

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY HEARING EXAMINER
Naples, Florida
October 26, 2017

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: Raymond V. Bellows, Zoning Manager
Fred Reischl, Principal Planner
Heidi Ashton-Cicko, Managing Assistant County Attorney

PROCEEDINGS

HEARING EXAMINER STRAIN: Good morning, everyone. Welcome to the Thursday, October 26th meeting of the Collier County Hearing Examiner's Office.

If everybody will please rise for Pledge of Allegiance.

(The Pledge of Allegiance was recited in unison.)

HEARING EXAMINER STRAIN: Some housekeeping matters from the agenda: The speakers will be limited to five minutes unless otherwise waived, decisions are final unless appealed to the Board of County Commissioners, and a decision will be rendered within 30 days.

The review of the agenda: We have three items on today's agenda. The first one, 3A, is the Bautsch DBE, boat dock extension. That was continued. It's going to be continued to possibly November 9th, and at that date we'll announce any changes at that point.

The continuation is because of deficiencies in the staff report and conflicts with the applicant's package: Some of the documents had different setbacks; some of the documents were illegible; some of the documents were incomplete. The applicant is in the process of completing that work. So that will be continued until that next November date.

The Foxfire PDI, which is 3B, will be continued indefinitely. That particular PDI did not have final review by County Attorney's Office. In the language that was submitted by the applicant that was included in the staff report, elements of the PUD that required review were not included in the staff report. A survey was not included in the staff report so setbacks could be checked.

The applicant is assembling those documents now, and we'll expect it will have to be readvertised for a new date when all those documents are finally collected.

***That takes us to the one remaining item on today's petition, or today's agenda. It's Petition No. NUA-PL20170002192. It's RS Management Corporation of Livonia, Inc., requesting a nonconforming use alteration for two duplexes in Naples Park.

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

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

HEARING EXAMINER STRAIN: And I know by looking at the audience there are no members of the public here other than the applicant either in opposition or support of this, so we won't need a formal presentation.

I would ask that the applicant come up, identify themselves for the record, and I have a few questions I'd like to ask of Mr. LaGrasta.

MR. LaGRASTA: Yeah.

HEARING EXAMINER STRAIN: You'll have to come up to this microphone, sir.

MR. LaGRASTA: Yeah. I'm here representing the owner. Nick LaGrasta from LaGrasta Homes.

HEARING EXAMINER STRAIN: Okay. And this particular application is so you can tear down and rebuild some duplexes on two different lots in Naples Park. In the analysis that was provided to me by staff, I reviewed it last night. I actually had more information that I'm going to discuss here today.

One of the questions was the alteration, expansion, and replacement will not increase the density on the parcel or lot which the nonconforming single-family dwelling, duplex, or mobile home is located and, basically, the answer was, or the answer stated, the petitioner will rebuild the structures in the same footprint. A new building permit will be issued only with the same density.

Another one, C, the alteration, expansion and replacement will not further encroach upon any nonconforming setback.

Answer: The new structures will not encroach further upon any nonconforming setback.

Staff requests a condition which will limit the further encroachment.

Now, what that says is, basically, I have a survey, and instead of 10-foot setbacks as required by the current code, you would have the latitude by this to build to the setback you have today, some of which are just a little bit over eight feet. Is that your intention?

MR. LaGRASTA: No. Our intention is to bring it up to the current code, to the 10-foot setback.

HEARING EXAMINER STRAIN: Okay. That certainly changes a lot of the situations that we had today, because there was a ZVL sent to you back on December 9th saying that a variance would be needed. There was an email sent to the County Attorney's Office from Ray Bellows -- actually, no. It was from a Geoff Hitchen. Does he work for you?

MR. LaGRASTA: Yes.

HEARING EXAMINER STRAIN: Okay. He said, hi, Heidi. There will not be a companion variance to the NUA because the duplexes will meet the current setbacks. Ray Bellows confirmed that if we meet the current setbacks, we could rebuild the duplexes without a variance. Will you need any additional info? Thank you.

