

**BOARD OF ADJUSTMENT MEETING  
WEDNESDAY, MARCH 10, 2004 – 7:30 P.M.  
1ST FLOOR – CITY HALL  
CITY COMMISSION CHAMBERS  
100 N. ANDREWS AVENUE  
FORT LAUDERDALE, FLORIDA**

**BOARD MEMBERS**

	<b><u>Present</u></b>	<b><u>Absent</u></b>
Stephen Buckley, Vice-Chairman	P	
Gus Carbonell	A	
Fred Stresau	A	
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  
Terry Burgess  
Charlie Wygant  
Charla Lopez, Secretary

**GUESTS**

David Casani	Larry Martineau	George Spatafora
Michael Crissy	Janna Lhota	Bob Tuthill
Maurice Debroff	Alan Gabriel	Candy Colby
Rhett Roy	Felicia LaRocco	Bruce Thompson
Jon Shampes	Molly Hughes	Rob McDougal
Ray Gunn	Richard Loarie	Sara Stewart
Brad Wood	George McKee	Mitch Bierman
Bill Smart	Bill Kek	

**CALL TO ORDER**

Chair Patricia Rathburn called the meeting to order at approximately 7:30 p.m.

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.

Chair Patricia Rathburn announced that all items were quasi-judicial, and anyone wishing to speak on the issues would be sworn in.

**Approval of Minutes for February 11, 2004**

**Motion** made by Don Larson and seconded by Binni Sweeney to approve the minutes of the February 11, 2004 meeting. Board unanimously approved.

Chair Patricia Rathburn asked if there were any sign problems regarding the cases on tonight's agenda.

**6. APPEAL NO. 04-15**

**APPLICANT:** Will Trower  
**LEGAL:** Sunrise, Block 10, Lot 3, P.B. 28, P. 42  
**ZONING:** RS-8  
**STREET:** 2500 NE 7 Place  
**ADDRESS:** Fort Lauderdale, FL

**APPEALING: Sec. 47-46** – Seeking a variance to permit a 4'7" side yard for a 587 sq. ft. 2<sup>nd</sup> Floor addition to an existing single-family structure where the Code requires a minimum 5' side yard.

Chris Wainwright, representing the owner, stated that they had received a list of items which had to be met in order to receive approval. He stated that he could discuss the specifications for two of the requests, but did not have the information regarding the third item. Therefore, he was not sure if this matter should be continued or not.

Chair Patricia Rathburn felt the information would be pertinent to the case, and the applicant could ask for a continuance at this time.

Robert Dunckel, City Attorney, stated that he had some knowledge of this case and he felt the matter should be continued.

Mr. Wainwright, therefore, requested that this matter be continued until the April 14, 2004 meeting.

**Motion** made by Binni Sweeney and seconded by Stephen Buckley to continue this matter until the April 14, 2004 meeting. Board unanimously approved.

**7. APPEAL NO. 04-16**

**APPLICANT:** Mainstreet One Financial Plaza Ltd.  
**LEGAL:** Town of Fort Lauderdale, Block 14, Lot 20 The South 300 ft. and the South 300 ft. of the West 16 ft. of Lot 21, less the South 15 ft. lying and being in Broward County, P.B. "B", P. 40(D)  
**ZONING:** RAC-CC (Regional Activity Center – City Center)  
**STREET:** 100 SE 3 Avenue, Ste. 2212  
**ADDRESS:** Fort Lauderdale, FL

**APPEALING: Sec. 47-22.4(A)(2)** – Seeking a variance to permit a ground sign with a name other than the approved name located on the building I.D. wall sign.

Chair Patricia Rathburn announced that the applicant had requested a continuance to April 14, 2004 in this matter.

**Motion** made by Binni Sweeney and seconded by Don Larson to continue this matter to April 14, 2004. Board unanimously approved.

**9. APPEAL NO. 04-18**

**APPLICANT:** FPIP XII, LTD  
**LEGAL:** Township 50 South, Range 42 East, Section 14, Southerly Right-of-Way line for State Road A-1-A (SE 17 St. Causeway) and along the Westerly Right-of-Way line for Eisenhower Blvd.  
**ZONING:** B-1 (Boulevard Business)  
**STREET:** 1680 SE 17 St  
**ADDRESS:** Fort Lauderdale, FL

**APPEALING: Sec. 47-22-3H** – Seeking a variance to permit a Reader Board on a proposed ground sign where it is currently not permitted by Code.

