

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
May 14, 2015

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 MARK STRAIN

Also Present: Heidi Ashton-Cicko, Managing Assistant County Attorney
Ray Bellows, Zoning Manager

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PROCEEDINGS:

HEARING EXAMINER STRAIN: Good morning, everyone. Good morning, welcome to the Thursday, May 14th meeting of the Collier County Hearing Examiner's Office.

Everyone please rise for the Pledge of Allegiance.

(Pledge of Allegiance was recited in unison.)

HEARING EXAMINER STRAIN: Thank you.

Couple housekeeping matters. Individual speakers will be limited to five minutes unless otherwise waived; all decisions are final unless appealed to the Board of County Commissioners; and a decision will be rendered within 30 days.

Review of the agenda, the agenda that's on the screen above. There are three items on today's agenda. There's no changes on any of those, we'll move right through them.

There's approval of prior minute meetings. We have two sets of minutes that were provided, April 9th and April 23rd. Both of those are okay to be recorded as submitted.

And with that we'll move into 4.A. 4.A is Petition No. VA-PL20140001721. It's the Belaire Development, LLC for a variance on lot 67 in the Gulf Harbor subdivision.

All those wishing to testify on behalf of this item, please rise to be sworn in by the court reporter.

(All speakers were duly sworn.)

HEARING EXAMINER STRAIN: Thank you.

Disclosures on my part. I spoke with staff, I've reviewed all the files and I've also spoke with Nicole Johnson with The Conservancy. I also spoke to persons of the Building Department here concerning gutter application.

There will be two exhibits currently listed. One will be Exhibit A, the staff report. The second will be Exhibit B, the legal ad.

(Exhibits A and B were marked for identification.)

HEARING EXAMINER STRAIN: And with that, I have read the entire staff report. Are there any members of the public here that are going to speak on this item?

(Indicating.)

HEARING EXAMINER STRAIN: Okay. The -- I'm going to ask that the applicant make a brief presentation as to the nature of their request. I'm assuming -- if the applicant's here, please come on up and

identify yourself for the record.

MR. HAAG: My name is Brian Haag, I'm the builder of Belaire Court and Winward Construction.

HEARING EXAMINER STRAIN: Okay, you'll have to -- the mics need to be probably moved up a little bit closer. They've been -- we've been --

MR. HAAG: Is that better?

HEARING EXAMINER STRAIN: -- having trouble with those getting picked up.

Yeah, that's much better.

MR. HAAG: Okay, great.

HEARING EXAMINER STRAIN: Thank you.

MR. HAAG: Go ahead, sir?

HEARING EXAMINER STRAIN: That works.

You're asking for a variance on the rear setback based on the submission to the county that the -- actually the county staff missed the reference that was supposed to have been measured from and instead they measured from the back of the lot line, which is apparently out in the water instead of the mean high water line?

MR. HAAG: What happened is we submitted for the permit, it was approved, and I staked out the house. I had a surveyor come out and pin the corners of the house. And before I started the footer, I came back and I met with staff. And I said, "This doesn't seem right to me. I'm only about four or five feet from the water."

And I met with staff here at the zoning counter and she pulled the regulations for me and she said, "No, that's right, the property line is" -- you know, whatever it is, 10, 15 feet on the water.

And we kind of had a discussion about it. I said, "Are you sure?"

I don't know who she went back and talked to. She said, "Yes, I've reviewed it, this is the actual setback."

So we built the house at the time. The spot survey was only required to be done prior to C.O. So I think we turned in the spot survey probably when the house was framed.

And at that point they said, you know, "There's an issue, we can't approve this because you're too close to the water."

So I came back with my notes and I said, "Look, we did this before we built the house and this was your approval."

So it was run up the food chain I think to Chris Scott, I believe. And I got -- not got into it but we got into the discussion, Chris Scott and I, and he said the problem is that the verbiage was adopted but never incorporated into the actual code. I mean, that's what it says via email, via my discussions with Chris is that apparently it had been changed at some point to which is ever more restrictive. But that was actually never adopted into the language of the code and changed, and that's why staff missed it.

So going on, you know, this is a house that I'm just the builder and these people built this for an investor to sell. We haven't been able to C.O. the house. You know, these people have a large financial loss because the house has been sitting here.

And going back through my emails, the original emails I have from Chris where this is staff error, we'll do a staff admitted -- staff initiated variance.

And through a period of 90 days we went back and forth, and then I guess as he ran that up through the chain of command, here at the Building Department it was changed to no, you have to be the applicant.

And, you know, we -- again, I'm not going to say we got into it, but I said this is nothing that we created, we're actually kind of victims of circumstance here. I don't want to be the applicant.

So we settled on us paying for the advertising and the county doing a staff initiated variance, I believe is how it ended up. This has been going on for probably a year. And these people have, I think, and again I don't want to speak for them, but a hard money loan on this house. It's costing them -- when they sell this house they'll be out hundreds of thousands of dollars. It's been going on for a year or more.

