we can go to the next slide.

The minimum piece we had talked about. The outparcel sign that is allowed is 60 square feet, so that's why we picked that number even though if we did this differently and the building were built brand new, you could put 150 here, 150 on the side and call it a day without getting into the outparcel sign.

Next slide.

And this is kind of where I started at the beginning here, which I think the intent here is helpful for making this decision because the idea is we don't want tons of signs that are distracting and unsightly. And so by staying at below half of allowed sign right, we achieve that goal without getting into having to remodel the building.

Next slide.

And just because I thought it was fun to take pictures, and I was out driving around, here is

every other sign in this building [sic]. So we'll just rip through these. Here's Golf Galaxy.

Next slide. Total Wine.

Next slide. JoAnn Fabrics.

Next slide. PetCo.

Next slide. OneGroup.

Next slide, and next slide.

So in all those prior signs, the reason I included them -- what I'm trying to make clear is everybody's facing in towards the parking lot because that's where the traffic is. And some of them, interestingly, like Golf Galaxy, has a rear sign facing the movie theater. So there's just a ton of signage in this plaza, and they're all much larger than what we're asking for.

Next slide. Next slide. Next slide.

HEARING EXAMINER DICKMAN: Yeah. I do know this. This is off Naples Boulevard, and Naples Boulevard has, obviously, changed quite a bit over the last couple years.

And this particular -- I know this particular, you know, shopping area, and it is pretty intense, and I understand what you're saying, you know, because you don't want people -- everybody comes in off of Naples Boulevard because it just wouldn't be feasible, from a traffic point of view, to have everybody have a curb cut just to pull into there. I get it.

MR. LOMBARDO: And for what it's worth, the access on the road that is in between Chick-fil-A and this building, that's a right-in, right-out off of Airport. So you can't left-in unless you're doing Naples Boulevard.

So we appreciate your consideration. We agree with staff that we've met all factors, and by amending our initial request down to 60 square feet, I think we're being respectful of the code and are well below the by-right minimums.

HEARING EXAMINER DICKMAN: And just in case I didn't hear it, you're in agreement with staff's evaluation as expert planners, that they're putting in the competent substantial evidence?

MR. LOMBARDO: We adopt staff's reasoning, staff's findings, staff's analysis.

And then Mr. Palladino, with the head nod, will confirm that this is our intent.

MR. PALLADINO: (Witness nods head.)

MR. LOMBARDO: And we are here to continue to be good members of the community.

HEARING EXAMINER DICKMAN: Would you like to adopt John? He's up for adoption.

MR. LOMBARDO: Yeah. For the record, Mission BBQ will adopt John. No. Actually, sorry, I forgot, I don't have an affidavit to work for Mission BBQ, so I'm sorry. I can't -- I can't do that.

HEARING EXAMINER DICKMAN: Any public speakers?

MS. PADRON: We have no speakers.

HEARING EXAMINER DICKMAN: Okay. All right. Nice job, Counselor. Appreciate it.

MR. LOMBARDO: Thank you.

HEARING EXAMINER DICKMAN: I'll get a decision out to you as soon as I can.

MR. LOMBARDO: Thank you.

HEARING EXAMINER DICKMAN: You're welcome.

All right.

MR. KELLY: ***For the record, John Kelly, formerly with the county.

HEARING EXAMINER DICKMAN: Now with Mission BBQ.

MR. KELLY: Correction, John Kelly with the county, Planner III.

HEARING EXAMINER DICKMAN: You're not going anywhere.

MR. KELLY: Before you is Agenda Item 3D. It's Boat Dock Petition PL20230008785. The applicant requests the Hearing Examiner approve a 9-foot boat dock extension from the maximum permitted protrusion of 20 feet or 25 percent of the width of the waterway, whichever is

less, for waterways less than 100 feet in width, to allow the construction of a boat docking facility protruding 29 feet into a waterway that is 80 plus or minus feet wide pursuant to Section 5.03.06.E.2 of the Land Development Code.

The subject property is located at 295 West Avenue also known as Lot 12, Block C, Little Hickory Shores, Unit 1, in Section 5, Township 48 South, Range 25 East, unincorporated Collier County, Florida, which is located within a Residential Single-Family 4, RSF-4, zoning district.

