

**BOARD OF ADJUSTMENT WORKSHOP
WEDNESDAY, MARCH 10, 2004
5:00 P.M. – 7:00 P.M.
8TH FLOOR – CITY HALL CAFETERIA**

**100 N. ANDREWS AVENUE
FORT LAUDERDALE, FLORIDA**

BOARD MEMBERS

	<u>Present</u>	<u>Absent</u>
Stephen Buckley, Vice-Chairman	P	
Gus Carbonell	A	
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, Planning and Zoning
Charla Lopez, Secretary

Staff Comments/Recommendations

Chair Patricia Rathburn stated they would start with staff's comments and recommendations.

Binni Sweeney stated that she had submitted an item for the agenda, but it was not on. Chair Patricia Rathburn reiterated that the purpose of having an agenda was so the Board would not just ramble on, but they could discuss anything the members felt was pertinent.

Robert Dunckel stated that the Board cannot discuss any cases that were on tonight's agenda, nor should they discuss anything from last month's agenda.

BOARD OF ADJUSTMENT WORKSHOP

MARCH 10, 2004

PAGE 2

Chair Patricia Rathburn continued stating that the Board had discussed at previous meetings the issue as to whether staff should make recommendations.

Greg Brewton, Zoning Administrator, stated that a while ago they had discussed the Board's concern regarding staff's recommendations. He explained they had stated that staff should be responsible for enforcing and supporting the Code as it was written. He stated that for them to stand up and be supportive of an application would not be consistent with what they were obligated to enforce which was the current adopted ULDR. He further stated that it was staff's position to be as helpful to the Board as possible. He remarked there were occasions when they had not officially stated a position, but the Board had asked specific questions of staff relating to the application. He stated if the Board was comfortable with that, staff was willing to stay along those lines. He added that they felt that had been successful. He further stated that staff was more inclined to find out from the Board what could be more helpful to them in making their decisions.

Mr. Brewton further stated that if they were to state in regard to every application whether it met the criteria, he felt they would find that a high number of such cases did not meet the criteria as established in the ULDR. He believed that sometimes the Board had the need to review an application based on real facts, and those facts might or might not be consistent with the established criteria as outlined in the ULDR, and for that reason the Board was to review each case on its own merits. He stated if the Board wanted something other than that, staff would attempt to comply. He asked if the Board was pleased with how things were working at this time.

Binni Sweeney asked if it would be appropriate for staff to state whether an application met the criteria or not.

Mr. Dunckel stated it was his personal opinion that instead of staff offering such an analysis on each case, that if the Board members had any doubts they could ask questions regarding one or two of the criteria.

Binni Sweeney reiterated that was not what she had asked. Mr. Dunckel stated that was the answer she was being given. Mr. Dunckel stated that implicitly he was suggesting that staff should not make a positive or negative recommendation regarding an application. He stated that he would prefer if on the cases where they felt there were severe violations regarding the underlying planning principles, then perhaps they could speak out against it, but otherwise they should only answer questions put forth regarding the application.

Chair Patricia Rathburn stated that she represented the County's Board of Adjustment and their staff made recommendations. She stated that staff not make a recommendation because if staff went down the list of criteria it would be

hard for them to find an exception to the Code. She also stated that she felt it took away some of the Board's flexibility.

Binni Sweeney stated that she did not have a problem with what was being stated, but her problem was that most of the applicants never addressed the criteria.

Chair Patricia Rathburn stated that was a different question. She stated if the question was how could the Board make sure that the applicants addressed the criteria, then she felt that pertained to what should be included in the application. She reiterated that they had discussed what could be put in **BOLD** in the application stating that all criteria had to be addressed.

Mr. Brewton stated that about 2-3 years ago there was a Board displayed showing the criteria. Fred Stresau stated that he had spoken to Gerry Cooper about this and was informed that the Board had been left with staff. He suggested that another display board be created. Mr. Brewton stated that what had taken place in the past was that questions were asked of the applicant as to how they were addressing the criteria being displayed.

Binni Sweeney stated that she did not have a burning desire for staff to make a specific recommendation, but she felt strongly that there was a tremendous waste of time because people did not address their hardship.

Mr. Stresau stated that with such an experienced Board that they had, if pertinent questions were asked, they would be able to get to the "heart" of the issue quickly.

