

**BOARD OF ADJUSTMENT MEETING
WEDNESDAY, JANUARY 14, 2004 – 7:30 P.M.
1ST FLOOR – CITY HALL
CITY COMMISSION CHAMBERS
100 N. ANDREWS AVENUE
FORT LAUDERDALE, FLORIDA**

BOARD MEMBERS

	<u>Present</u>	<u>Absent</u>
Stephen Buckley, Vice-Chairman	P	
Gus Carbonell	P	
Fred Stresau	P	
Patricia A. Rathburn, Chairman	P	
E. Birch Willey	P	
Binni Sweeney	P	
Don Larson	P	

ALTERNATES

Scott Strawbridge	P
Al Massey	P
Jon Albee	P

STAFF

Robert Dunckel, City Attorney
Greg Brewton, Zoning Administrator
Don Morris, Planner
Charlie Wygant

Margaret A. D'Alessio, Recording Secretary

GUESTS

Khamgart Hersherly	Ray Doumar	Linda Nunn
Tyson Jones	Robert Lochrie	Lesley Lombardi
Elizabeth Hays	Dave Amiot	Rev. Elivita Baker

CALL TO ORDER

Chair Patricia Rathburn called the meeting to order at approximately 7:40 p.m. Roll call was taken. Chair Patricia Rathburn proceeded to introduce the members of the Board and the staff. She then proceeded to explain the procedure that would be used at tonight's meeting.

APPROVAL OF MINUTES – December 10, 2003

Chair Patricia Rathburn asked for a motion to approve the minutes from the December 10, 2003 meeting.

Fred Stresau stated that regarding Item No. 03-72 on page 22, they had been discussing the description of the business and the owner had read a letter of support from one of their customers which described the business. He stated that he believed the letter should be included in the minutes.

Mr. Stresau further stated that in regard to Item No. 03-85 the vote in regard to permitting the construction of a second floor deck on the existing structure should reflect that it failed 4-3 and not 3-4.

Motion made by Fred Stresau and seconded by Don Larson to approve the minutes of the December 10, 2003 meeting as amended. Board unanimously approved.

Individuals wishing to speak regarding tonight's agenda were sworn in.

1. APPEAL NO. 03-80

APPLICANT: OnRite Facility
LEGAL: Leder Commercial Subdivision, a portion of Parcel
B, P.B. 70, P. 25
ZONING: B-3 – Heavy Commercial/Light Industrial
STREET: 5130 N. State Road 7
ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47-25.3.A.3.d - To permit the construction of a 5' high wood fence to buffer non-residential property from residential property where the code requires a 5' high masonry bufferyard wall when non-residential property abuts residential property.

Chair Patricia Rathburn stated that staff had determined that a variance was not needed in this matter, and therefore, the item had been withdrawn from tonight's agenda.

4. APPEAL NO. 04-03

APPLICANT: Investacar.com d/b/a Bourget's of Florida
LEGAL: Lauderdale, 1st Addition, P.B. 2, P. 15, Block 11, South
65' of Lots 19 & 20
ZONING: B-1 – Boulevard Business
STREET: 1580 South Federal Highway
ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47-6.20 (Table of Dimensional Requirements) – To permit a 0' front yard where the Code requires a minimum 5' front yard. **Sec. 47-20.2** – To permit five (5) 6' x 10' parking spaces for motorcycle use where a minimum 8'8" x 18' parking space is required. **Sec. 47-22.3.0.** – To permit a 17'6" high roof sign where roof signs are prohibited. **Sec. 47-21.9** – To permit a 2'9" perimeter landscape area where a minimum 5' perimeter landscape area is required.

Chair Patricia Rathburn stated that the applicant had asked that this item be continued until February 11, 2004. Staff agreed.

2. APPEAL NO. 04-01

APPLICANT: Bram Persaud d/b/a Pelican Pub
LEGAL: Woodland Park Unit I, S65' of the NE ½ of 8-50-42
ZONING: B-2 – General Business
STREET: 282 SW 27 Avenue
ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 5-27(a) – seeking a variance for a pub with a 2COP liquor license upgrading to a 4COP liquor license with a distance separation of 270' from a church (Bethesda Pentecostal Church) where the code requires a minimum separation of 500' from any established church, public or private school.

Robert Dunckel stated that he wanted to remind the Board that the burden on this case was to prove a variance and not a special exception. He stated that the Board was accustomed to seeing special exceptions under 5-26 (a) where the sale of food in a restaurant would predominate over the sale of beverages. He stated the threshold for that special exception was merely that the applicant had to demonstrate that it was not contrary to the public interest. He stated in this case the burden was on the applicant to satisfy all the criteria in the Code for a variance.