The subject property comprises 0.23 acres and is described as a side end lot. The two waterfront property lines measure 40 and 45 feet for a total water frontage of 85 feet, which is stabilized by a seawall on an 80-foot-wide canal.

The proposed dock facility comprises two triangular docks with a boatlift between them that has been designed to accommodate a single 38-foot vessel per Land Development Code Section 5.03.06.E.7. All dock facilities, except boat houses, on lots at the end or side end of a canal or waterway shall have a side setback of 7.5 feet.

In this case, the vessel extends beyond the physical dock on both sides, which results in an increased protrusion; however, the actual side setbacks are 7.5 feet to both the north and west riparian lines.

Public notice requirements were satisfied per Land Development Code Section 10.03.06.H. The property owner notification letter and newspaper ad were satisfied by the county on February 23, 2024, and a public hearing sign was placed by me on February 23, 2024.

The petition was reviewed by staff based upon the review criteria contained within LDC Section 5.03.06.H. Of the primary criteria, it satisfies four of five. Of the secondary criteria, it satisfies five of six, with the sixth being not applicable, the Manatee Protection Plan.

And the project has been found to be consistent with both the Land Development Code and the Growth Management Plan.

With respect to public comment, one phone call requesting additional information was received from a Larry Blackwell. It is believed that he might be in attendance today, as he had concerns about the facility being at the end of the canal.

Staff recommends that the Hearing Examiner approve this petition as previously described in accordance with the proposed dock plans provided within Attachment A.

And for the applicant is Nick Pearson.

HEARING EXAMINER DICKMAN: John, this is always amusing to me, sort of. So the site address, is it Bonita Springs, Florida, or it Naples? Like, is Bonita --

MR. KELLY: I believe the mailing address is Bonita Springs.

HEARING EXAMINER DICKMAN: Yeah. But, I mean, does the municipality of Bonita Springs flip over into --

MR. KELLY: No. It's unincorporated Collier County.

HEARING EXAMINER DICKMAN: I didn't think so. Yeah, I know this is right up by the county line, but, you now, it says this -- on the --

MR. BOSI: Their mailing address is Bonita.

HEARING EXAMINER DICKMAN: The site address says Bonita Springs, Florida. But, anyway. I always go back and forth with people, like, yeah -- no, Bonita is not in Collier County.

MR. KELLY: Bonita's not in Collier County, you're correct.

HEARING EXAMINER DICKMAN: Yeah. The post office, they just have their own thing. Got it.

All right, Nick. Come on up. Good to see you. I hope it wasn't too uncomfortable sitting next to your boss -- your former colleague, I should say.

MR. PEARSON: No, no.

HEARING EXAMINER DICKMAN: Good friends, right?

MR. PEARSON: Yeah.

HEARING EXAMINER DICKMAN: All right.

MR. PEARSON: For the record, Nick Pearson with Bayshore Marine Consulting.

So just to give a little background on the project, this is the general location. As you can see, it is south of the county line, which corresponds with the City of Bonita Springs. I usually defer to the address on the appraiser's site so that --

HEARING EXAMINER DICKMAN: Yeah.

MR. PEARSON: I kind of go back and forth on that also with these sorts of locations.

HEARING EXAMINER DICKMAN: But just as an interesting fact, just -- so our law firm's post office box is Vanderbilt Beach. So I don't even think that's a city or anything. So the post office does whatever it wants, pretty much.

MR. PEARSON: Well, here's where it's located, whatever the case. As you can see, it's kind of at the end of the canal, as John alluded to.

If we could go to the next slide.

This is a little bit of a better picture. You'll see the remainder of the exhibits don't show a house. Those were photos used during the application process. So during that time, older photos were all that was available. This one is from Google Earth.

HEARING EXAMINER DICKMAN: Yeah, before you move on, those are all going out, down to that little peninsula. Those are all the boat dock lots, right?

MR. PEARSON: Yes.

HEARING EXAMINER DICKMAN: You can see down further, if you go down further out here, are those the infamous boat dock lots that don't have houses on them?

MR. PEARSON: Yes, that is correct.