And it's an unfortunate circumstance, but it was -- it's just an oversight. And as far as I know and what Chris told me is that this is just a failure of Collier County to actually incorporate this whichever is more restrictive piece into the actual language that's written into the code. So that's what I know about it.

HEARING EXAMINER STRAIN: Okay. And I appreciate your comments. It's interesting, I didn't know that you had actually caught the mistake early on and tried to come in and point it out and still got told you were okay.

MR. HAAG: Absolutely.

HEARING EXAMINER STRAIN: That's an interesting side note.

Also to correct something that you were told, the corrected language is in the code. It was there. Whoever reviewed it failed to look at the definition section for yards waterfront, and it's -- I found it, it's right there. It says the most restrictive of the following and a list of various points in which are supposed to be measured from, so --

MR. HAAG: And the experience is that's what I was told, and so --

HEARING EXAMINER STRAIN: Oh, I understand. I just wanted to correct that statement.

MR. HAAG: Yeah. And only again, that it was actually -- what's interesting, it's just a side note, doesn't change anything. When I came in to the counter before we actually did the footer and she looked up the codes, it was missed again. So that was actually twice that it was missed.

HEARING EXAMINER STRAIN: I'm aware of it now. I wish it hadn't happened that way.

MR. HAAG: Me too.

HEARING EXAMINER STRAIN: One of the requirements of your permit is that square highlighted area: Utilize gutters to facilitate all roof stormwater to detention area. Use downspouts to connect gutters to the dry detention area.

I don't believe those are on the house yet.

MR. HAAG: It's fully guttered.

HEARING EXAMINER STRAIN: Is it?

MR. HAAG: Yeah, the house is fully guttered front, rear and sides, I believe.

HEARING EXAMINER STRAIN: Okay. That will have to be verified by the inspection department, because it will be a condition.

The sizing of the gutters has been -- is a question. The gutters will have to be sized ample enough to take the full runoff from that section of the roof that they're serving. That will be part of one of the conditions that's being considered here today.

So whatever is up there, you may be asked to verify through the county engineering department that the gutters are adequate. And that may be just an additional submittal you have to make.

And the county engineer was here earlier. He's well aware of it and he'll be glad to take a look at it and his department will verify the size of --

MR. HAAG: We just suggest that, when we were talking with The Conservancy, is one of the other things we could maybe do is -- the biggest gutter that I'm aware of is the six-inch super gutter. We also talked about maybe running a full splash block the back length of the house, just so if that gutter fills in a bad storm. Because, you know, there's drainage problems here with that entire subdivision. Maybe we can run a splash block across that length of gutter too, just maybe to help a little bit.

HEARING EXAMINER STRAIN: I would suggest when you produce the sizing and you give it to the county engineer, he'll provide some documentation or at least review towards that effort, and you guys can decide what is the best way to address it. Just so it's all caught, that's the key.

MR. HAAG: No problem.

HEARING EXAMINER STRAIN: With that, I don't -- I think I -- go ahead, Heidi.

MS. ASHTON-CICKO: There's an additional document to be added to the record and that's the affidavit of authorization signed by Ayal Keren of Belaire Development, LLC.

The one in the package is not the correct affidavit for this application.

HEARING EXAMINER STRAIN: Great, thank you.

Do you have another copy of it so I can give this original to Cherie'?

MS. ASHTON-CICKO: Yeah, you can give that to --

HEARING EXAMINER STRAIN: So Cherie', this will be Exhibit C, the affidavit of authorization. (Exhibit C was marked for identification.)

HEARING EXAMINER STRAIN: That's all the questions I believe I have of you at this time, sir, so

thank you.

MR. HAAG: Okay, thank you.

HEARING EXAMINER STRAIN: I do have some questions of staff. Thank you.

No, not you, this staff.

Fred, the notation on this particular detail shows a variance of 10 feet-eight inches, and that's a little bit easier to see right here. Yet the application is for 12 feet-eight. I know I understand the reason, but could you explain that so that -- for everybody in the audience who may want to understand it as well?

MR. REISCHL: Thank you, Mr. Strain. Fred Reischl, Zoning Division.

The Land Development Code provides that a balcony that is unroofed and unenclosed, also a stairway unroofed and unenclosed may encroach three feet into a rear setback. That's the difference.

HEARING EXAMINER STRAIN: Okay. In order to make this clear for any kind of documentation to go forward, this document doesn't match up in the way it reads to the staff report or to the actual variance requested. It says 10-foot-eight variance needed. Needs to change to 12-foot-eight is my assumption then.

And the distance line that that's pointing to needs to point to the extent of the variance limitation. Would you agree or not?

MR. REISCHL: I'm not sure --

HEARING EXAMINER STRAIN: If you see this one right there, I know it's kind of small. See that highlighted yellow?

MR. REISCHL: Yes.