So I wanted to confirm with you that that statement from your employee was correct.

MR. LaGRASTA: That is correct.

HEARING EXAMINER STRAIN: And also to confirm, then, that the staff's -- staff report is, again, in error; it is not accurate in regards to the same footprint because you will be keeping with the new setbacks.

MR. LaGRASTA: Correct.

HEARING EXAMINER STRAIN: Which then will expedite a lot of things today, because one of the concerns I had, if the staff report was accurate, the question of the variance would have had to come into play. In order to avoid the variance, documentation should have been included in the staff report to show the setbacks in 1960 that your buildings were properly built to.

The setbacks in 1960 were eight feet, so they were properly within that standard, but that -- then that information I had dug up on my own. It was not part of the research done by staff. It should have been because, basically, the staff report was relying on those setbacks and not on the required setbacks that you're not going to provide.

So that takes us to a stipulation that's in the staff report. It says, the replacement structures will be built within the existing building footprints and shall not encroach further into the setbacks. You are going to adhere to the setbacks that the new code requires for the side setbacks; is that correct?

MR. LaGRASTA: Correct. We're going to abide by the new setbacks but the buildings will be a little bit larger than what's existing, but we'll stay within the current setback code.

So, like, if an -- if the building that's there now was 40 feet long, the new one might be 50 feet, but we'll still be within our current setbacks.

HEARING EXAMINER STRAIN: Okay. Now, that's a little -- okay.

MR. LaGRASTA: No, we're not going to be encroaching.

HEARING EXAMINER STRAIN: No. You're going to be enlarging the nonconformity, which is why you have the nonconforming use application.

So I'm trying to make sure everything still fits like it does and doesn't require another staff review.

MR. LaGRASTA: Right.

HEARING EXAMINER STRAIN: This first review was based on a premise that is not true. No fault of yours. It obviously just didn't get communicated somehow.

MR. LaGRASTA: Right. I mean, currently, if the existing structure is 1,000 square feet, for example, and we build a new one at 1,200 square feet, as long as we stay within current code as far as the setbacks are concerned, and the 10 feet -- we're not asking to go to the eight feet. We'll abide by the current code at 10 feet.

HEARING EXAMINER STRAIN: The problem with the current code is there are other restrictions for duplexes that don't fit on the site you're at. That's why you need this nonconforming use application.

MR. LaGRASTA: Correct, because they want it on top of two lots.

HEARING EXAMINER STRAIN: Yeah, that's exactly right. So the enlargement of the nonconforming use is why the NUA is in play.

MR. LaGRASTA: Okay.

HEARING EXAMINER STRAIN: And we understand that you'll actually be, then,

performing -- producing a better product --

MR. LaGRASTA: Correct.

HEARING EXAMINER STRAIN: -- by being in conformance with the current setbacks --

MR. LaGRASTA: Correct.

HEARING EXAMINER STRAIN: -- and the current code.

Well, I think that might be all the questions I have. Let me make sure. Oh, the height. Are you still staying with the single story?

MR. LaGRASTA: Yes.

HEARING EXAMINER STRAIN: You have no problem if we stipulate that?

MR. LaGRASTA: No problem at all.

HEARING EXAMINER STRAIN: And the other questions all involve the fact that a variance wasn't requested. I can see why you didn't put it through. I didn't learn this until this morning because one was originally required, and then when you decided to meet the setbacks on the side, the variance isn't necessary anymore, so we're good with that. And the NUA covers the rest of the standards and deviations that you're asking for.

So I'm comfortable with the information you provided. Thank you.

Anything else that you'd want to say for the record?

MR. LaGRASTA: No.

HEARING EXAMINER STRAIN: Okay.

MR. LaGRASTA: Thank you.

HEARING EXAMINER STRAIN: Thank you.

Is there a staff report?

MR. REISCHL: Thank you, Mr. Strain.

Fred Reischl, Planning and Zoning.

Some questions. I was writing the staff report under the assumption that duplex was not a permitted use on this size of a structure. That's why it was a nonconforming use.