HEARING EXAMINER DICKMAN: All right. That's what I thought.

MR. PEARSON: But there is a house on our property now.

HEARING EXAMINER DICKMAN: I know.

MR. PALLADINO: It's been completed and CO'ed.

So if we could go to the next slide.

Again, this is just kind of to demonstrate the width of waterway. With properties like these, there is always sort of a difficulty in where you're measuring from. The canal itself is 80 feet wide, but the property does kind of wrap around the end of the canal. So, technically, you could say the width of waterway is there to the sort of undeveloped parcel that's on the far left of the screen. And, you know, that's over a thousand feet wide.

If you could go to the next slide, please.

HEARING EXAMINER DICKMAN: Well, yeah, let's --

MR. PEARSON: It's -- I only bring that up --

HEARING EXAMINER DICKMAN: I understand that, like, looking down, you know, but I think you really have to -- like, the primary lot is similar to the other ones. So I think, you know, for all practicable purposes -- there are several lots like this on Vanderbilt Drive with corner lots that -- you know, that they meet -- you know, they've got some frontage that meets in the middle like that. But I don't know that we should be measuring it east and west.

MR. PEARSON: I don't mean to insinuate we should. It's purely for the sake of the verbiage in the criteria.

HEARING EXAMINER DICKMAN: Yeah.

MR. PEARSON: So that's the reason why I bring it up.

HEARING EXAMINER DICKMAN: Yeah. I just think that would be opening up a crazy door that you would never be able to shut.

MR. PEARSON: Sure. I'm totally in agreement with that anyways.

So for the site itself, this is a little bit of a better depiction. Again, it's sort of like a rectangle that's had a corner cut out of it or, rather, a square.

Eighty-five feet of water frontage; the shoreline is entirely of seawall. And as you can see, the riparian lines converge essentially at 90-degree angles from the property boundaries.

And the one unique thing about this site are the setbacks. So the normal setbacks for

properties over 60 feet in width would be 15 feet. Because this lot is on a corner, it has seven-and-a-half-foot side setbacks, which is part of the reason why this petition is being driven. You can -- I think some of the later slides show a dimension on the neighboring dock. But if we were to build to side setbacks, it would make navigation pretty difficult for the west neighbor.

Next slide, please.

So this was our proposal. As you can see, the dock itself fits actually entirely within the normal protrusion limit. It is only the boatlift and the vessel that stick out beyond the protrusion limit, which is that yellow line.

So, again, you can also see 29 feet is the slip to the west. And basically to -- between the side setbacks is only 22 and a half feet. So that kind of posed a difficulty for how we were going to configure this dock. And, in fact, the owners' original plan was to not pursue a BDE at all.

In the interim of planning and permitting, the neighbor built his dock, and we kind of had to "call an audible," if you will, and kind of reconfigure to this configuration.

Next slide, please.

Probably not a whole lot to see here. Obviously, many of the docks on this canal do adhere to the normal protrusion limit. But, again, most of these are -- they're normal rectangular-shaped lots. They're not at the end that have sort of this different riparian configuration.

HEARING EXAMINER DICKMAN: So normal, just to be clear -- so, like, but for -- if it was an interior lot, the side riparian setbacks would be what?

MR. PEARSON: Are you asking what the setbacks would be?

HEARING EXAMINER DICKMAN: Yeah, yeah, on the sides.

MR. PEARSON: I believe for all these, they would be 15 feet.

HEARING EXAMINER DICKMAN: Right. So you're stuck with seven and a half?

MR. PEARSON: Yes.

HEARING EXAMINER DICKMAN: Okay.

MR. PEARSON: Yes.

HEARING EXAMINER DICKMAN: Even though you have shoreline, but it's at a right angle.

MR. PEARSON: My understanding is that it's seven and a half because it's on the end, even though it is above the 60-foot shoreline length threshold.

HEARING EXAMINER DICKMAN: Okay. Got it.

MR. PEARSON: Feel free to correct me, you guys, if that was incorrect, but I think it is.

MR. KELLY: For the record, that was correct.

MR. PEARSON: If we could go to the next slide.