HEARING EXAMINER STRAIN: It says 10-foot-eight variance needed to satisfy building setback requirement. That's the one I'm trying to get corrected. It isn't 10-foot-eight, it's 12-foot-eight. Is that --

MR. REISCHL: Okay, I see what you're saying.

Yes, that's correct.

HEARING EXAMINER STRAIN: Could you make a point to get that document corrected? Because it will have to be as an exhibit to the decision when it's issued, and I'll need that in order to issue the decision.

MR. REISCHL: I'll tell the builder and he can relay that to the surveyor.

HEARING EXAMINER STRAIN: Okay. The 10 -- the 12-foot-eight arrow, see the arrow from that block is pointing to the distance for the porch/balcony, but actually will have to go beyond that a couple of feet.

MR. REISCHL: Correct, because of the --

HEARING EXAMINER STRAIN: Overhang.

MR. REISCHL: -- overhang. That exceeds the three feet that is required, but then becomes part of the variance, right.

HEARING EXAMINER STRAIN: I just want all that to be clear --

MR. REISCHL: Understood.

HEARING EXAMINER STRAIN: -- so that it matches the decision. If the -- if it's beneficial just to blow up that piece by your surveyor and show the detail, that works, but it's got to get clean.

Fred, is there anything else you want to add to the staff discussion?

MR. REISCHL: Just that I got a phone call from Nicole Johnson of The Conservancy of Southwest Florida and she discussed the runoff. I checked the building plans and my non-expertise in reading building plans where I did not see gutters, and I showed them to the Hearing Examiner and you found them quite quickly, so I'll have to learn how to read building plans more than site plans a little better. But the gutters are shown on there.

But I also spoke to one of the engineering inspectors, Joe Bianchi, and he said it may require oversized. And as Mr. Haag said, that that will be determined at the time of inspection.

HEARING EXAMINER STRAIN: Right. And I think what we'll be requiring is that prior to the C.O. the sizing of the gutter in the roof area, the calculations will be submitted to Jack McKenna who's our county engineer. He said he would turn it around real quick and make sure the sizing is adequate.

I don't care how it gets done but I would think that the builder would be the one that would want to

submit that, or the subcontractor that the builder's hired. So we just get a sign-off that the gutters are sufficient to take care of that roof runoff.

With that in mind, are there any registered public speakers, Ray? We'll start with the registered first, then we'll go to unregistered.

MR. REISCHL: Yes. Anthony Lombardo.

HEARING EXAMINER STRAIN: Sir, if you want to come up and identify yourself for the record. You may have to spell your name for the court reporter.

MR. LOMBARDO: Great. My name is Anthony Lombardo. That's L-O-M-B-A-R-D-O.

I am located directly across the canal. There's an empty lot and then I am next to that from this home.

And my concern that I want to raise today is not so much about the -- specifically about the variance, it's making sure that we are aware because this house is so close and that back door you can see on the northwest corner, the actual land is literally underneath. It begins underneath that door, okay. So this house is on a slab, it's not driven in on pilings. I believe the builder can attest to that. But it's, you know, not anchored down in.

This house gets C.O.'d and sold, what myself and some of my neighbors are concerned about is five, 10 years down there's a major structural problem because the land has been undermined and the homeowners have to walk away from the home. Now we have a different problem. That's one.

Number two is if there is failings, is there any threat to the estuary, natural waterways that we have because this house is literally perched on the edge of the land.

Number three is if there were ever a fire in this home, the fire trucks would approach from the front, they'd spray. There's no land in the back to catch any water. We know how much hazardous materials are in building materials today. All of that water is going straight into the canal. And it's a very fragile canal with wildlife. And this is a bird sanctuary.

So we are more concerned that there is a way to prop up -- you know, to ensure the structural integrity of the house.

We spoke with Honc Marine; came out, looked across the canal, said that it is a very challenging project but there are ways to build a seawall, a buttressed seawall. Obviously you can't do deadman, you can't do traditional rip-rap because of the slope, but they feel that there is a way that they could go in there and build a seawall with buttresses out of the canal which would actually work to hold the land back to stop any structural damage or any additional erosion which would occur.

Those are our major concerns, that this is not just a today's issue, this is an issue five years from now, 10 years from now when somebody who has a mortgage has a major problem and does not have the financial wherewithal to address it, walks away from it and leaves the county and the neighborhood with a bigger problem.

So we ask the county to look at this and say what can we do to make sure that this is not -- that this is structurally sound and that erosion does not cause a future problem to this structure. That's our concerns. And I appreciate your time.

HEARING EXAMINER STRAIN: Thank you.

Just out of curiosity, since you're from the area, were there seawalls in place along this canal where this house and yours and others were built? Were they built out over the seawall or was there no seawall there?

MR. LOMBARDO: There is no seawall there. It's just natural land.

And this is one of the canals which has very few seawalls at all. The one canal which does is Rainbow Court, which was one over, which my understanding was the first canal which the Army Corps put in. That has quite a bit of seawalls. The other canals in Gulf Harbor have very few.

