HEX NO. 2021-48

HEARING EXAMINER DECISION

DATE OF HEARING.

September 23, 2021

PETITION.

PETITION NO. BDE-PL20200001723 - 678 Palm Court - Request for a 73-foot boat dock extension (BDE) for a boat dock that extends 53 feet from the maximum permitted protrusion of 20 feet for waterways greater than 100 feet in width, to allow construction of a boat docking facility with two slips each with a boatlift for which the dock and vessel combination will protrude up to 73 feet into a waterway that is 430 feet wide. The subject property is located at 678 Palm Court in Section 18, Township 52 South, Range 27 East, Collier County, Florida.

GENERAL PURPOSE FOR THE PETITION.

To construct a new docking facility comprising two slips, each with a boat lift, for the mooring of two vessels. The "L" shaped dock facility will protrude a total of 73 feet into a waterway that is $430\pm$ feet wide. The proposed dock facility is to accommodate a 20-foot vessel and a 29-foot vessel.

STAFF RECOMMENDATION.

Approval with conditions.

FINDINGS.

- 1. The Hearing Examiner has jurisdiction over this Petitioner pursuant to Sec. 2-87(4) of the Collier County of Ordinances, Sec. 8.10.00 of the Land Development Code, and Chapter 9 of the County Administrative Code.
- 2. The public hearing for this Petition was properly noticed and conducted in accordance with all County and state requirements.
- 3. The public hearing was conducted electronically and in-person in accordance with Emergency/Executive Order 2020-04.
- 4. The Petitioner and/or Petitioner's representative executed the Hybrid Virtual Quasi-Judicial Public Hearing Waiver related to conducting the public hearing electronically and in-person.
- 5. The County representative introduced the Petition and staff recommendations, followed by Petitioner and/or Petitioner's representative, and then public comment. Multiple "no objection"

letters from the abutting and adjacent neighbors were presented and one speaker, at 699 West Palm Avenue, expressed opposition.

6. The County's Land Development Code Section 5.03.06.H. lists the criteria for dock facility extensions. The Hearing Examiner may approve, approve with conditions, or deny a boat dock extension request if it is determined that at least four (4) of the five (5) primary criteria, and at least four (4) of the six (6) secondary criteria have been met. The County's Land Development Code Section 5.03.06.F. lists the criteria for a Boathouse. The Hearing Examiner may approve, approve with conditions, or deny a Boathouse request if it is determined that seven (7) out of the seven (7) criteria have been met.¹

Primary Criteria:

1. Whether the number of dock facilities and/or boat slips proposed is appropriate in relation to the waterfront length, location, upland land use and zoning of the subject property. Consideration should be made of property on unbridged barrier islands, where vessels are the primary means of transportation to and from the property. (The number should be appropriate; typical single-family use should be no more than two slips; typical multi-family use should be one slip per dwelling unit; in the case of unbridged barrier island docks, additional slips may be appropriate.)

The record from the public hearing reflects that the criterion **HAS BEEN MET**. The subject property is located within a residential single-family zoning district; the proposed docking facility will have two slips, each with a boat lift.

2. Whether the water depth at the proposed site is so shallow that a vessel of the general length, type and draft as that described in the petitioner's application is unable to launch or moor at mean low tide (MLT). (The petitioner's application and survey should establish that the water depth is too shallow to allow launching and mooring of the vessel(s) described without an extension.)

The record from the public hearing reflects that the criterion **HAS BEEN MET**. This BDE is requested for the purpose of ingress/egress of the owner's vessels from deeper depths. At 20 feet from the seawall, only 1 foot of water is present at MLW. Much of the area waterward and directly adjacent to the seawall is completely exposed at low tide. In the proposed mooring location, from 50 to 73 feet from the face of the seawall, the applicants' (Mark and Laura Diefenthaller) vessels will have from 3.5 to 4 feet of navigable water at MLW. Additionally, due to the Rookery Bay Aquatic Preserve, dredging in this location is prohibited, and therefore not a viable alternative option to the dock which is proposed." Staff has verified that MLW (Mean Low Water) was used in lieu of MLT and that the terms are synonymous; finding no reason to dispute the petitioner's assertions. The applicants' legal counsel stipulated to the stated length of the two vessels owned by the applicants'.