Bram Persaud stated that they now had a 2COP license which was established since 1976. He stated there was a change in the trend for the restaurant, and there was more of an ethnic Caribbean population in the area and liquor was more in demand than just beer and wine. He stated that he had never applied for a COP license because they did not feel there had been a need for it previously. He stated that the church in the area had a COP for the last 2-3 years. He felt the Board should consider that the restaurant had been there first. He reiterated that they felt all criteria were being met.

Chair Patricia Rathburn asked Mr. Persaud to explain how the criteria were being met and asked if he was aware of all the criteria. Chair Patricia Rathburn explained that the applicant needed to show that a hardship was involved, but

not an economic one. She remarked that this was included in the application for the variance.

Mr. Persaud stated that not obtaining the variance would prevent the reasonable use of the property.

Fred Stresau suggested that while the applicant was reading the criteria, that the public be permitted to speak in regard to this matter.

Reverend Baker, Pastor, asked to read a letter which they had written in regard to this matter. The letter was addressed to Commissioner Moore and stated as follows:

“Reverend Elvita Baker, along with the members of the Bethesda Pentecostal Church, write you this letter to express our concern about the request of Pelican Pub to upgrade their license from 2COP to 4COP. As it is right now, the situation is already unbearable. We are constantly picking up beer cans, liquor bottles, and other trash in front of the church and on the church grounds because these days people do not have any respect for the church. Upgrading their liquor license would result in a large clientele, thereby generating more traffic, more beer cans, more liquor bottles, and more trash to pick up. We are the Bethesda Pentecostal Church which greatly contributed to the enhancement of the community through our ministry. We have seen people whose lives had been changed. Their conscience had been woke up and they had turned into honest and respectful citizens making your job much much easier. The church will never give up its mission which is a higher calling. However, we count on people in high places like Commissioner Moore and others with listening ears, and open minds, who would take our concern into consideration and help us make our community a better safer place to live in. We hope the Commissioner and others will do just that in a no vote to turn down Pelican Pub’s request to upgrade its license.”

Elizabeth Hays stated she did not live in the immediate community, but resided in River Run Civic Association and was active in the Southwest Coalition which encompassed this area. She continued stating that they felt the need to work with other communities when there were problems. She stated that was why she was at tonight’s meeting. She advised that she had sent an e-mail to Greg Brewton regarding the concerns the community had regarding this type of matter. She stated that her concern was that she was the person who advised the church that this matter was to be on the agenda. The church had not received any notification from the City. She stated she was present this evening to give moral support to the members of the church because they were part of their community.

Stephen Buckley asked where the church was in relation to the Pelican Pub. Reverend Baker stated they were 270' south of the church.

Birch Willey asked when the church had been founded. Reverend Baker stated they were at this location since 1989, and the Pub had already been operating with a 2COP license at that time.

Binni Sweeney asked about notification which had been sent to the church.

Greg Brewton, Zoning Administrator, explained that the process for notification was changed a few years ago. He stated that the list to be used for notification was the responsibility of the applicant. In looking at the file, 12 notices had been sent out on December 30, 2003, and the Bethesda Pentecostal Church was on such list located at 2665 SW 2nd Court, Fort Lauderdale, Florida 33312. He advised that the mail was not returned.

Tyson Jones stated that in looking at the criteria, #1 which dealt with special conditions and circumstances affecting the property which prevented reasonable use, he felt they had kept the location very clean and they worked with the tenants in the area. They felt that a hardship was not being placed on the community. He advised they opened at reasonable hours.

Mr. Jones further stated that in regard to #2 which dealt with circumstances which caused a special condition which were particular to the property at issue, they felt that the property was what it was when purchased by them. He advised they had not made any changes to the site. He explained they presently sold beer and wine and felt it was an asset to the community where they could gather and socialize and play pool. He stated they never had a problem with either their patrons or the community. He thought they were servicing the community.

Mr. Jones stated that this use was the proper use for the land for how it was zoned. He further stated that in regard to #4 of the criteria which dealt with a unique hardship which was not self-created by the applicant, he felt they did not create a self-imposed hardship. He stated they were trying to better serve the community. He added that they were not in disregard for their neighbors or the rest of the City. He stated they worked with the community as much as possible. He stated there was no loud music and no patrons disturbing the neighborhood.