This, I think, kind of shows a better overview of, really, the docks that are, you know, immediately adjacent and, you know, would be most at risk of being affected. I personally don't feel either neighbors will be affected. The north neighbor only has a small marginal dock. It's really completely out of the way of what we're proposing, and the west neighbor, as you can see, is kind of what drove us to this configuration. He's also signed a no objection letter to our project as well.

HEARING EXAMINER DICKMAN: The west neighbor?

MR. PEARSON: Yes, correct.

HEARING EXAMINER DICKMAN: Okay.

MR. PEARSON: And as you can see, there's, you know, approximately 45 feet of backing distance from the vessel that's proposed here.

One thing I think that's important to note here, too, is obviously the concern of the one individual who called in about basically navigability at the end of the canal here. If you assume each dock is 20 feet off the seawall, then for an 80-foot-wide canal, you could expect to be left with approximately 40 feet between the docks.

HEARING EXAMINER DICKMAN: So the property directly across the canal to the

north, is there a dock there or not?

MR. PEARSON: On the opposite corner.

HEARING EXAMINER DICKMAN: Directly north of that?

MR. PEARSON: That's what that blue square is. It's not a very good photo as far as resolution, but that's what that rectangle is.

HEARING EXAMINER DICKMAN: Oh, okay. So they just have something that runs parallel to that part of their property?

MR. PEARSON: Yes.

HEARING EXAMINER DICKMAN: Okay.

MR. PEARSON: It's a small marginal dock.

HEARING EXAMINER DICKMAN: I gotcha, okay. All right.

MR. PEARSON: Next slide, please.

Again, I don't want to beat a dead horse with the criteria here. The only one we really missed was the width of waterway. But, again, since we're at the end of the canal, I don't really see that we're affecting navigability in general.

As far as turnaround, you know, ability, you should be just as easily able to turn around, you know, a few feet earlier than otherwise. And, you know, from a theoretical standpoint, you shouldn't have any other issue with doing that.

HEARING EXAMINER DICKMAN: This is a good slide. I mean, I like that you do this because it kind of puts all the criteria on one, and you can see how this works out. I mean, obviously, on the primary criteria, you know, the waterway width maintained -- I mean, that's just mathematical. I mean, it's just math. That's all it is. And then the same thing with the secondary criteria. The shoreline ratio, just math, you know. So -- and then, you know, the views gets a little bit more subjective, but I think I've got that down.

So this is a very nice slide. Thank you for putting this together.

MR. PEARSON: Absolutely.

Next slide, please.

That is all I have for you.

HEARING EXAMINER DICKMAN: Okay.

MR. PEARSON: Any questions?

HEARING EXAMINER DICKMAN: No. Let's see if we've got any public speakers. Anybody signed up?

MS. PADRON: Let me check for online speakers.

HEARING EXAMINER DICKMAN: All right. Great.

MS. PADRON: It looks like we don't have any speakers.

HEARING EXAMINER DICKMAN: Okay. I understand this. Again, you know, I've seen similar situations to this down on -- in the Vanderbilt Lagoon area. There's -- there are lots that are -- they have these little "meet in the middle" type of thing. So I think I can evaluate this with the information provided by you and by county planning staff. I think I've got plenty of testimony to be able to evaluate this and get a decision out within the allotted time, okay?

MR. PEARSON: Perfect. Thank you very much.

HEARING EXAMINER DICKMAN: Nice job.

Okay. Anything else you guys want to do? No.

MR. BOSI: No.

HEARING EXAMINER DICKMAN: All right. So I think the next meeting, it looked like there were two items coming up?

MR. BOSI: Yep.

HEARING EXAMINER DICKMAN: I'll try to drag that out so that we can spend a half a day --

MR. BOSI: We'll generate some more public feed- -- public comment.

HEARING EXAMINER DICKMAN: If there are some food gifts here, possibly.

MR. BOSI: We're going to lean on the court reporter for that.
HEARING EXAMINER DICKMAN: Thanks, everybody, for all your hard work. Great job over there. Thank you. Thank you. It's always a pleasure to be here. So the meeting is adjourned.

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 10:01 a.m.

COLLIER COUNTY HEARING EXAMINER

ANDREW DICKMAN, HEARING EXAMINER

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.