Chair Patricia Rathburn reiterated that she did not think it was a bad idea to have this stated in the application.

Scott Strawbridge stated that he felt it would be unwise to have staff weigh-in, especially in a "gray" area. He stated further that they were to make such determinations themselves. He asked if in reviewing the application that more pressure be placed on the applicant to supply the pertinent information, otherwise the application should not be accepted.

Jon Albee stated that he agreed with that, and when he had first gotten on the Board years ago the first thing he had wanted to do was to get the 5 items included in the application. He stated they were included, but he did not feel they were significant enough nor visible enough to have the applicant comply. He suggested that the 5 items should be complied with or the application should not be accepted.

Chair Patricia Rathburn stated the problem she saw with that was that it left staff making editorial determinations.

Mr. Stresau stated that recently an applicant was asked to address the required criteria, and they did not even know what the Board was talking about. He stated even if the applicant answered the questions with one word, at least they had read the questions asked of them.

Mr. Strawbridge stated he was not expecting staff to provide an editorial review, but they should review the application and see if the 5 questions had been answered or not. He suggested that possibly in order to make it easier for staff, the application should be modified stating that the criteria must be submitted on a separate sheet and attached. Then, staff would just have to check and see if such information had been supplied. He believed it was this Board's job to make the editorial review.

Chair Patricia Rathburn stated that the way it was now written, it did not state that the applicant had to answer any of the criteria. She stated that the application needed to state that the following questions need to be answered.

Birch Willey stated that possibly they needed to include the word "prepared" stating that the applicant should be prepared to answer the following questions. Mr. Strawbridge stated that they should answer the questions to the best of their ability at the time they were filling out the application. Mr. Stresau stated if the applicant could not answer them, then possibly they saved someone money by not having them come before the Board unnecessarily.

Chair Patricia Rathburn asked if the Board agreed that if they changed the criteria section to say: "The following must be submitted with your application, the criteria must be addressed, and be prepared to discuss those issues." She stated they could phrase the items in the form of a question, rather than just state the criteria.

Binni Sweeney suggested that the wording be used such as "what are the circumstances involved, and explain them."

Mr. Strawbridge stated that he had made his suggestion thinking it might be easier for staff to check when the information was submitted. Chair Patricia Rathburn suggested that in the space provided for the answer, it could state: "If more space is needed, please attach a separate sheet."

Chair Patricia Rathburn clarified that it was the Board's suggestion that the criteria section on the application should be changed to say: "In order for the application to be complete, the applicant must answer the following questions" and list the numbers or letters of those items. Fred Stresau stated then the Board could follow up during the presentation and ask the applicant to answer those questions.

BOARD OF ADJUSTMENT WORKSHOP

MARCH 10, 2004

PAGE 5

Mr. Dunckel stated that he appreciated Mr. Brewton's willingness to make recommendations if that was wanted, but he felt that would unduly make the process more cumbersome. He thought the idea was to get things moving more expeditiously. He stated that he was opposed to staff supplying recommendations. He asked if there was a conference discussion regarding the agenda before the meeting. Chair Patricia Rathburn confirmed and stated that they reviewed what was already on the agenda. Mr. Dunckel suggested at that time they could discuss whether the criteria had been answered, and those that did not comply would not be placed on the agenda.

Mr. Brewton stated that they met a couple days before the meeting and the agenda was already published and advertised. He stated that prior to developing the agenda, they could make sure that all questions had been addressed. If the applicant had not fully complied, then they would return the application to the applicant stating that it was incomplete and could not be accepted until all questions were answered. He reiterated if the applicant failed to comply, then the item would not be placed on the agenda.

Birch Willey stated that he did not think that staff should make recommendations. He felt part of what this Board did was to make such decisions and he felt that protected staff at certain levels. He further stated if there was a major issue that staff wanted to make the Board aware of, it should be discussed at the Chair's conference meeting with staff. Then, the Chair could somehow make the Board aware of a specific issue. Chair Patricia Rathburn confirmed that had been done in the past.

Chair Patricia Rathburn reiterated that it appeared there was a consensus among the Board that they were comfortable with not receiving a recommendation from staff, and that the application should be modified to ensure that the applicant was more focused in answering all pertinent questions.

Chair Patricia Rathburn asked if the Board felt enough information was being supplied in their packages, or did they have suggestions regarding additional information or improved backup.