Chair Patricia Rathburn advised that the question was what hardship would be imposed on the applicant, if the Board did not approve the request for a variance.

Mr. Jones stated it would hurt his business tremendously. Chair Patricia Rathburn reiterated that according to the City Code, economic hardship was not considered a hardship. Mr. Jones reiterated that an economic hardship would

occur if they did not receive this variance. He stated that the clientele in the area were changing and they wanted to accommodate the patrons.

Binni Sweeney asked if the hardship criteria were explained to the applicants when they applied for the variances.

Mr. Brewton stated that it was the procedure of the counter to explain the application. He further stated that many people requesting the application were fully aware of the criteria. He stated it was up to the applicant to read the application before signing it. He added that the criteria was listed on the application, and if the applicant had questions staff was available to answer them.

Birch Willey stated that the bar was in the area first, and then the church moved into the area, and he asked if the church had to have any type of variance in order to move into its present location.

Mr. Brewton stated that there was a strange twist in the Code. He explained that the Code required that an establishment selling alcohol had to be no closer than 500' in this instance it was a church, but the Code did not address a requirement for the limitation of a church being no closer than a certain number of feet from a commercial liquor establishment. Therefore, the Code was silent in that respect.

Birch Willey stated that in his opinion, the church came closer than they should have to the pub which was there first. He stated the pub was now trying to do what legally they were entitled to do. He felt the fact that the church moved into the area created a hardship for the establishment.

Mr. Brewton stated that in defending the Code, he explained they would then have to look at this as if it was a non-conforming situation that had been created. He stated a place was legal when built, but a change occurred which now made them legal non-conforming that allowed them to maintain what they had, but the expansion would not be accepted under the Code.

Stephen Buckley asked if the 500' applied for the 2COP or just for the 4COP. Mr. Brewton stated it applied for both, and they did not identify the license classification, only identified it as a use which was dispensing and selling for consumption of alcoholic beverages on the premises.

Binni Sweeney stated that with this pub applying for a 4COP license, they would be changing their use, and therefore, had to prove a hardship. Mr. Brewton stated that according to the Code as it presently existed, the application was for a variance which required that a hardship had to exist.

Mr. Persaud reiterated that they were not responsible for the allegation that liquor bottles were being strewn through the neighborhood because they only presently sold beer and wine. He added that their patrons were not permitted to take beverages outside of the establishment.

There being no other individuals who wished to speak on this matter, the public hearing was closed and discussion was brought back to the Board.

Motion made by Binni Sweeney and seconded by Fred Stresau to close the public hearing. Board unanimously approved.

Stephen Buckley stated that since the pub was there first and no church existed within 500', but later the church did move in and the Code did not distinguish between the 2COP and 4COP licenses, if the church left the area the pub would not be required to apply for such variance.

Robert Dunckel stated that he wanted to expose to the Board an alternative viewpoint on this matter. He explained that the church's entrance into the community made this pub a legal non-conforming use. He stated they were attempting to expand the legal non-conforming use which was a self-created condition which translated into an economic hardship. He stated they needed to make a different profit margin, but he had not heard anything that showed they were not able to make a reasonable use of the property. He explained that the property did not just have to be used for the sale of alcoholic beverages. Even though the church moved into the community, he felt they would conclude in analyzing the criteria that the presentation did not meet the criteria by virtue of the fact that it was an attempt for an expansion of a non-conforming use.

Fred Stresau stated that he related this to zoning. He further stated that if one had a business and it had not been improved and the zoning was changed, then they would no longer be able to expand such business to something else. He stated he was not sure what the difference was between changing the zoning and having the church move into the community. He stated if someone wanted something, they had to ask for it, and if it was an appropriate request and the City Commission made such a determination, then one would possibly receive what they requested. In this instance they owned the property but did not ask for something else, and they were now suffering the consequences.

Motion made by Fred Stresau and seconded by Binni Sweeney to approve the request for the variance. Roll call showed: YEAS: Stephen Buckley, Birch Willey and Gus Carbonell. NAYS: Fred Stresau, Don Larson, Binni Sweeney and Patricia Rathburn. Motion denied 4-3.