Applicant requested that this matter be deferred until April 14, 2004.

**11. APPEAL NO. 04-21**

**APPLICANT:** Parking Company of America  
**LEGAL:** Lot 37 less N. 15' together with Lots 34, 38 & 39, Block 19 of Bryan Subdivision of Blocks 5, 8 & 19 of Town of Fort Lauderdale P.B. 1, P. 18  
**ZONING:** RAC-WMU – Regional Activity Center – West Mixed Use  
**STREET:** 500 West Broward Blvd.  
**ADDRESS:** Fort Lauderdale, FL

**APPEALING: Sec. 47-24.12 A.(10)** – To grant an extension to a previous Board of Adjustment approval to: **Sec. 47-13.20.C.1.d** – To permit a 15' setback of a vehicular use area from an image street (Broward Blvd), where the code requires a 20' setback. **Sec. 47-21.9.A.2.a** – To permit a 2' perimeter landscape area where code requires a minimum perimeter landscape area of 5' when abutting a street. **Sec. 47-21.9.A.2.b** – To permit a landscape area of 0.5' where the code requires an area of 2 ½' when not abutting a street. **Sec. 47-21.9.A.3** – To permit 710 sq. ft. of interior landscape area where code requires an area of 960 sq. ft.

Stephen Buckley stated that he had not sees a sign at this site.

Mitchell Bierman, attorney, stated that he had just been to the site and there was a sign posted as required. He explained it was placed on the attendant's booth facing Broward Boulevard. He advised that Mr. Cartalano was the attorney who had previously represented this applicant had been the one who had originally applied, signed the Affidavit of Compliance, posted the notice, and sent out all notifications.

Greg Brewton, Zoning Administrator, advised that notices had been sent out by the City.

**1. APPEAL NO. 03-69**

**APPLICANT:** Holy Cross Hospital/Holy Cross Medical Properties  
**LEGAL:** Coral Hills, Block 12, Lots 4, 5, 6, 7, 14-17, P.B. 37, P. 20  
**ZONING:** RMM-25 – Residential Mid-Rise Multi-family/Low Medium Density  
**STREET:** 1900 & 1930 NE 47 St.  
1901, 1911 & 1921 NE 46 St.  
**ADDRESS:** Fort Lauderdale, FL

**APPEALING: Sec. 47-5.19** – To permit a surface parking facility to support an existing medical office where such use is not permitted in the RMM-25 zoning district. **Sec. 47-20.15** – To maintain the existing back-out parking where the code prohibits back-out parking. **Sec. 47-21.10** – To permit a minimum of 18% landscaping of the gross lot square footage where the ULDR requires a minimum of 35%.

Don Larson disclosed that he had been contacted by Attorney Horowitz in regard to this matter. Birch Willey stated that he had received a call from Ms. Lhota. Jon Albee also stated that he had received a call from Ms. Lhota. Patricia Rathburn stated that she had received a call from Ms. Lhota.

Individuals wishing to speak on this item were sworn in.

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Janna Lhota, attorney, stated that she was representing Holy Cross Hospital and Medical Properties. She proceeded to introduce George Spatafora, Director of Engineering, Bio-Medical Engineering, Facility Services, and Construction for Holy Cross Hospital; Larry Martineau, architect; Jerry Morris, General Counsel for Holy Cross Hospital; Jim Bouk, COO and Sr. Vice-President of Holy Cross Hospital; Sr. Mary Louisa, one of the Sisters of Mercy who runs Holy Cross Hospital; and Maria Saldani, Public Marking and Outreach for Holy Cross Hospital.

Ms. Lhota continued stating that the application was seeking to expand an existing parking lot for the medical complex west building which was owned by Holy Cross and located at 1930 NE 47<sup>th</sup> Street. In order to allow the construction of this lot, 3 variances were required. The first was that they were seeking a use variance pursuant to Sec. 47-5.19, Sec. 47-21.10, and Sec. 47-20.15. She explained they wanted to retain the back-out parking, as it existed at this time.

Ms. Lhota stated that she wanted to provide an overview of events which had led them before this Board. She explained that this application had started back in June, 2003, when the hospital sought approval for a sign package for the hospital campus. She continued stating that at that time an issue had been raised regarding the residential property which was an unrelated matter to the application. She stated such discussion prompted a series of events and decisions made by the hospital regarding the property, along with an assessment of their specific needs. She further stated that it had been decided that the property would be best used for parking. She proceeded to show photographs of the site.