HEARING EXAMINER STRAIN: You mentioned pilings. Is your house on piling?

MR. LOMBARDO: No, my house is one of the old homes, but it sits way back from the canal. It's probably 30, 40 feet back.

There are many homes which are on pilings in that area. So one of the things which again Honc had mentioned to us was when you look at the home, because it's sort of perched on the water you would typically think that this would be a home which would be constructed to have pilings or something driven into the earth to hold the house. Again, I don't want to speak for the builder, but it seems that this -- as it went up it looked

like it was a home which was built on a slab just precariously close to the canal.

HEARING EXAMINER STRAIN: After your discussion and we have another public speaker, I'll be asking the builder to at least clarify some of the way the building methods are. Thank you.

And Ray, from the county's perspective, how is a house like this reviewed for structural integrity and assurances that when waters rise or there's flood conditions that the house is going to be structurally stable? I mean, is that something you'd be familiar with? I know you're not the building department, I know who John Walsh is. But John's obviously not here and not expecting this.

MR. BELLOWS: That's exactly what I was -- for the record, Ray Bellows.

That's exactly what I was going to say. I really would have to -- my impression is that these are inspected by the Building Department, and before a C.O. is issued they're comfortable with the engineering of the house.

But I think to answer more detailed questions, we need someone from the Building Department.

HEARING EXAMINER STRAIN: Fred, since you're the planner with this project, what we'll do is after the meeting I'll get the exact questions asked of the gentlemen and ask that you send those to John Walsh, who's our building director, to get a response. And then we can -- when the meeting's over, if we haven't (sic) already have the gentleman's contact information, make sure we do have it and we'll forward him the responses we have from the building department.

This is a land use zoning hearing, it's a little different than a building application. But we'll try our best to get answers for you beyond what we hear from the builder when we ask him to speak as well.

Nicole, did you have anything you wanted to address?

MR. REISCHL: I would ask Mr. Lombardo, is your email on the speaker slip?

Thank you.

MS. JOHNSON: Good morning. Nicole Johnson for the record, here on behalf of The Conservancy of Southwest Florida.

And our concern was the stormwater and making sure that you had gutters which may need to be more oversized than you would on a normal house. On normal homes, and my home has a roof similar to this, when you have the flashy big storm events, the water, some of it goes in the gutter, some of it spills over the edge. If it goes into grass then it still has that opportunity to percolate, to get cleansed.

But in this case because you don't have any pervious area beneath the roof line, we really wanted to make sure that the gutters were sized appropriately for this particular situation.

And I think that the splash guard is an idea that might be good to make sure that as much as possible is captured in the gutter system. Probably over-sized, but we'll leave that to the engineers to decide what that needs to be. But we would recommend and ask that some sort of gutter, sized appropriately for this particular situation, be part of your recommendation.

HEARING EXAMINER STRAIN: Appreciate your heads up on this before the meeting. It gave me the opportunity to talk with our engineering department. They're more than willing to review the submittal and will clarify the basis and everything for that in a decision.

MS. JOHNSON: Thank you.

HEARING EXAMINER STRAIN: Thank you.

And I'd like to ask if the applicant's representative would come back up again.

Would you mind providing some details of how the slab on this --

MR. HAAG: Yeah, sure.

HEARING EXAMINER STRAIN: -- home was constructed?

MR. HAAG: Actually, the house is built on an AE, I think it's a 12 (sic) flood zone. And the footers, there is no pilings on the house. We did soil bores and they weren't required --

THE COURT REPORTER: Please say that again.

MR. HAAG: We did soil bores and the pilings weren't required.

But it is a concrete foundation. The footers are what's known as spread footers, so they're a little bit over-sized. And obviously we're the builder, we don't do this portion. This is done by the engineers for support.

But the lower level is essentially below required floodplain. And what happens is if you look at it, the

floodplain's probably this high off of existing grade. And in speaking with the homeowners the decision then becomes well, do we build your house this high in the air, do we go all the way up so you can park underneath and actually fit a house of this size on the lot.

So there is a lot of concrete and a lot of larger over-sized footers. It would be very difficult for this to move.

One of the things that I had done was a site visit when this all came to fruition by our engineer, because I had the same concern. I said, okay, well, it's really -- it's a little deceiving, the picture. The door's not actually over the water. The closest point of the building is probably four or five feet back from the waterline. But I still had the same concern, you know. And I said, you know, I don't -- and I had a site inspection done prior to the house being built and was given the green light by the engineer.

Now, I may be able to produce something from our engineer that he's fine with it. It's been probably 18 months since he looked at it. But the actual lower level is -- you have a hydrostatic fence. The idea of a storm surge is such that if the water were to come up to and flood to relieve that pressure on the foundation of the building so that you wouldn't have the pressure of the walls pushing the -- again, just telling you what I know about this, you wouldn't have the -- having those walls roll over, the building collapse.