3. APPEAL NO. 04-02

APPLICANT: Wolfgang Puck Express
LEGAL: Lots 2-7 & 10-15, less N. 10' of Lots 3 & 4 of Wheeler's
Subdivision of Lots 1-20, Block B, Town of Fort
Lauderdale, P.B. 3, P. 59
ZONING: RAC-CC – Regional Activity Center – City Center
STREET: 350 E. Las Olas Blvd.
ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 5-26(b) – Seeking a special exception for a restaurant selling alcoholic beverages, incidental to the sale and service of food, with a distance separation of 190' and 138' respectively from two other places of business where there is already the sale of alcoholic beverages where the code requires a minimum distance separation of 300'.

Ray Doumar, attorney for the applicant, stated they were requesting a license for beer and wine. He stated they were within the 300' of surrounding establishments. He assured the Board that 85% of their gross sales came from the sale of food and non-alcoholic beverages. He advised that he was not aware of any objections to this request. He stated this would not be contrary to the public's interest, and would be an asset to the area. He urged the Board to approve their request.

Robert Dunckel reminded the Board that unlike the last case, this case had met the burden with a special exception, and the applicant only had to prove that this would not be contrary to the public's interest.

There being no individuals who wished to speak on this matter, the public hearing was closed and discussion was brought back to the Board.

Motion made by Binni Sweeney and seconded by Don Larson to close the public hearing. Board unanimously approved.

Motion made by Binni Sweeney and seconded by Fred Stresau to approve the request for a variance. Roll call showed: YEAS: Don Larson, Stephen Buckley, Birch Willey, Binni Sweeney, Gus Carbonell, Fred Stresau and Patricia Rathburn. Motion carried 7-0.

5. APPEAL NO. 04-04

APPLICANT: Bank Atlantic Modular Facility
LEGAL: Progresso, P.B. 2, P. 18, Block 22, Lots 4-6
ZONING: B-1 – Boulevard Business
RMM-25 – Residential Mid-Rise Multi-family/Medium
High Density
STREET: 1750 E. Sunrise Blvd.
ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47-5.19 – Seeking a use variance to permit a modular bank facility in the RMM-25 zoning district where such is not listed as a permitted use in the district.

Chair Patricia Rathburn announced that Gus Carbonell and Fred Stresau had conflicts of interest in regard to this item. Therefore, alternates Scott Strawbridge and Al Massey would sit on the Board in regard to this item.

Robert Lochrie, attorney for the applicant, stated that this was a request to permit a modular banking facility at the current location of Bank Atlantic along Sunrise Boulevard. He advised that Bank Atlantic was going to consolidate a number of their operations, including their headquarters, administrative offices, processing facility, checking review operations, and other operations to Cypress Creek Road. He stated this property had been the bank's headquarters, and previously had been the site for Atlantic and Glendale Federal, and was to be redeveloped. He stated that Bank Atlantic would maintain a branch bank at this facility.

Mr. Lochrie further stated that the property was unique in that it was divided. The property fronting Sunrise Boulevard was zoned B-1, and the rear portion of the property which had traditionally been used for the parking facility for the commercial and drive-thru facilities was zoned multi-family/residential. He proceeded to show graphics of the area.

Mr. Lochrie advised that the bank's plan had already been submitted to the City for process, and was a plan to build a new branch bank on Sunrise Boulevard, and the majority of the residential area would no longer be used for commercial operations, but would be redeveloped in a manner consistent with the underlying multi-family zoning. He stated the reason they were here this evening was one of timing. According to Federal Regulations they were required, unless they completely shut down the branch operations, to keep a branch opened at the site. He added that it also was a practical decision because patrons still wanted a branch in that area. He stated that the difficulty they faced was that when the building would be demolished and while construction of the new facility was underway, they needed a place to house the banking facility. He advised the intent of the request was to have a modular banking facility adjacent to the current drive-thru facility to the south of the existing building.

Mr. Lochrie advised that this would not be a long-term solution, and therefore, they would agree to a temporary restriction regarding the timing of the modular facility. He stated if the Board approved, they were requesting a 3-year time limit or until the new branch bank was ready for operation, whichever occurred first.

Mr. Lochrie further stated that the property outlined in the dotted area on the graphic had been approved by the Board of Adjustment and the City Commission in 1991, when the Commission had granted commercial flex to the underlying property so it could be used for a banking operation. In addition to the general parking which was a legal non-confirming use, the Commission went one step further and stated that the area could be used for banking facilities. He explained the intent at that time was for the drive-thru which was approved with a variance by the Board of Adjustment. He stated that unlike other residential properties in the area, this property had the commercial flex designation, and therefore, would be consistent with the Land Use Plan.