Ms. Lhota stated that the 4 buildings had been removed from the property and the site was secured with a chain link fence and cleared of debris. She stated that dust control measures had been instituted to mitigate any impacts prior to any further construction. She proceeded to show an aerial of the site.

Ms. Lhota further stated that the need for the parking facility was a multiple one. When the Medical Arts Complex had been constructed in the 1960's pursuant to a use variance granted by this Board, the parking required and provided had been 76 spaces. Since that time due there was a need for additional parking for the facility. According to Code, there was a need for 143 spaces for the Medical West Building, and they were currently providing 76 spaces. She advised that 22 of those spaces were back-out parking. She stated that the proposed site plan would provide for an additional 53 spaces, and therefore, providing a total of 129 spaces. She explained there was a domino affect in the area regarding parking needs, and patients were being affected coming to the facility.

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Binni Sweeney stated that she lived in the area and had been to the building mentioned very recently, and did not feel the statement made was accurate because Holy Cross provided valet parking for the building.

Ms. Lhota continued stating that she was aware that valet parking was provided for the main hospital, but she did not know if there was valet parking for the medical complex. Ms. Sweeney stated that she had used such parking personally within the last 2 weeks. Ms. Lhota reiterated that there was valet parking at the main hospital entrance.

George Spatafora, Director of Engineering, stated that at the A, B, and C Buildings they did provide valet parking. He stated the proposed property was the 1930 property.

Ms. Sweeney stated that she stood corrected.

Ms. Lhota stated that although the valet parking was complimentary, many times individuals did not avail themselves of its use and some might not even know it was available. She stated that the flip side of the equation would be the benefits that would be made available if this request was granted. She explained that the immediate benefit had been the removal of the residential buildings from the neighborhood. She stated it would also allow for the elimination of back-out parking. She also stated that another plus was that the residential buildings had been located only 7' from the property line, but the proposed parking would be set back at least 12' from the property line. She stated that the hospital would also provide enhanced landscaping, along with a decorative concrete wall along the west property line. She also advised that portions of the design had changed due to meetings with the neighbors, Commissioner Teel, and the DRC review.

Ms. Lhota stated they believed this was the minimum use that could be used for this site with the least affect on the neighbors. She stated that she was going to turn the presentation over to George Spatafora who was going to provide the various steps which had been taken to receive neighborhood input.

George Spatafora stated that in the materials submitted to the Board, there was a large section devoted to communications which had taken place between the Hospital and the neighborhood. He explained that Mr. Casani had been the most vocal resident and his input had been appreciated during the development of this plan. He proceeded to show a list of communications and meetings which had been held since the December 10, 2003 Board of Adjustment hearing.

Mr. Spatafora stated that he had met with the Casanis prior to the demolition of the buildings in an effort to address their concerns. He also stated that spacing

between the trees had been reduced, and the issues of lighting had been addressed. He advised they had also met with Commissioner Teel on February

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13, 2004, and additional modifications had been made to the plan. He further advised that Mr. Casani had reviewed the entire DRC plans on February 20, 2004 prior to their final review. He stated that Mr. Casani had asked about further mitigation plans regarding construction. The Hospital had agreed that they would not use vibration soil compaction, but would use static compaction. The tenants had been reviewed and lights would be turned off as early as possible, while still ensuring the safety of the individuals remaining in the building.

Ms. Lhota stated that she was going to distribute a brief chronology of events to the Board. She also stated that Larry Martineau would show the metamorphosis of their site plan.

Larry Martineau stated that they came in December with a conceptual site plan, and were requested to go through final DRC review. On January 24, 2004, plans were submitted for DRC and due to their heavy caseload, they were placed on the February, 2004 agenda. He explained they met with the neighborhood and modifications had been made regarding further landscaping enhancements. He stated they informed the neighborhood that they would provide a 6'6" fence on the property line as submitted by Code, and a lighting plan was explained along with the photometrics. He stated that staff had requested that the light pole on the western side be moved to the eastern section of the driveway. He further stated that they had met with Commissioner Teel who had suggested that a chain link fence be provided, along with hedging material, on the southern property line, and that vehicular access be closed from 46<sup>th</sup> Street.