And according to the way I wrote it, I thought the -- that either way, whether it met today's setbacks or the 1960 X setbacks, that it would -- that that stipulation would fit either situation. Is that not correct or not your understanding or --

HEARING EXAMINER STRAIN: No. There's a difference. Based on the ZVL written in December, based on the comment Ray made to the employee of the applicant saying that if they adhere to the current setbacks they wouldn't need a variance, there's no variance in this package.

In discussing it with Mike Bosi, he said that the changes that were allowed by -- the changes could have been allowed by an administrative variance by staff.

So I pulled that documentation, and it's under 9.04.04 under minor after-the-fact encroachments; where a structure was lawfully permitted within a residential zoning district under a previous code and where said structure is considered nonconforming under the current Land Development Code due to changes in required yards.

The County Manager or designee may administratively approve a variance in the amount equal to or less than the existing yard encroachment.

There is no evidence in the package reflecting any changes in the current yards. I hear your statement, but there's nothing in the record that shows what the standards were in 1960 to compare to what they are now --

MR. REISCHL: Okay.

HEARING EXAMINER STRAIN: -- in 2017. Without that information, the staff report is, again, incomplete.

I do not know how to -- how to encourage you guys, how to guide you, how to ask you any more than I've been saying for a long period of time now. These staff reports have to be complete. I am not here to make the applicant's case. The applicant should be told things that are needed by staff so staff has a complete case and package that can come as a staff report.

I shouldn't discover this on the 11th hour. It's inappropriate, and from now on it's going to be called out. So I don't care how you guys fix this, but we've got to be more careful in the evidence that's provided. And when documents require things to be provided, for example, the Firefox -- the Foxfire PDI, it says it will be consistent with the architectural standards by the -- from the covenants and restrictions for those properties. That's rare to have that in a PUD. The Briarwood PUD had it, too, and look what trouble it caused them. No one checked that.

So the applicant didn't check it. I've asked the applicant since to supply that information so I can check it. That is not what I should have done. It should have happened before the staff report even got to me.

So I don't know who's reading these -- I don't know who's reading these documents when they're finally gurgitated to get to the point that they're ready for public hearing, but someone needs to be looking closer at the required documents, because I'm getting tired of having to do this at the 11th hour and trying to correct it on the fly in these meetings. It's not appropriate.

And if I need to say that from the dais at the Planning Commission meeting, I will. But one way or another it's got to get corrected. It can't go on like this.

So from the perspective of the staff report today, you don't have any needed changes based on what you heard from Mr. LaGrasta today, do you?

MR. REISCHL: Correct.

HEARING EXAMINER STRAIN: Ray, do you see anything that, from your perspective as zoning director or zoning manager, there are any issues with the testimony we heard today and the changes that are being provided to us to by the applicant?

MR. BELLOWS: No. The corrections or clarifications presented today are consistent with the process that's before you today.

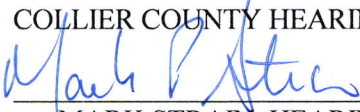
HEARING EXAMINER STRAIN: Okay. With that, I don't have any other questions, and there's no members of the public.

So, Mr. LaGrasta, I hope that within a very short period of time we'll have a decision to you. I will be attaching the appropriate information to make sure that we're consistent with what you're planning to do. Appreciate your time today.

And that will close the public hearing.

And that takes us to the end of our agenda today. There is no other business. There's no members of the public here to comment, so this meeting's adjourned. Thank you.

There being no further business for the good of the County, the meeting was adjourned by order of the Hearing Examiner at 9:14 a.m.

COLLIER COUNTY HEARING EXAMINER


MARK STRAIN, HEARING EXAMINER

ATTEST
DWIGHT E. BROCK, CLERK

These minutes approved by the Hearing Examiner on 11-7-17, as presented
or as corrected _____.

TRANSCRIPT PREPARED ON BEHALF OF
U.S. LEGAL SUPPORT, INC.,
BY TERRI LEWIS, COURT REPORTER AND NOTARY PUBLIC.