Mr. Lochrie explained the hardship they faced was both due to the Federal Regulations, as well as the necessity to keep a branch on the site close to the drive-thru facility. He stated if they moved to another location it would be difficult to operate, and possibly they might not be able to do so because of Federal Regulations. He felt that in the end, this would be something more preferable to the neighborhood.

Binni Sweeney asked why they had not stated this would be temporary in their application. Mr. Lochrie stated that was not in the application, but he would like to verbally amend it. He continued stating that they would agree to a temporary variance. Ms. Sweeney asked why 3 years would be necessary if the site plan was already going through the process. Mr. Lochrie stated it was conservative and that was why he had added the caveat that once the new facility was opened, it would be removed. He further stated that the bank portion was due to go before DRC at the end of January or early February, 2004. Then, it would go before Planning and Zoning in April, 2004, and then on to the City Commission in either June or July, 2004. He stated that they would also be meeting with the neighborhood association in early February, and they would probably have input on the plan and its design. He further stated that they expected to be through such process by the end of the summer. They would then be able to proceed forward with their construction drawings which would have to be reviewed by the City's Building Department. They anticipated the current structure to exist for about one year. Then, it would probably take about one year to build the new facility. Ms. Sweeney clarified that the modular would not be placed on the property until the existing building was demolished. Mr. Lochrie agreed.

Dave Amiot stated that he was in favor of this project and the variance conditioned that it be temporary while the new facility was being built.

There being no other individuals who wished to speak on this matter, the public hearing was closed and discussion was brought back to the Board.

Motion made by Don Larson and seconded by Binni Sweeney to close the public hearing. Board unanimously approved.

Greg Brewton, Zoning Administrator, stated that in defense of the applicant and why it had not been advertised including the 3-years, staff had known that this request was going to be made and the Code did not allow for a temporary variance. However, it was with the understanding that the applicant would present such information to the Board that this had been permitted as presented.

Scott Strawbridge clarified that there would still be banking facilities at the site. Mr. Lochrie confirmed.

Motion made by Don Larson and seconded by Al Massey to approve the application as presented.

Binni Sweeney stated that she wanted to add the condition that the modular building would not be erected until the existing building was demolished.

Chair Patricia Rathburn advised there had to be some sort of overlap in order for the facility to continue its operations.

Mr. Lochrie stated that they would not be operating both facilities at the same time, but there could be a time where an overlap would occur and the existing building would be vacant but not yet demolished.

Scott Strawbridge suggested that it be two years from the time they acquired the demolition permit. Ms. Sweeney stated that was not her concern, and she had not wanted both buildings on the site for a long period of time and did not feel it would be necessary.

Mr. Lochrie stated that was not their intent and did not want the existing building sitting vacant for a long period of time. He added that it was difficult giving a specified time frame, and stated that it would probably not take longer than 6 months.

Birch Willey stated that the landscaping around the modular had not yet been addressed.

Mr. Lochrie stated that the modular would not resemble a trailer and Dave Gennaro would review the site plan for it, and requirements for landscaping would be met as directed.

Mr. Willey suggested the motion be amended that the landscaping for the modular should be approved by the City. Mr. Brewton stated that was all part of the process. He added the modular would be treated as if it was a building and all landscaping requirements would have to be met.

Binni Sweeney asked how they would be removing the modular once the structure was built. Mr. Lochrie stated that when the variance terminated which was when the new facility opened, they would be required to remove the modular or they would be in violation.

Chair Patricia Rathburn restated the motion as follows:

Motion made by Don Larson and seconded by Al Massey to approve the application as presented in that the use variance to permit the modular bank facility would be for a 3-year time period or until the permanent branch bank would be operational, whichever occurred first.

Roll call showed: YEAS: Stephen Buckley, Birch Willey, Binni Sweeney, Scott Strawbridge, Al Massey, Don Larson and Patricia Rathburn. NAYS: None. Motion carried 7-0.

Gus Carbonell and Fred Stresau rejoined the Board.

6. APPEAL NO. 04-05

APPLICANT: Rubenstein Florida Properties/Smokey Bones
LEGAL: Port Royale Commercial, all of Tract "B", P.B. 101, P. 36
ZONING: B-1 – Boulevard Business
STREET: 6500 N. Federal Highway
ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47-23.9.A. 1 (Interdistrict Corridor) – To permit a 10' interdistrict corridor yard abutting North Federal Highway where the code requires a 20' interdistrict corridor yard for any development abutting this portion of North Federal Highway.