I think there's 22 or 27 hydrostatic fence, that calculation is done by the engineers so that in theory the water would flow through the lower foundation without putting pressure on the walls or the structure itself to roll over. That's how it's designed.

HEARING EXAMINER STRAIN: Have you had a final inspection on this house?

MR. HAAG: We can't. We've been waiting for this. We can't get --

HEARING EXAMINER STRAIN: Have you had final structural inspection?

MR. HAAG: No, this is what we're waiting for is this hearing. We haven't been able to have it.

HEARING EXAMINER STRAIN: They wouldn't even give you final structural until this hearing?

MR. HAAG: No, because final structural is when inspection -- it's called building final. So we're only out -- we've had the drainage system inspected. I know there's some questions about that so we have had the gutters inspected. We have had the drainage system inspected. We have two outstanding inspections that I'm aware of: Final electric and final building, which would be the functional equivalent of final structural. But the structural items in terms of foundation work are some of the first inspections that are done. So there's not that I'm aware of another structural inspection, per se. What we'd be looking at now is more life, safety, electrical, that type of thing as opposed to structural issues.

HEARING EXAMINER STRAIN: Okay. So what we'll do is we'll get our Building Department involved to get a response to the specific questions asked today. We'll copy you with that response and we'll make sure everybody --

MR. HAAG: Yeah, obviously we want to work with you guys. This isn't -- I just want to resolve it on behalf of the homeowners, that's all.

HEARING EXAMINER STRAIN: Appreciate your time.

MR. HAAG: Okay.

HEARING EXAMINER STRAIN: Are there any members of the public that wish to speak on this item?

(No response.)

HEARING EXAMINER STRAIN: Okay, with that we will close this hearing and a decision on this matter will be rendered within 30 days. Most likely a lot sooner than that. We usually take a week to 10 days if the backlog isn't too bad. So we'll have a decision out as shortly as we possibly can but no longer than 30 days.

MR. HAAG: Should we move forward with the gutter calculations and those type of things?

HEARING EXAMINER STRAIN: Well, yeah, and for the record the gentleman asked if he should move forward with the gutter calculations and that. Yes, because when the decision's issued you'll still have to complete the house pursuant to any conditions of the decision. The gutter issue will be part of that decision. The condition will be there. So the sooner you get proactive on that, the less time you'll have to work on it after the decision is issued. So I would jump on all this as soon as possible.

MR. HAAG: The 12-and-a-half-foot clarification --

MR. REISCHL: I'll call you.

HEARING EXAMINER STRAIN: Yes, the 12-and-a-half-foot clarification, that will need to be part of an attachment to the decision. So on that one I can't issue a decision until we receive that document cleared up.

MR. HAAG: Perfect, okay. Appreciate it. Thank you.

HEARING EXAMINER STRAIN: Thank you.

MR. KEREN: Can I say one thing?

HEARING EXAMINER STRAIN: Is it about the case that just --

MR. KEREN: Yes.

HEARING EXAMINER STRAIN: You'll have to come up to the --

MR. KEREN: I'm the owner of the house.

HEARING EXAMINER STRAIN: -- microphone, identify yourself --

MR. KEREN: My name is Ayal Keren. A-Y-A-L. K-E-R-E-N.

All I'm asking --

THE COURT REPORTER: Excuse me, let me swear you in first.

MR. KEREN: Yeah, sure.

(Speaker was duly sworn.)

MR. KEREN: All I wanted to ask is if we can do it as fast as possible. We have this house that we're trying to sell. We already have a loss of 150,000 in this house and we're just waiting for this variance.

So, you know, we're trying to do as much as we can to help the county with this variance.

The house is built. I mean, we're probably not going to destroy it down. So it is a technical variance. We're trying to solve all the issues that came up here. There's no -- to my knowledge, there won't be any structural. I went over all the engineer's plans and everything that was submitted and approved and we're just trying to push it forward because we have buyers that are waiting for this and they didn't buy it and we're already two years into this project.

HEARING EXAMINER STRAIN: Well, I understand, and I wish it all didn't happen. But we -- this office will move as fast as we possibly can. It will be contingent on I guess your contractor to supply that right detail. Once a decision's issued and the gutters are installed, after they've been reviewed by the county engineering department, which all can be done simultaneously. That will be as fast as we can get it done.

We're not here to cause you any more trouble. It's unfortunate that it happened. We'll do the best we can from at least this office to get you out of the door.

MR. KEREN: I understand. I just heard, you know, a few things about seawalls and, you know, keeping the environment and, you know, putting concrete seawall there is just going to -- you know, most of the houses don't have it there. It's just going to make it ugly, and I just don't understand those concerns.

HEARING EXAMINER STRAIN: If it's required by law, it will have to be there. But that's why we're going to have the Building Department double check the approval they've already issued on your plans. And if they -- they'll have to then say either they issued them correctly and they've looked at these issues and everything's fine or they didn't issue them correctly. And we'll just have to -- I'm assuming they were issued properly. And we'll just have to do that review, though.