¹ The Hearing Examiner's findings are italicized.

3. Whether the proposed dock facility may have an adverse impact on navigation within an adjacent marked or charted navigable channel. (The facility should not intrude into any marked or charted navigable channel thus impeding vessel traffic in the channel.)

The record from the public hearing reflects that the criterion **HAS BEEN MET**. The proposed docking facility is not located within, nor will it affect any marked or charted navigable channels. Thus, the dock will not impede vessel traffic in any channels. The manmade canals located on either side of the proposed dock will respectively retain 140 feet (to the west) and 98 feet (to the east) of open waterway width for navigation by the public.

4. Whether the proposed dock facility protrudes no more than 25 percent of the width of the waterway, and whether a minimum of 50 percent of the waterway width between dock facilities on either side is maintained for navigability. (The facility should maintain the required percentages.)

The record from the public hearing reflects that the criterion **HAS BEEN MET**. The width of the waterway to the south of the subject property is approximately 430 feet. The proposed dock facility will protrude a maximum of 73 feet from the face of the seawall/MHWL which has been established to be the most restrictive point; therefore, the protrusion is approximately 17% of the width of the waterway to the south. The subject location is unique in that it also has man-made canals to the east and west. The proposed dock is approximately 140 feet to the dock on the western shore at 649 Palm Avenue and 98 feet away from the dock on the eastern shore at 727 Palm Point Drive.

5. Whether the proposed location and design of the dock facility is such that the facility would not interfere with the use of neighboring docks. (The facility should not interfere with the use of legally permitted neighboring docks.)

The record from the public hearing reflects that the criterion **HAS BEEN MET**. The submitted plans reveal the subject docking facility satisfies the required setback requirements and no impediments with neighboring dock facilities were observed. Both neighbors supplied "no objection" letters.

Secondary Criteria:

1. Whether there are special conditions not involving water depth, related to the subject property or waterway, which justify the proposed dimensions and location of the proposed dock facility. (There must be at least one special condition related to the property; these may include type of shoreline reinforcement, shoreline configuration, mangrove growth, or seagrass beds.)

The record from the public hearing reflects that the criterion **HAS BEEN MET**. The subject property's shoreline abuts the Rookery Bay Aquatic Preserve, which prohibits any dredging from occurring. Therefore, to reach ample water depths for ingress/egress of the owners' vessels, the length of the proposed pier is required. This statement is supported

by provided plans, most specifically the "Proposed Dock Plan "and "Cross Section" depicting both water depths and the draft of vessels, and therefore concurs.

2. Whether the proposed dock facility would allow reasonable, safe access to the vessel for loading/unloading and routine maintenance, without the use of excessive deck area not directly related to these functions. (The facility should not use excessive deck area.)

The record from the public hearing reflects that the criterion **HAS BEEN MET**. As shown on the drawings by the petitioner, no excessive deck area is proposed. The dock facility is design exclusively for safe access to the vessels with no additional decking.

3. For single-family dock facilities, whether the length of the vessel, or vessels in combination, described by the petitioner, exceeds 50 percent of the subject property's linear waterfront footage. (The applicable maximum percentage should be maintained.)

The record from the public hearing reflects that the criterion **HAS BEEN MET**. The property has 131 feet of water frontage. As proposed, the dock facility is to serve a 20-foot vessel and a 29-foot vessel, the combined total being 49 feet which is less than 50% of the shoreline.

4. Whether the proposed facility would have a major impact on the waterfront view of neighboring property owners. (The facility should not have a major impact on the view of a neighboring property owner.)