It was stated that even if the packages were not complete, it would help to receive whatever information was available as early as possible.

Mr. Brewton asked if all the Board members had e-mail capability. It was stated that not all Board members had e-mail. Mr. Brewton stated that the information could be e-mailed to those who had such capability. He added that the earliest an agenda could be given to the Board would be one week prior to the scheduled meeting, and added that they were going to be more efficient in distributing the back-up material to the Board.

BOARD OF ADJUSTMENT WORKSHOP

MARCH 10, 2004

PAGE 6

Mr. Stresau asked when the department was going to move. Mr. Brewton replied sometime in April. He explained they were going to push back the cut-off date for the applications. He stated it was now 30 days and they were going to move it back to 45 days. He stated that would allow them more time to work on the information and supply it quicker to the Board.

Scott Strawbridge stated that he did not feel it was necessary for the City to bear the expense of mailing the packages, and he would be willing to pick it up after receiving an e-mail stating that the information was ready.

Chair Patricia Rathburn asked if the Board wanted staff to send the agenda when complete, and at that time ask the Board if they wanted to pick up their materials, otherwise they would be mailed or delivered. The Board agreed.

Birch Willey stated that by supplying the information of the address and the sections being appealed, that was 60% of what the Board needed.

Scott Strawbridge added it would be helpful if copies were provided of the sections of the Code which were being appealed.

Binni Sweeney stated that she felt staff should adopt a policy that in discussing interpretations, the attorneys could not present a list of cases to the Board at the meeting. Mr. Brewton stated that they were told that all the time, and the Board could reject the information.

Chair Patricia Rathburn stated that she felt the answer to that was addressing the issue in the application. She further stated that she had a problem regarding due process because she did not feel the Board could reject such information, but she stated they could state that the Board at this time could not review this information and digest it, and ask them to summarize the information being distributed.

Mr. Dunckel stated that Planning and Zoning had a procedure that all information had to be submitted before the meeting, and if counsel wanted to submit an argument at the meeting in writing, then the matter could be continued until the Board's next meeting. He stated that he was not in favor of the information being submitted as part of the record, and then his office had to deal with the issue in Court in the future.

Binni Sweeney stated that it could be stated to the applicants that all information must be submitted to the Board in a certain number of days prior to the scheduled meeting. She suggested that possibly this could be included in the notice.

Mr. Dunckel further stated that if this issue was handled properly, he did not feel it would deny them due process.

Binni Sweeney asked about petitions submitted by neighborhoods. Chair Patricia Rathburn suggested that they be told all information had to be submitted 5-7 days in advance of the scheduled meeting.

Jon Albee stated that if individuals had signed a petition, they would probably be in the audience ready to voice their opposition.

Fred Stresau asked if it was appropriate to cut-off someone's ability to give a presentation through handout materials. Mr. Dunckel stated that as an example in litigation, the Judge entered a Pre-Trial Order which contained a list of all witnesses and exhibits. If they entered the courtroom and attempted to submit new evidence not listed, then it was refused. He stated that injected more procedural fairness into the process. Mr. Stresau suggested that recommendation be followed.

Fred Stresau asked if someone attempted to distribute information they felt was important to their presentation and the Board refused it, what would happen. Mr. Dunckel stated it would be handled the same as the Pre-Trial Order which stated that all material had to be submitted a certain number of days before the hearing. He stated the exception to the rule would be that the item could be continued.

Chair Patricia Rathburn stated that unless it was included in the application that all technical information had to be submitted prior to the scheduled meeting and provide the time period, then no information would be accepted by the Board during the meeting. Mr. Stresau stated that the language could state that "if information was submitted during the meeting, then such submittal could cause the item to be continued." Chair Patricia Rathburn stated that would provide more flexibility to the Board in this matter.

Mr. Dunckel stated that it might be more prudent for this Board to go through the formal process of adopting this, which was actually done by the City Commission through a resolution.

Mr. Brewton asked if the information could not be included in the application. Mr. Dunckel stated that if they were challenged, it would be better that this be incorporated in a resolution. He stated that he would carry out the wishes of the Board.