Linda Nunn, representing applicant, stated that they were requesting a variance to be allowed to maintain the existing buffer which existed in front of their property on Federal Highway. She continued stating that this parcel was part of a 3-parcel development built years ago having interconnecting driveways. She explained that the site currently had an existing Shell Seafood Restaurant on it, and to the south was a Blockbuster rental, and to the north was an office building. She stated that all the parcels shared driveway access with one coming from Federal Highway, one from the north going into Bay Colony Condominiums. All possess cross-access drive lanes and they share parking. She explained there was an existing continuous buffer comprised of hedges and trees which

had been there for a long time. She stated if they were to meet the requirement of the interdistrict corridor overlay, which was created after this area had been developed, it would require them to add significant buffering in the front which would significantly reduce the on-site parking, or it would require them to move the parking stalls back and close the drive access points to the abutting properties which she did not think was legally possible due to existing lease agreements. She added it would also cause significant hardship for the abutting properties.

Ms. Nunn explained their intent was to demolish the Shell restaurant building which consisted of about 9,000 sq. ft. and replace it with a smaller restaurant of 6,800 square feet. She further stated that since the ordinance regarding parking had also changed, along with landscaping requirements, even though they were reducing the size of the building but keeping the same use, the parking was more restricted.

Chair Patricia Rathburn stated that if they kept the existing building, there would be no problem. She asked why they did not want to retain the building.

Ms. Nunn replied that the building was old and had been a restaurant prior to Shell moving in, and they did not want to operate from this building. She stated they preferred to build a new facility that would be built to Code and more sanitary. She stated they did renovate restaurants, but they did not find this building suitable for renovation.

Leslie Lombardi, resident of Bay Colony Condominiums, stated that their building comprised about 640 units. She stated they did not want any change in the setback for the structure.

Chair Patricia Rathburn explained the applicant did not want a change in the setback. She explained further that the Code now required a greater setback.

Mr. Brewton stated that the applicant was requesting to waive the interdistrict corridor and retain the existing setback.

There being no other individuals who wished to speak on this matter, the public hearing was closed and discussion was brought back to the Board.

Motion made by Binni Sweeney and seconded by Don Larson to close the public hearing. The Board unanimously agreed.

Binni Sweeney stated that she lived in The Landings, and the reason they changed the requirements in order to create a larger buffer zone was so when redevelopment occurred, it would get better. She stated that anyone with a

redevelopment project came in requesting a variance, but then nothing would ever change in the City and she had a problem with that. She stated there was an existing building, but they did not want to keep it, and therefore, did not want to pay attention to the rules. She stated this affected her neighborhood and she had a real problem with this request.

Mr. Brewton clarified that through the survey they had, he was not sure there was a 10' existing setback at this time along Federal Highway. He felt it could be less than 10' which meant that if the variance was approved this evening, and they moved forward with a site plan, there would have to be a minimum of 10' at that location. Therefore, if the variance was granted, there could be additional landscaping in the area than what existed.

Ms. Nunn clarified they were asking to maintain the existing buffer, and stated that their initial plans did not have a dimension on them.

Mr. Brewton advised that the Board could not consider anything that had not yet been advertised. He reiterated they could only address the 10' issue.

Robert Dunckel stated that they would be asking for a greater variance than what had been advertised. He stated they could not amend their request to seek more footage than what had been advertised, but they could amend it if they wanted to seek less.

Ms. Nunn stated that it was her understanding that if this variance was approved, they would be required to have a 10' setback, even if only 8' presently existed. Mr. Dunckel confirmed.

Fred Stresau stated that the site plan showed they were requesting 7.53'. Mr. Brewton stated he was not sure if the site plan reflected what presently existed at that location. Mr. Brewton advised that the site plan would have to be amended depending on what the Board voted on this evening.

Gus Carbonell stated he did not have a problem with a 10' setback.

Don Larson asked if they could return with an amended request to be in accordance with the site plan. Mr. Brewton explained they would have to come back. He stated it appeared the dimension varied and they needed to capture what was actually being requested on the site plan by virtue of a notice reflective of the request. Mr. Larson stated he felt the setup which existed was very good and he did not want to see anything change.

Stephen Buckley stated it would be wiser if they came back before the Board with revised plans. He reiterated that if they came back, he would prefer to see

more of the entire strip shown since they wanted continuity of the driveway going north/south, and it was not readily visible on the existing survey.

Ms. Nunn stated that the dimension was being shown on the site plan and not on the survey, and she was not sure if the dimension was accurate because it had been generated by an architect in Orlando. Therefore, it was not a field measurement.