Mr. Martineau further stated that DRC had requested that they further investigate the swale between the actual roadway and where they were proposing the sidewalk, and check for any utilities. If there were no utilities affected, they were requesting that an additional row of trees be provided. After several discussions, a determination was made to supply such trees that would be crepe myrtles. He stated another issue raised during the DRC review was the existing driveway on the east side of the property that was only 17' wide, where 20' was required. He explained there were 3 back-out parking spaces along that driveway into the right-of-way, and 2 spaces had been eliminated in order to get the required 20' width, along with the required 10' site triangle for egress out of the property.

Mr. Martineau stated that one of the issues raised by Planning was for them to provide a pedestrian access way to the front of the building from 46<sup>th</sup> Street, and that had been accomplished by providing a minimal 3' sidewalk with a chain link fence gate opening that would remain unlocked.

Don Larson stated that he was not an advocate of chain link fences because they deteriorate very rapidly, and asked if they would consider having a solid wall along 46<sup>th</sup> Street. Mr. Martineau stated that another individual had made a similar

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comment, and the suggestion would be considered. He added that he would discuss the matter with Dave Gennaro at the City.

Mr. Martineau further stated that a requirement for an RMM-25 was 35% for landscaping, and one of the reasons they were asking for the use variance was because they did not want to rezone the property. He stated that RMM-25 was to the east, and single-family homes to the west. He advised that to the east of the other RMM-25 was B-1. He stated that maintaining RMM-25 would be a great buffer from the single-family residence to the business section. He stated if they rezoned the property to CF, the zoning code required that 25% of the vehicular use area was to be landscaped. He advised they were presently at 22% for the landscaping for that area, but only at 18% for the entire site. Mr. Martineau continued stating that there was an umbrella tree on the west property line they were going to maintain.

Stephen Buckley asked for some further information as to how the landscaping was figured out for the site. Mr. Martineau proceeded to explain the procedure.

Chair Patricia Rathburn proceeded to open the public hearing.

David Casani, resident on 47<sup>th</sup> Street, stated that he wanted to thank this Board because the communications between everyone involved in this project had increased greatly since the Board's last meeting. He stated the residents in the area were truly grateful to the hospital for listening to their concerns and needs. He stated their primary concern in the area had always been quality of life and the value of their property. He stated the hospital was in need of the parking area, and they only asked of the hospital to minimize the loss of value to their property and to maintain their quality of life. He further stated that the only remaining issues were to minimize the duration of lighting. He stated they had made great strides since submitting their initial landscaping plans.

Mr. Casani stated that the hospital had committed to a wall between the houses to the west and the lot to the east, and the wall on 46<sup>th</sup> Street had been requested by some neighbors, and also had been included in the DRC comments. He thanked the hospital for their cooperation, and asked for them not to let the neighbors down.

Binni Sweeney asked Mr. Casani if he was satisfied with the plans that had been submitted by the Hospital. Mr. Casani replied that he believed it was the least of the evils that they could expect in a pragmatic world. Binni Sweeney stated that the Board could place conditions on the application. She stated for an example

that a wall could be required. Mr. Casani stated that if they could ask for conditions, it would be to turn off the lights on the parking lot and the building at the first earliest possible hour, and not leave it to the convenience of the cleaning crew. He commented that this had been a disputed issue between the Hospital



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and the neighbors. He felt that there should not be lights on in the building to accommodate a cleaning crew up to 9:00 p.m. when no one else was in the building at that time. He stated that they did not feel it was necessary to maintain a fully lit facility as if it was a shopping center. He also asked if the landscaping was provided that they take the extra step to encourage its growth and maintain it as required.

Mr. Casani stated that the Hospital had agreed to erect a wall between the parking lot and the properties to the west. The wall in question was where the Hospital had agreed to install a chain link fence. He stated that Mr. Vincent and Christina Santeri were adamant in talking with him about having that area with a wall also.

Binni Sweeney asked how the cleaning crews could clean the building in the dark. Mr. Casani reiterated that he did not expect them to clean the building in the dark, but he expected all exterior lights, with the exception of the main entrance, to be extinguished. He added that the residents had no objections to lights on the east side of the building since that area did not face residential dwellings.

Mike Crissy, owner of the building at 1960 47<sup>th</sup>, stated that he was supportive of the parking because it was definitely needed. He added that everything at Holy Cross being proposed would only enhance the area.

Binni Sweeney stated that the plan presented was very nice, but she felt the problem was that there was still not enough parking. She asked if a parking garage had been considered.