Mr. Dunckel further stated that he felt such a rule should apply across the Board, and not just to the applicant. He added that by having the information submitted 5 days in advance of the meeting, they had the opportunity to then prepare their case, and if the opponents entered at the last minute with a lengthy study that would blind-side the applicant, then that would not be fair and the rule should apply to all. He added that photographs and letters could be submitted at the time of the meeting.

Don Larson asked if lengthy materials were provided could a member of the Board make a motion to table the item. Mr. Dunckel confirmed.

Mr. Dunckel stated that if the opposition presented something at the 11th hour, the applicant could be asked if they would be prejudiced by this, and if not, the hearing could continue.

Don Larson reiterated that he felt it would be better to let the Board make the decision at the time. Binni Sweeney stated she did not agree about continuing the meeting because individuals would be present, and then they would have to return.

Fred Stresau stated that he felt the public would want the opportunity to review the new information, as well. He reiterated that it worked both ways.

Don Larson stated that many times the applicant would return and work with the neighborhood and solve some of the issues before returning to the Board. Birch Willey suggested that accepting late submittals should be left up to the Chair. Binni Sweeney stated that her problem was not regarding photographs or petitions, but with interpretation because attorneys submitted lengthy documentation at the time of the meeting, and the Board could not digest so much information that quickly.

Chair Patricia Rathburn stated that possibly they could include on the application a warning that it was strongly recommended that any packages with lengthy back-up material be delivered to the Board at least 5 days in advance of the scheduled meeting. Otherwise, she stated the Chair could state that the Board had not sufficient time to digest the information and the matter would be continued.

Jon Albee reiterated that he felt this should be handled at the discretion of the Chair. Mr. Strawbridge stated his problem regarding that suggestion was with notice regarding the process. He stated that he was in favor of having the City attorney design rules giving a cut-off date for any exhibits to be submitted to staff, and the same rules would apply to the neighborhoods and other involved individuals. He reiterated that the Chair could always entertain a motion by the Board if a problem arose.

Chair Patricia Rathburn suggested that a "bullet" be provided saying that "any substantial back-up material to be considered by the Board shall be provided" within a certain number of days prior to the scheduled meeting.

Mr. Dunckel cautioned that he did not want the opposition to use that as a sword to try and delay a matter.

Chair Patricia Rathburn asked if it was necessary for the Board to see the DRC comments.

Fred Stresau stated that some DRC comments were applicable to the Board being able to grant a temporary use.

Greg Brewton stated the problem was that some of the temporary use permit applications would not ordinarily trip a DRC review. He explained that it would be up to the desire of the Board, but the issue involved was timing. He felt the best way to do it would be to have the applications go through DRC before being put on this Board's agenda. He explained it could be a standard requirement prior to appearing before this Board.

The Board agreed that would be a good idea.

Mr. Brewton reiterated that because it was not written in the Code, they could decide to take their chances with such review.

Chair Patricia Rathburn stated that they did not want to say they had to go through DRC due to the timing issue, but again they would strongly recommend it. She further stated that the first question that would be asked of the applicant when he approached this Board, would be why did he not go through DRC review. She explained if they had a very good reason why they had not gone through such review, then she wanted the opportunity to hear it.

Binni Sweeney reiterated that if the matter was time sensitive then, they should have taken care of things ahead of time. She reiterated that they were aware of the rules and should have prepared everything earlier. Mr. Brewton stated they did not know the rules because they were not in the Code. He reiterated that was the problem. Binni Sweeney asked how long it would take to change the Code. Mr. Brewton replied that was a good question because there was a pending item list, and then a Commissioner would have to introduce the item.

Mr. Brewton stated that if the DRC process was not used, then another process would be in place. He stated that the real problem was to get on the agenda, especially if they were not required. Staff sometimes had 12-15 items for the agenda. He asked if it would be more applicable for the applicant have a staff review.

Chair Patricia Rathburn asked if the Board wanted staff's comments regarding technical issues. She stated that once in a while an application was received where they requested to reduce a drive aisle by about 70' or a parking space, and she did not feel she was technically qualified to make a judgment on the matter.

Fred Stresau stated that many times an applicant was asked if it had been included on the building permit plan. He further stated that he felt it would be important for someone from the building department to attend the meeting and address the issue. He commented that many times there were engineering questions, and maybe someone from that staff should also be present at the meetings.

Mr. Brewton asked if the applicant could meet with the appropriate staff to discuss the issue. Mr. Stresau agreed and stated that would work and it could be tried.