Chair Patricia Rathburn stated that the Board was suggesting that they should come back at a later date for this variance.

Ms. Nunn asked if the matter could be tabled and they could return next month. She asked further if they discovered that the 10' would not be doable, would they have to go through the advertising process once again. Mr. Brewton explained they would have to come in and amend their application, and the letters of notification would have to be resent.

Don Larson reiterated that the resident had desired that the area be as it presently existed, and that was what they were actually requesting only the measurements submitted were not correct. He felt it would be smarter for them to return next month.

Gus Carbonell stated they would not be able to maintain what presently existed if the buffer was from 7.5' to 8'. He stated if the applicant was willing to state that they would expand the 1.5' this evening, then the matter could be decided, but that would be up to the applicant.

Mr. Brewton stated that he was concerned that the Board did not have a site plan reflective of the 10' area, and he was not sure how the 10' would work. He stated that other issues could be involved.

Fred Stresau stated that he wanted some further explanation regarding the parking and how they had calculated the parking to be 152 spaces, but the plan showed they would provide 147 spaces.

Ms. Nunn explained that they had rushed to submit this documentation by the deadline. She stated that originally they had 147 spaces and now it was down to 143 spaces. She explained there was a reciprocal parking agreement in place with Blockbuster who had surplus parking. She stated that both properties were owned by the same individual, and the cross parking agreement had been submitted to Terry Burgess today in draft format for review. She stated they anticipated that would not be an issue because there was additional parking at the Blockbuster site which was dedicated for their use.

Fred Stresau stated that he felt when they came back before the Board, they needed to provide the parking arrangements both to the north and south of the site, and show the required parking for all the parcels. Therefore, if the Board asked them to modify the driveways in order to provide the 20', they would know how many spaces would be lost at the two adjacent sites.

Ms. Nunn replied they had a survey which included the Blockbuster parcel, but they had not surveyed the entire office building parcel to the north. She was not sure if that information was readily available, but she would check on it.

Mr. Stresau reiterated that he was going to hold them to the 20', so since they wanted to connect the driveways to the adjacent lots, if they were over parked and the aisles could be modified with an elimination of spaces to the north and south, such information would be required.

Stephen Buckley stated they needed to know if there were any additional parking agreements regarding the areas. He asked if the property to the north was owned by the same person. Ms. Nunn replied he did not own the property to the north. She advised that the reciprocal parking agreement which accounted for the required parking for this parcel was to the south with Blockbuster. She further advised there was a cross access agreement for the driveways. Stephen Buckley stated that could restrict the driveways. Mr. Stresau stated they needed to research the matter, and possibly they might find out they had additional parking available there and could possibly make a deal.

Robert Dunckel stated that in anticipation of amending the request for the variance by virtue of the fact that the existing conditions might not be a consistent 10' or 8' and could vary, he recommended that a survey be provided so the advertisement and notice referenced said survey.

Mr. Brewton stated that since the application was going to come back, he had wanted to take off his zoning hat and put on his planning hat for the benefit of the Board and explain why the interdistrict corridor got to the north. He explained that basically it was the old B-1 zoning to the south, and in 1997 they had included the north area eliminating the B-1A zone and created the interdistrict corridor. He stated that had been done that in anticipation that at some point in time North Federal Highway would look like South Federal Highway with the 20' yards which existed.

Motion made by Don Larson and seconded by Fred Stresau to have this request tabled until February 11, 2004.

Ms. Lombardi asked if the plans had been approved for this project. Chair Patricia Rathburn replied they had not gone through the process for final approval.

Roll call showed: YEAS: Birch Willey, Binni Sweeney, Gus Carbonell, Fred Stresau, Don Larson, Stephen Buckley and Patricia Rathburn. NAYS: None. Motion carried 7-0.

“Good of the City”

Workshop

Greg Brewton, Zoning Administrator, asked if the Board would be amenable to having a workshop in March. He stated the intent of having such a workshop with staff would be to review items which could assist the Board in the process. He stated they wanted to review certain types of cases which routinely came before the Board. He stated they wanted to see if there was a need to take back to the City Commission an amendment to the ordinance instead of having certain types of cases continuously be presented to the Board. He stated they also wanted to hear suggestions from the Board as to how they could help the issue. He further stated they had some ideas they wanted to present to the Board. He asked if the Board would meet at 5:00 p.m. on March 10, 2004 and dinner would be provided. He stated they would meet on the 8th floor.