MR. KEREN: Okay. Thank you very much.

HEARING EXAMINER STRAIN: Thank you, sir.

***Okay, with that we'll move on to the next petition today, it's Petition No. VA-PL20150000189, the Vanderbilt, LLC. It's for the Gulf Shore Drive, approximately 1,200 feet north of the Vanderbilt Beach Road. So I think we've called that the Twin Eagles beach house or clubhouse or something like that.

All those wishing to testify on behalf of this item, please rise to be sworn in by the court reporter.

(All speakers were duly sworn.)

HEARING EXAMINER STRAIN: Disclosures. On my part, I've met with the applicant's representative, I've talked with staff numerous times and I've reviewed all the files, both historically and the ones that are in the planning commission -- or the hearing examiner's packet.

Exhibit A will be the staff report, Exhibit B will be the legal ad.

(Exhibits A and B were marked for identification.)

HEARING EXAMINER STRAIN: And with that, I have read the entire packet.

Are there any members of the public here wishing to speak on this item?

(No response.)

HEARING EXAMINER STRAIN: Okay, because I've read the entire packet I won't need a formal presentation. I'll ask if the applicant wants to add anything to the record.

And if you'd just come up and respond to that question, Karen, identify yourself for the record, that would be fine.

MS. BISHOP: Good morning. I'm Karen Bishop. I represent the applicant for the Twin Eagles Beach and Bay Club.

And I do not wish to do a presentation, unless you want me to.

HEARING EXAMINER STRAIN: No, I think we're fine. I may have some questions that I'm going to ask staff to clarify. I may ask you to come back up and just clarify anything that comes up. Thank you.

MS. BISHOP: Okay.

HEARING EXAMINER STRAIN: The site location is on Vanderbilt Beach, as noted earlier. That's the general location there.

There are three variances being requested: One for a stair modification to the north; one for a proposed arbor out alongside the pool; and one for the cooler addition that is in a location that's already utilized by an existing planner. In addition to those intrusions into the side setback, I did notice that on the bottom and on the top there are two existing stairwells that protrude into the side setback.

Can staff explain to me why those aren't needed as even a matter of clarification for this variance action?

MR. REISCHL: Fred Reischl with Zoning Division.

There was a meeting that I was not in attendance, and I had spotted those two encroachments also. And I wasn't a party to the meeting so I don't know why I was instructed not to include them. I believe Ray was in the meeting, he may be able to enlighten us.

MR. BELLOWS: For the record, Ray Bellows.

I met with Karen Bishop.

HEARING EXAMINER STRAIN: You're not getting picked up on that. Sorry, Ray.

MR. BELLOWS: How about that?

HEARING EXAMINER STRAIN: There you go.

MR. BELLOWS: During the meeting we had with the applicant we were talking about various types of possible variances that staff thought could -- should be requested. And in discussion with the applicant there are certain things that would not necessarily qualify for a variance. If the stairway's unenclosed and is less than 30 inches, it wouldn't have to meet the setback requirement. That's my understanding in regards to the stairs. There might be -- my memory may be different so I'll maybe have to defer to the applicant.

HEARING EXAMINER STRAIN: Karen, would you mind responding? Thank you.

MS. BISHOP: Karen Bishop, again.

It was determined that since those were already approved and C.O.'d 12 years ago that they would not require additional variance at this time.

HEARING EXAMINER STRAIN: My concern was if we're in here for a variance and we can clean them all up at once, it would seem an expeditious way to do it.

Ray, in your discussion -- well, first of all, Ray seems to believe -- he has expressed that's an exception for uncovered. Are these covered or uncovered?

MS. BISHOP: They're uncovered.

HEARING EXAMINER STRAIN: Well, then that would take them out of the need to --

MR. BELLOWS: Are they less than 30 inches too?

MS. BISHOP: I didn't measure the height of those, honestly, just to be honest with you. I know that the finished floor elevation of that club is much higher than the -- you know, there's substantial stairs that go up into this, because it's a flood area. It may be a little bit more than 30 inches, I just can't -- for sure. It never came to -- not something I know for sure.

HEARING EXAMINER STRAIN: In our -- go ahead, Fred.

MR. REISCHL: Mr. Strain, if you're looking for a cure, the way the title is written, it would allow for other points that are -- because those are not the farthest protrusion to the north and the south. Therefore, if you want to change my condition where I say it's just for those three points, if you want to add these other two points, it's my belief I can leave it to the County Attorney to make the final decision. But it sounds to me like it was advertised for the maximum encroachments. And since these are less than that maximum, if you wanted to add those, that would still, in my non-legal opinion, work.

HEARING EXAMINER STRAIN: Even if they were put in at a previous approval, just like we saw with this house, doesn't make it conform. It doesn't make it legal.