Chair Patricia Rathburn stated that this might not be done in respect to each application, but would be determined on a case-by-case basis. Mr. Stresau stated that often the question was asked if "that was what had been permitted," and no one seemed to be able to answer.

Mr. Dunckel stated that often times the applicant brought in the plans which had been on the site, and could vary from the plans that had been approved. Mr. Stresau stated the first question to be asked would be "whether those were the plans that had been signed-off by the Building Department." Binni Sweeney asked if that could be included as part of the application process.

Mr. Brewton stated that if the plans had been submitted for permit, staff could retrieve the plans and bring those to the meeting. Mr. Stresau stated that he was concerned in regard to the "after-the-fact" permits. Mr. Strawbridge remarked that in some instances the project was completely built, but then the "plug was pulled" at the last minute. Mr. Brewton stated that in those cases, they could make sure they would bring in all the information, and maybe such issues could be included in the application. Mr. Strawbridge reiterated that in those situations, the Board most times wanted to grant the applicant some relief, and it was hard to say "tear it down." He stated that sometimes the hardship criteria went out the window.

Specific Changes to Application Process and Materials Provided to Applicants

A. Temporary Use Permits.

Chair Patricia Rathburn stated that again timing was involved in this issue. She felt they should change it to say they strongly recommended that the applicant go through the process.

Fred Stresau stated that he felt part of the problem they were running into was that they could not always depend on certain Board members to add the technical back-up that would have been received from the engineering or planning department. He felt they should not necessarily depend on one person's point of view, and that's why it was important to have staff's comments.

Mr. Brewton stated the Board was looking to give relief to the issues that were not life safety. He stated right now it was not included in the current process, but they could continue to do it as they had been. He further stated if the material was not received in time for the meeting that they should not hold the issue until the next meeting.

Binni Sweeney stated that an assumption was being made that everything had to be granted because it was time sensitive. She did not think that should be the case. Mr. Brewton stated that he was speaking of items the Board decided to table so they could go through DRC review. He stated that 30 days was not enough time in most instances and 60 days would be better.

Binni Sweeney asked if some of the items regarding parking variances should be sent to the Planning and Zoning Board. Mr. Brewton stated that they were going to discuss that matter.

Chair Patricia Rathburn stated that some of the temporary use permit applications were extremely involved, and she felt in those cases technical answers needed to be provided. She stated they did not want to make this a requirement, especially for applicants who might only want to have overflow parking in their church yard until the parking lot they were building was completed.

Birch Willey asked if staff could not be given the latitude to make such determinations.

Chair Patricia Rathburn stated that in regard to the parking variances, there was the alternative to seek a parking reduction. She stated that sometimes that would be more appropriate. She further stated they had discussed making a recommendation if the application included a variance for parking.

Fred Stresau stated that every time he had ever been involved with parking, it had always come up in the internal review with the attorneys that it was easier to go to the Board of Adjustment because it was quicker than obtaining a parking variance. Chair Patricia Rathburn stated that was true.

Mr. Brewton stated that if the items were necessary in order for the Planning and Zoning Board to make their determination, then why were they not applicable for this Board. Binni Sweeney and Fred Stresau agreed. Mr. Brewton stated that on the other hand, he and Mr. Dunckel believed that they needed to amend the Code.

Mr. Dunckel stated that if the Code provided another administrative remedy, then they should not be using the Board of Adjustment to substitute for the other administrative remedy. He stated that was the path they should follow. He

explained that a long time ago, there was a case to be heard regarding a request for a side yard setback that had an R-3 or such zoning classification that stated such cases had to go before Planning and Zoning. He stated there was another remedy available. He stated that there was nothing in the Code that prevented them from doing this, but he felt they needed to draft a provision forcing them to go along another pathway when possible.

Chair Patricia Rathburn stated that some of the parking was tied into other variances so they had to be considered as a package. She further stated that if someone was just going for a parking reduction, they would not be seeing the entire picture. If someone came before this Board for a parking variance but there were 3 other variances that were needed, then the entire package was not being presented. Chair Patricia Rathburn reiterated that some came before this Board strictly for a parking reduction. Binni Sweeney and Fred Stresau disagreed. Chair Patricia Rathburn stated that she believed they should go to someone else.