The record from the public hearing reflects that the criterion **HAS BEEN MET**. There are only a handful of residences whose views would directly face the proposed project. In all instances, the views of those residences already currently consist of other single-family residences and their docking facilities. Therefore, construction of the proposed structure would not significantly alter the views of neighboring residences. The subject docking facility satisfies setback requirements. Both abutting neighbors supplied "no objection" letters.

5. Whether seagrass beds will be impacted by the proposed dock facility. (If seagrass beds are present, compliance with subsection 5.03.06.J of the LDC must be demonstrated.)

The record from the public hearing reflects that the criterion **HAS BEEN MET**. The submerged resources survey provided indicates that no seagrass beds exist within the footprint of the dock. No seagrass beds will be impacted by the proposed dock facility.

6. Whether the proposed dock facility is subject to the manatee protection requirements of subsection 5.03.06(E)(11) of this Code. (If applicable, compliance with section 5.03.06(E)(11) must be demonstrated.)

The record from the public hearing reflects that the criterion is **NOT APPLICABLE**. The provisions of the Collier County Manatee Protection Plan do not apply to individual docks behind individual residences.

ANALYSIS.

Based on a review of the record including the Petition, application, exhibits, the County's staff report, and hearing comments and testimony from the Petitioner and/or the Petitioner's representative(s), County staff and any given by the public, the Hearing Examiner finds that there is enough competent, substantial evidence as applied to the criteria set forth in Section 5.03.06.H of the Land Development Code to approve the Petition. The Petition meets 5 out of 5 of the primary criteria and 5 out of 6 secondary criteria (one secondary is not applicable in this case).

DECISION.

The Hearing Examiner hereby <u>APPROVES</u> Petition Number BDE-PL20200001723, filed by Nick Pearson of Turrell, Hall & Associates, Inc., representing Mark and Laura Diefenthaler, with respect to the property described as 678 Palm Court, further described as Lot 27, Block F, Goodland Isles Second Addition, in Section 18, Township 52 South, Range 27 East, Collier County, Florida, for the following:

• A 53-foot boat dock extension from the maximum permitted protrusion of 20 feet for waterways greater than 100 feet in width to allow the construction of a boat docking facility protruding a total of 73 feet into a waterway that is 430± feet wide for the benefit of the subject property.

Said changes are fully described in the Dock Plans and Survey attached as Exhibit "A" and are subject to the condition(s) set forth below.

ATTACHMENTS.

Exhibit A – Dock Plans and Survey

LEGAL DESCRIPTION.

678 Palm Court, further described as Lot 27, Block F, Goodland Isles Second Addition, in Section 18, Township 52 South, Range 27 East, Collier County, Florida

CONDITIONS.

- 1. All other applicable state or federal permits must be obtained before commencement of the development.
- 2. A Special Treatment Permit (ST) must be obtained prior to obtaining a building permit for the proposed docking facility.
- 3. Reflectors shall be installed at the outermost end on both sides of all dock elements or mooring pilings, whichever protrude the furthest into the waterway, prior to issuance of a Certificate of Completion.

DISCLAIMER.

Pursuant to Section 125.022(5) F.S., issuance of a development permit by a county does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the county for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law.

APPEALS.

This decision becomes effective on the date it is rendered. An appeal of this decision shall be done in accordance with applicable ordinances, codes and law.

RECORD OF PROCEEDINGS AND EXHIBITS: SEE CLERK OF COURT, MINUTES AND RECORDS DEPARTMENT. DECISIONS OF THE HEARING EXAMINER FOR VARIANCES, CONDITIONAL USES, AND BOAT DOCK EXTENSIONS SHALL BE NOTED ON THE ZONING MAP FOR INFORMATIONAL PURPOSES.

October 15, 2021 Date

A. Dila

Andrew Dickman, Esq., AICP Hearing Examiner

EXHIBIT "A"









P11114.01 Diefenthaler-678 Palm CIICADI/PERMIT-COUNTY11114 1-BDE dwg CROSS SECTION 9/2/202