MR. REISCHL: Correct.

HEARING EXAMINER STRAIN: I would rather we clean everything up at one time and just include those into this variance action, because they're within the setbacks that we're talking about.

Is there any objection from the County Attorney's Office for doing that?

MS. ASHTON-CICKO: No.

HEARING EXAMINER STRAIN: Okay. Then what I will do is after this meeting, Ray, or Fred, we're going to need to get just a slightly different site plan than this one. Those two stairwells that will need to be considered now just need to be darkened in so that they're part of the variance action. And that would clean that up. And then we get all of them done at one time.

MS. BISHOP: I'm a little confused. You say two stairwells. We're talking specifically one stairwell on the south side of the property?

HEARING EXAMINER STRAIN: Well, I'm sorry, there's one on the south side and there's one on the north side.

MS. BISHOP: But the north side is already in the variance.

HEARING EXAMINER STRAIN: Just the dark one. The one to the left of the dark one, that's 12 foot 12.

MS. BISHOP: Okay.

HEARING EXAMINER STRAIN: That one, if it's supposed to be 15, I would want to make sure that that is covered.

Go ahead.

MS. BISHOP: That one technically has a small canvas cover right above. Because this goes underneath the building and so rain gets in. But it's -- that one I know for sure is not 30 -- is below 30 inches. That's -- because it goes down underneath. And so there is a little canvas cover right above where the hole is, so to speak, so it doesn't fill up with water.

HEARING EXAMINER STRAIN: That's fine. Then the only one we need to shade in is the one on the bottom --

MS. BISHOP: Okay.

HEARING EXAMINER STRAIN: -- right next to the arbor. That will just clean up so there will be no question in the future.

MS. BISHOP: I'm sure we already have an exhibit just like that too.

HEARING EXAMINER STRAIN: I think you do.

MS. BISHOP: I'm sure I do.

HEARING EXAMINER STRAIN: Thank you.

MS. BISHOP: Thank you.

HEARING EXAMINER STRAIN: And Ray or Fred, I believe we've received two letters of no objection from the adjoining neighbors?

MR. REISCHL: From the property owners to the north and south.

HEARING EXAMINER STRAIN: Okay, double checking my questions to make sure we've asked everything.

Go ahead, Karen, come on up.

MS. BISHOP: It was just brought to my attention that the new proposed changes there does include more of a roof over that one on the north side. I didn't see the final construction plans to know for sure. So

they're taking out I guess the little canvas that exists over the top of it and putting a little roof over it.

HEARING EXAMINER STRAIN: To be safe, why don't you just --

MS. BISHOP: Shade it in.

HEARING EXAMINER STRAIN: -- shade them both -- well, honestly, it will --

MS. BISHOP: I'm okay.

HEARING EXAMINER STRAIN: -- stop any question in the future.

MS. BISHOP: It's not a problem for me. I'm happy to do it. I thank you.

HEARING EXAMINER STRAIN: Okay. Fred, do you have a staff report?

MR. REISCHL: Thank you, Mr. Chairman.

Fred Reischl, Zoning Division.

HEARING EXAMINER STRAIN: There you go, Chairman.

MR. REISCHL: Oh, Mr. Strain, sorry.

One correction that we noted to you is that the address in the staff report of 9468 is the one that I got from the Property Appraiser's website but apparently with multiple buildings on this property. The actual address of this building in question is 9467.

HEARING EXAMINER STRAIN: Was that the right address in the advertisement?

MR. REISCHL: There was no address in the advertisement.

HEARING EXAMINER STRAIN: Good. Then we don't have to deal with that issue.

MR. REISCHL: Right.

HEARING EXAMINER STRAIN: Okay, I don't have any other questions.

Are there any members of the public like to speak in this matter?

(No response.)

HEARING EXAMINER STRAIN: Okay, with that we'll conclude this hearing and a decision will be rendered as quickly as I can possibly crank it out.

And we will need the corrections to this site plan.

MS. BISHOP: We'll have them today.

HEARING EXAMINER STRAIN: And the decision will take no longer than 30 days. But as I mentioned to the prior applicant, we're -- usually within a week or 10 days we get them out. We'll do our best to move this fast. I know you've been waiting a long time and you have a deadline to meet, so we'll certainly try our best to help you there. Thank you.

***Next and last item up today is Petition No. SV-PL20150000086. It's the RaceTrac Petroleum, Inc. It's for the convenience store and service station that will be on the corner of Barefoot Williams Road and U.S. 41.

All those wishing to testify on behalf of this item, please rise to be sworn in by the court reporter.

(All speakers were duly sworn.)

HEARING EXAMINER STRAIN: Disclosures. On my part I have met with Tom Hardy who's the representative for RaceTrac, I've had discussions with the staff, I've talked with the commissioner from the district, I've reviewed all the files both in the packet and historical that I could find, and I've talked with various residents of the Hitching Post which is a community adjacent to this particular project.