Mr. Dunckel stated that the last case the Board had which fell into that category was when Robert Lochrie was looking for a temporary non-conforming use permit because he did not have enough time in the season to go the parking reduction route. He felt this area needed to be addressed further.

Chair Patricia Rathburn suggested this be included in the application saying if one was asking for a parking variance, a parking study had to be submitted. Mr. Brewton stated that they did not want to duplicate the work by the boards.

B. Signs

Chair Patricia Rathburn asked if the application should include an outline of where the signs should be located. Mr. Stresau stated that was what he had been requesting.

Binni Sweeney stated that every month she went out to the sites and checked the signs. She stated that if she did not know better, she would think that individuals placed the signs purposely in locations where people could not see them.

Fred Stresau stated that he had suggested the signs be put on corners and facing the major streets, and not in windows.

Chair Patricia Rathburn stated that there had been past cases where there was no where to place the signs but in the windows. Binni Sweeney suggested that if the site was at a corner, then the signs should be posted facing both roadways. Chair Patricia Rathburn stated this Board could make the recommendation that if the property was located on a corner, they recommended that a sign be placed

on each side of the property. Binni Sweeney stated that she felt the Code should be changed.

Mr. Dunckel stated that one of the problems in that area was the way the ULDR was structured.

Binni Sweeney stated that she wanted to recommend that they put this on the list, and asked if a copy of that list could be provided to the Board so she could speak to the Commissioners.

Mr. Brewton stated that in regard to a Planning and Zoning case on the Beach, the signs kept disappearing and daily inspections had to be made and the signs replaced. He reiterated that it was the applicant's responsibility to monitor the site and keep the signs in place.

Notices

Binni Sweeney requested that the Board be informed of how many notices were sent out, and how many responses were received in regard to a matter. Mr. Brewton confirmed that such information could be supplied to the Board.

Conflicts of Interest Discussion/Review of Bob's Memo/Questions and Comments

Chair Patricia Rathburn asked if the Board had any questions in regard to this item.

Birch Willey asked was there a conflict of interest when a member was involved heavily with a not-for-profit. Binni Sweeney stated there was no conflict if there was no economic gain involved.

Mr. Dunckel stated that when they spoke of conflicts of interest, there were 2 categories. The first category was a voting conflict of interest. The test on that type of interest was if taking action on the item might affect one's benefit or loss. On the other hand because they were public officials, they were also governed by Chapter 112 – Ethics for Public Officials, and there were certain actions one was prohibited from taking. He stated that he was not sure if he had the answer regarding a not-for-profit operation. He reiterated that it did not fall within the voting conflict of interest of regulations, but it could be in violation of Chapter 112. He asked if Mr. Willey wanted him to explore that issue. Mr. Willey confirmed.

Mr. Dunckel further stated that another issue was where there was a predisposition on a case, and they were unable to give the applicant a fair and impartial hearing. He reiterated that attorneys did not agree across the board regarding this matter. He urged the Board that whenever they had any doubts on a matter, they should not hesitate to call him and discuss it. He stated that

according to the Statute, when one assumed a role as a public official, it was that person's responsibility to vote unless a voting conflict was involved.

Scott Strawbridge remarked that he felt Mr. Dunckel's advice was great, and they had to be considered on a case-by-case basis.

ITEMS RECEIVED FROM BOARD MEMBERS

Change in Meeting Times

Chair Patricia Rathburn stated that according to the Code to change the time of the meetings, it would require an ordinance change. Binni Sweeney asked for the Board's input on this item because she would prefer a different meeting time.

Mr. Massey stated that most of their agendas were crowded, and he would prefer to change the ordinance in order for the meetings to start at 5:00 p.m. or 6:00 p.m.

Greg Brewton advised the Board that he believed this Board was the only one to begin at 7:30 p.m. Fred Stresau advised that the Utility Advisory Board had begun meeting at 7:30 p.m., but they were now meeting at 6:30 p.m. in order to have the meetings end at an earlier hour. He stated that he did not think 5:00 p.m. would give the general public sufficient time to get to the meetings, and suggested that they could possibly begin at 6:00 p.m.

Binni Sweeney asked for input from the Board members regarding a change in meeting times. Birch Willey suggested they meet at 7:00 p.m. Don Larson stated that he had no preference. Fred Stresau stated that starting the meetings earlier would probably benefit staff, and suggested either 6:00 pm. or 6:30 p.m. Binni Sweeney stated that she would agree to 6:30 p.m.