The Board unanimously agreed. Mr. Brewton stated that an agenda would be provided and the Board would be notified.

Posting of Signs

Fred Stresau stated that he had suggested many times that staff should explain to the applicants where to post the signs. He asked if the Board would agree to direct staff to make such a change.

Chair Patricia Rathburn stated that she felt that was too much of a burden to be put on staff because each site was unique, and they did not always go out to the site.

Mr. Brewton stated he did not have a problem regarding the need to have signs posted correctly, but he had a problem with placing this burden on staff. He explained that presently they did not have enough staff and it would require them to visit each site, and he was not sure that it would be doable at this point in time.

Binni Sweeney suggested that the applicant mark on their site plan where they would post the signs. She stated that every month she went out and looked for signs and it appeared they were being hidden from view. She reiterated that everyone volunteered their time and she did not mind doing so, but to have to drive around a site 4-5 times looking for signs, it created a problem.

Gus Carbonell stated that the only problem he had regarding signs was what they were made of, and how they sometimes got blown in the wind. He stated they had to constantly check on them. He suggested that staff create a hand-out giving instructions on how to post a sign, and what they should be made of.

Mr. Brewton stated that could be done, but asked the Board to look at the sign notice as only one form of notice. He stated it did not preclude what was done with other notification. He believed that some signs were removed and the applicant was not in the situation where they checked on them constantly. Therefore, if staff directed where to place them, then the burden would be placed on staff.

Mr. Stresau reiterated that the burden was on the applicant. Mr. Brewton stated he did not disagree. Mr. Stresau stated that an alternative had been suggested and maybe they could try it out and see how it worked. Mr. Brewton stated he was not the director of the department, and the Board was requesting that staff hours be devoted to something he had no authority over. Mr. Stresau stated this had not taken place in the past because the Board had not directed staff in what they wanted. Mr. Brewton stated he did not believe that this Board could direct staff to do something. He reiterated that he was willing to go back and raise the issue and see what could be done to solve the problem.

Chair Patricia Rathburn stated that the issue had been raised and the Board had mentioned their concerns, and possibly this could be addressed at the workshop. Mr. Brewton agreed and stated that in the interim he would see what could be done.

Amendment Limiting Requests for Parking Variances

Fred Stresau stated that another item was an amendment which had been discussed at the last meeting as to how to limit individuals coming before this Board for a variance for parking, as opposed to getting a parking reduction. He asked if that item could be placed on the agenda for the workshop.

Measurement of Pools and Fences

Fred Stresau stated that when the verbage had been changed regarding the location of pools and fences, it read that "a measurement was to be taken to the back of the coping of the pool." He stated that in all residential construction today, there was no coping but a deck surrounding the pool. He reiterated that the inspectors had no possible way to measure to the back of the coping.

Definition of Grade

Fred Stresau stated that he and Gus Carbonell had tried to assist staff in addressing some potential ULDR problems. He further stated that last month they had discussed a wall that encroached into the height restriction. He reiterated they did not have a good definition of grade.

Greg Brewton stated they did not always use the normal definition of grade. Mr. Willey suggested they use the crown of the road. Mr. Brewton stated this discussion could go on indefinitely and everyone would still not agree.

Mr. Stresau stated he did not want the Commission to state they were delving into an area that did not need fixing because he felt it needed to be fixed. He stated he did not know the answer. Mr. Brewton stated when they looked at this issue, they needed to see what they wanted to achieve in limiting heights. He felt they possibly might approach this issue in a different manner.

Gus Carbonell stated that the present definition was unfair due to existing conditions. He stated it was different from other cities in the County. He reiterated that 20% of his office's effort was in regard to this issue.

Mr. Stresau stated further that part of the problem was that none of the lots in the City were flat. He stated he had a problem with the landscape architect being held responsible. He did not think this was what the City Commission had intended to be established for a front yard setback height limit.

Mr. Brewton stated there were two definitions for grade as it related to a fence or a wall, and then for a principle structure. Mr. Stresau clarified he was referring to the grade in regard to fences and walls.

Motion made by Don Larson and seconded by Fred Stresau to adjourn the meeting.

There being no further business to come before this Board, the meeting was adjourned at approximately 9:15 p.m.

CHAIRMAN

Patricia Rathburn

ATTEST:

Margaret A. D'Alessio
Recording Secretary

A mechanical recording is made of the foregoing proceedings, of which these minutes are a part, and is on file in the Planning & Zoning Offices for a period of two (2) years.