Exhibit A will be the staff report and Exhibit B will be the legal ad.

(Exhibits A and B were marked for identification.)

HEARING EXAMINER STRAIN: And with that, I have read the entire staff report. There are no members of the public here to discuss this item, so I don't need a formal presentation.

I would like confirmation from the applicant on a couple conditions. Mr. Hardy, if you don't mind coming to the mic, identify yourself first, please.

MR. HARDY: Good morning. Tom Hardy with RaceTrac Petroleum.

HEARING EXAMINER STRAIN: I get to see you a lot in Collier County now.

MR. HARDY: We've got a few locations going.

HEARING EXAMINER STRAIN: I think there's six, if I remember, and you've got two more on Immokalee Road, so you're up to about eight plus the one that exists on Pine Ridge, so you're what, nine now, something like that?

MR. HARDY: Yes, sir. Yes, sir. We enjoy the Collier market. We really like doing business down here.

HEARING EXAMINER STRAIN: Well, I think people down here like to spend money on gas too because there's a --

MR. HARDY: Yes, sir.

HEARING EXAMINER STRAIN: -- your places are always very packed.

In discussions with the neighborhood, similar to the conditions that we talked about on 951 and Manatee, there was concerns about the wall height. And I believe you've agreed to go to an eight-foot wall height there on this location, and that we would use the canopy tree that was utilized on the Manatee project. Is that confirmed with your office?

MR. HARDY: Yes, sir. And part of our building permits that are approved with the SDP.

HEARING EXAMINER STRAIN: So you already kind of figured that, huh?

MR. HARDY: Yes, sir.

HEARING EXAMINER STRAIN: Tom, that's all I've got. I just wanted to get that cleared up for the record. So I appreciate your time.

I do want to know -- Fred, do you have a staff report -- that's all I need from you, thank you.

Or Mike, I'm sorry. Last time I think it was Fred, so this is great.

MR. SAWYER: Good morning. Mike Sawyer, Zoning Division.

You've got the staff report dated I believe April 22nd. I can answer any questions that might come up.

HEARING EXAMINER STRAIN: Would you mind turning to Page 3 of the staff report under purpose/description of project in the second paragraph. Let me know when you're there.

MR. SAWYER: I've got it.

HEARING EXAMINER STRAIN: Okay. The second paragraph reads, it says: Second, the applicant is requesting a variance from Section 5.05.05(C)(2)(b) which limits canopy signs and the facades that face the street right-of-way to instead allow canopy local sign on the northeast sign of the canopy.

Doesn't that -- shouldn't that say southeast side of the canopy?

MR. SAWYER: It most definitely should. I apologize.

HEARING EXAMINER STRAIN: And then it says which is none, N-O-N-E, street facing side of the -- which is not facing a street side of the canopy.

MR. SAWYER: Should be non street side.

HEARING EXAMINER STRAIN: Non instead of none. Okay.

Then the last one of these little nuances is the County Attorney's Office. It says: The County Attorney's Office has not yet reviewed the staff report for this particular action. Did we have an update from the County Attorney's Office on their review?

MS. ASHTON-CICKO: Scott, would you like to address that?

MR. SCOTT: Scott Jones, Assistant County Attorney.

I believe that I did review it. It may just be an error on the approval.

HEARING EXAMINER STRAIN: You believe you reviewed it? Mike, do you know if you reviewed it?

MR. SAWYER: I know in fact that he did in fact review it. The not yet should have been removed when I added the date into that section.

HEARING EXAMINER STRAIN: Ah. Okay, well, that -- you're safe, Scott. Thank you.

MR. SAWYER: The project manager apologizes for all those three errors.

HEARING EXAMINER STRAIN: Well, there's no members of the public here so there's no sense in running through this. But I believe I've asked all the questions I have. And there's nothing else on staff's part?

MR. SAWYER: Nothing further.

HEARING EXAMINER STRAIN: Any members of the public here that would like to speak on this item?

(No response.)

HEARING EXAMINER STRAIN: Hearing none, we will close this public hearing and a decision

will be rendered within 30 days, most likely a lot less.

I thank you all for coming. Tom, thank you, appreciate your time.

MR. HARDY: Thank you.

HEARING EXAMINER STRAIN: That takes us to other business. There's none on the agenda.

Public comments, there's no members of the public left, so I think we've taken care of that issue.

And with that, this meeting is adjourned. Thank you all.

(At which time, this hearing concluded at 9:43 a.m.)

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 9:43 a.m.

COLLIER COUNTY HEARING EXAMINER


MARK STRAIN, HEARING EXAMINER

ATTEST:

DWIGHT E. BROCK, CLERK

These minutes approved by the Hearing Examiner on 6-11-15, as presented or as corrected .

TRANSCRIPT PREPARED ON BEHALF OF
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BY CHERIE' NOTTINGHAM, COURT REPORTER AND NOTARY PUBLIC