Chair Patricia Rathburn reiterated that part of the problem was that they needed to accommodate the public. She asked the Board for their input regarding starting the meetings at 7:00 p.m., earlier than that she felt could be inconvenient for the public.

Don Larson stated that he felt the public needed to plan for the meetings, and he did not think the time element would be a problem. He stated that anytime after 6:00 p.m. would be good. Al Massey agreed that 6:00 p.m. would be a good starting time, and reminded everyone that the City Commission met at 6:00 p.m. Jon Albee stated that it was difficult to make 6:00 p.m. meetings. Binni Sweeney suggested they meet 6:30 p.m., but not earlier. Fred Stresau agreed.

Chair Patricia Rathburn clarified that the new starting time for this Board would be at 6:30 p.m.

Mr. Brewton stated that they were going to draft the ordinance in such a way as to give more flexibility for changing the meeting dates.

Pending Items List

Chair Patricia Rathburn stated that she felt they had already discussed the parking reduction/variance requests.

Chair Patricia Rathburn asked for Fred Stresau's input regarding the setback measurement. Fred Stresau stated that they had discussed the fact that there were several ways to measure a setback. He stated they were normally measured from the wet base of the seawall, but in one case zoning had measured from the edge of the canal. He stated that he did not want this to happen again because there had been several cases in 1955 when they measured from the property line. He asked why they were not taking the setback from the property line regardless of where it was located.

Greg Brewton stated that one of the things which had come up some time ago was to measure from the water's edge was in accordance with the Code, even though it might not have been enforced. He stated the idea behind that was to make sure they had preserved the tranquility of the City's waterways. If they measured from the property line and it was 10' into the waterway, then the building would be 10' closer to the waterway. He stated that would affect the appearance of the waterway. He further stated that the idea was they wanted to make sure the view and the waterway were preserved. Therefore, they measured from the waterway to make sure the corridor would be clear of structures.

Birch Willey stated when they had removed the seawall at Himmarshee, the frames for the new wall had picked up 2' – 2 ½' along the edge of the canal. Binni Sweeney added that different types of pilings had been used. Fred Stresau explained that the new seawall was put in with the old still in place.

Fred Stresau stated that his point was that this caused the measurement to vary. Mr. Dunckel agreed, but stated how to resolve it was a philosophical issue, and he was going to see how greater minds than his solved the matter. Fred Stresau stated that the responsibility to provide some sort of open space was the driving force behind why it had been measured in that fashion, and possibly the key was to measure from the property line but also provide the green area.

Jon Albee asked how the setbacks were measured for pools. Fred Stresau stated it was wrong because pools no longer had coping.

Birch Willey felt they needed to decide that wall heights should be measured from the crown of the road of the street at all points along the wall. Fred Stresau stated that he did not know what the answer was to this problem.

Chair Patricia Rathburn asked what was the Board to accomplish other than to recommend that the Commission put on their "pending item list" to establish a uniform type variance.

Greg Brewton stated they could do it from the water's edge. Fred Stresau explained that was how it had been done and should be done. He stated they were now measuring from the back of the coping. Binni Sweeney reiterated there was no longer any coping. Fred Stresau stated if it was incorporated into the deck, then they would not know where the beam stopped. He asked if they were referring to a stem wall survey which they did not want to discuss again.

Carport Enclosures

Fred Stresau stated that previously they had approved an enclosure for the Navarros, and about 15-20 meetings ago someone wanted to in-fill a carport on a corner and it was approved. If they allowed the Navarros to enclose a carport, then everyone on the street could do the same. Binni Sweeney asked what would be done if it had not been built within the setback.

Mr. Dunckel stated that his mother lived across the street and he should not provide an opinion in this matter. He stated that in regard to the issues on 13th Street, they had 50' lots with no where else to go, but Navarro had plenty of buildable space. He reiterated that case was entirely different. He felt the Board "missed the boat" on that one entirely. He stated that those houses were "cookie cutters," and he felt the Board was in a bad position when another individual on that street would make the same request.