Mr. Martineau stated there were plans in the works regarding parking that the Hospital was considering, along with parking structures. Ms. Sweeney stated that she felt such plans were relevant to the situation. Mr. Martineau reiterated that the Hospital's campus site currently had 250 parking spaces above what was required by Code. He continued stating that zoning codes never permitted sufficient parking for hospitals. He stated they felt they needed to figure in 50% to what was required, and then there would be sufficient parking, especially in an area like South Florida which had a high seasonal rate. He stated that the Hospital realized they had a parking issue, and were doing some strategic planning. He further stated that they were coming in for an administrative review regarding a parking lot at the north end which would add about another 59 parking spaces to the site. He added that they were also working on a parking

assessment plan and had hired Tinter and Associates to do a parking evaluation of the entire campus and their adjacent properties.

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 Jon Albee and seconded by Binni Sweeney to close the public hearing. Board unanimously approved.

Jon Albee stated that he had advocated neighborhood involvement in this matter, and he was glad to see that the residents were somewhat pleased about the situation. He stated that he was concerned because the landscaping requirement for RMM-25 was not being met, and he understood the reason, but on the other hand there should be mitigation of some sort for a trade-off. He felt the landscaping being proposed was very positive. He asked if it would be possible to somehow modify the lighting situation so there could be some sort of protection for the residents across the street.

Mr. Martineau stated they would work on the matter and that possibly separate timers could be used. In regard to the 35% landscaping, he explained that they had run the calculations, and they would lose about 57 spaces if they met the 35% requirement.

Jon Albee continued stating that as they continued with their parking assessment plan, including the strategy, he felt further discussion was still needed with the neighborhood. He asked if it was part of their plan to continue the process.

Mr. Martineau stated that Maria Saldani, one of the Directors, had storm-fronted the neighborhood meetings. Mr. Albee stated that it was his understanding that the neighbors were not yet sold on the Hospital's plan, and he asked what was going to be done to resolve their concerns. Mr. Martineau stated they would continue to work with the neighborhood. Mr. Albee asked if they had received final DRC on the project. Mr. Martineau stated they could not get final DRC until they had Board approvals for their various requests, but all comments had been addressed.

Mr. Crissy stated that in regard to the janitorial lighting, they could light up the east side because they welcomed that due to the fact that it kept out undesirables.

Birch Willey thanked both parties for their hard work. He continued stating that the 6 spaces of back-out parking onto 47<sup>th</sup> Street, he felt as they moved forward with their parking plan that they convert, if and when possible, those spaces into additional landscaping.

Binni Sweeney stated that she felt certain conditions should be placed on this application. She continued stating that she wanted to place some conditions regarding the lighting situation.

Robert Dunckel, Assistant City Attorney, stated that it was up to the Board if they wanted to consider placing any conditions upon any part of the application.

Binni Sweeney suggested that conditions be placed on the application regarding evening lighting. She felt that the east side of the building should be lit in the evening hours, and the remaining lights should be on timers.

Chair Patricia Rathburn stated that she felt the issue was something that should be raised during DRC review, but she was uncomfortable to direct that the lighting should go off on one side of the building so as not to cause a safety problem for the community.

Binni Sweeney reiterated that they were asking for a variance, and then going back before DRC, and DRC would state that no conditions had been placed on the application by this Board. Chair Patricia Rathburn felt that this was a DRC issue and further discussion was warranted. She added that the Board could strongly recommend that the lighting be limited, but to state that the lights should go out by a certain time was not in the neighborhood's best interest. Binni Sweeney stated that strongly recommending something did not always take care of the issue.

Don Larson reiterated that this was a safety issue and some doctors could still be working at the suggested 6:00 p.m. time. He stated that he could understand the lights being put out by 9:00 p.m. on a timer.

Chair Patricia Rathburn stated she did not see a way for this Board to determine what the lighting should be other than to strongly make some sort of specific recommendation, while still meeting the needs of the community. Binni Sweeney stated that she understood what was being said and she did not disagree, but her problem was that in the past if conditions were not placed on an application, then they did not get addressed.

Chair Patricia Rathburn stated that from a legal standpoint she could not think of the language that could be imposed on this variance which would address the situation.

Jon Albee stated that in order to go through final DRC action had to be taken by this Board. He continued stating that at the same time, they needed to offset the need of the neighborhood. He stated that perhaps the condition was for a lighting plan that involved the neighborhood in the approval process.