Chair Patricia Rathburn stated that she had voted against Navarro, and it appeared the issue was that people were voting against the matter because they knew what the owner was going to do with the property. She felt they should not treat him any differently because they knew he was going to build 3 stories. She further stated if that was the dividing point as to how they looked at something, then they could grant the variance to enclose the carport, but it would not mean that the person could build up. She added that the variance was for that structure only. Then, there would not be problems like the Navarro case without penalizing everyone.

Binni Sweeney stated that one of the problems was that they did not address the hardship.

Fred Stresau stated that if another such situation ever arose, the Board needed to be careful on how they voted. He did not know if anything had to be decided. Mr. Dunckel stated that he agreed with Mr. Stresau. In talking about the matter, they had raised the level of consciousness regarding the issue.

Binni Sweeney reiterated that she felt one of the problems they had was that people gave a "sob story" as to why they wanted the variance, but they did not address the hardship. She stated that most of the hardships were self-imposed.

Mr. Brewton stated that they needed to ask the applicant directly how they were addressing the hardship. Mr. Brewton further stated that variances were granted for the life of the property.

Chair Patricia Rathburn asked if the Board had received a letter from an applicant that had been on last month's agenda. Binni Sweeney stated that she had also received a call from that person, but she had not talked to him. Don Larson stated that he also had received a letter and a fax.

Fred Stresau stated that he wanted to address hardships and the inter district corridor. He stated that 10 years ago the Board voted "no" on everything, and finally they sat down with the Commission and asked them how strict they wanted the Board to enforce the hardship issue. He added that he had received a letter from a couple of them stating that the Board had been wrong. He advised that in a round table discussion with the Commission in a workshop, he believed it was the Commission's feeling that if there had been a small indiscretion that did not harm the neighborhood, then the Board should consider it whether self-imposed or not.

Fred Stresau further stated that on the inter district corridor they had a project which came before the Board two years ago and they were unable to meet the required 20', and only had 17 ½'. He advised they were 2 ½' short and they did not get the variance, and it had killed the project. He was not sure that anyone could look at 17 ½' or 20' and know the difference. He stated it was how it was treated that mattered. He stated the question was did they almost meet the inter district corridor, and how should they treat the landscape issues in that corridor, rather than producing a piece of grass.

Binni Sweeney stated she understood where Fred Stresau was coming from, but if they kept doing that, they would never get what they wanted. She remarked that sometimes buildings should be torn down. Fred Stresau agreed, but stated that if they did not need the 20', then they should not come before this Board. Binni Sweeney disagreed.

Mr. Dunckel stated that Ms. Sweeney was saying that if they came before the Board and prove the hardship. Fred Stresau reiterated that the hardship was that the building existed. Mr. Dunckel stated that it then became an economic hardship. He stated they should be cautious because the Commission had gone through a process, and had decided they wanted a 20' district corridor. He stated they should not start to substitute their judgment for what the corridor should be for the Commission's judgment. He stated that on the other hand if there was

truly a hardship because of the unique shape of the parcel or some other matter, then it would be appropriate to grant the variance. He stated there were a lot of close calls, and he was not going to second-guess the Board, but if they were going to start saying that 17 ½' was okay, then why not 16 and so on.

Fred Stresau clarified that he had stated that it depended on the treatment of the landscaping in the corridor. Mr. Dunckel stated that he did not want to make a hard and fast rule, but he did want them to be cautious so the Board did not begin substituting their judgment for the Commission's. Fred Stresau stated that was why he had presented the issue in the way he had. Mr. Dunckel reiterated that they had to balance it out with what they were trying to accomplish when the zoning change was made, and decided to impose the 20'. Fred Stresau stated that if he had to make that decision right now, he was not sure what was being said. Mr. Dunckel stated that he was not telling them anything, but was raising factors that needed to be balanced. Mr. Stresau there were no offsetting or mitigating circumstances if someone had 18' as opposed to 20', and there was an existing building.

Mr. Dunckel stated that he felt the Board had erred in the Navarro case, but he was not suggesting that in this circumstance, but merely was raising factors for the Board's consideration that should go into the balance and formula.

Mr. Willey reiterated that he wanted them to find a way to use the crown of the road as a standard measurement.

Binni Sweeney stated that she felt this workshop was very helpful and they should schedule another one in about 6 months.

The meeting adjourned at approximately 7:00 p.m.

CHAIRMAN

Patricia Rathburn

ATTEST:

Margaret A. D'Alessio
Recording Secretary