Ms. Lhota stated that if the Board was inclined, they could impose a condition that a timeframe for the lighting on the west and south face of the building be established by DRC.

Jon Albee stated that he felt that would move this item forward which would be friendly to the neighborhood. Binni Sweeney stated that she did not have any

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problem with that suggestion. She asked what language would be used to address the problem. Jon Albee explained that they were moving to approve Section 47-5.19 with the condition that the lighting strategy as discussed by this Board be part of the DRC recommendation for approval.

Birch Willey stated that he would accept such an amendment to his motion. The second Don Larson also accepted the motion. Therefore, the motion would now read as follows:

**Motion** made by Birch Willey and seconded by Don Larson to approve the application in regard to Section 47-5.19 as submitted with the condition that the lighting strategy as discussed by this Board be part of the DRC recommendation for approval.

Robert Dunckel suggested that this be contingent upon DRC review of a lighting plan which would ensure neighborhood compatibility.

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

**Motion** made by Jon Albee and seconded Don Larson by to approve the application in regard to Sec. 47-20.15 as submitted with the condition that the ongoing parking assessment, which was in progress, would eliminate the back-out parking on 47<sup>th</sup> Street when possible.

Chair Patricia Rathburn stated that she had a legal issue in that regard. She stated that in terms of granting a variance until some other plan was instituted and then this would go away, she felt people had a right to rely on what they could and could not do.

Jon Albee clarified that they were saying that in light of the parking assessment plan, which was campus wide; they would remove the hazard of back-out parking while gaining some additional landscaping.

Robert Dunckel stated that he understood where Mr. Albee was going, but it was a very subjective standard that he was enunciating, and he would prefer to see

more objectivity. He did not think it was fair to put staff in the middle of this situation.

Chair Patricia Rathburn stated that someone needed to look at this variance which was in the public records and understand its meaning.

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Mr. Martineau stated that they were talking about a stand-alone site and not necessarily the campus itself. He stated that site was already severely under the required parking, and to remove that would not be feasible.

Mr. Dunckel stated they were beginning to open the door to a place they did not want to go. He reiterated that because of land use considerations, they were before this Board as part of the campus, and they should not move forward with the stand-alone argument.

Ms. Lhota stated they desperately needed to retain the back-out parking. She advised there were about 18 parking spaces which backed out into 47<sup>th</sup> Street, and to lose those would substantially impact their parking which they were attempting to provide for the medical complex, while alleviating some of the parking for the hospital. She stated that her concern was that they might add parking which would be at the north end, and that would not impact the issues at the southern portion. She further stated that even though the parking assessment was being done, possibly at that time a determination could be made whether it would be appropriate to eliminate the back-out parking. She stated that she wanted to make sure it would include enough thought process to account for the fact that the parking was at the north end, and would not affect the south end.

Ms. Lhota further stated that it was her understanding that there were no entrances or opposing back-out parking on the other side of 47<sup>th</sup> Street, and the Hospital was not aware of any issues with respect to such parking spaces. She stated they would like the opportunity to include that condition and rebut the safety considerations to show how the parking was still needed, and to show whether there were any safety concerns involved.

Robert Dunckel asked if Ms. Lhota could possibly arrive at a combination of factors that might help resolve the situation. He stated there appeared to be some negative votes in regard to this matter, and he felt they needed some kind of an objective formula. He reiterated that this if Board passed this, they could not revisit the item.

Ms. Lhota stated that she was not sure how many parking spaces they presently had, and what they were hoping to achieve. Robert Dunckel stated that it appeared they were moving in the right direction, and possibly with a few more moments of consideration, they could arrive at a working formula. Then, the Board could still move forward on the other items.

Binni Sweeney asked if they had considered valet parking. She reiterated that she had a problem in regard to safety with back-out parking. Ms. Lhota stated there were dangerous situations and that was why they wanted to provide more parking on site. She stated that she had just spoken with the COO, and possibly the condition could be that when they added additional parking at the south end of the Hospital, it could eliminate a back-out parking space. Binni Sweeney asked

if there were any plans for additional parking in the south end. Ms. Lhota replied that they were looking at the situation.

Mr. Martineau stated that there was a master site plan which had a proposed parking garage at the south campus, but he did not know when that would be done.

Birch Willey stated that when he raised this issue, he did not expect them to totally resolve it this evening. He further stated that due to the work already done between the parties involved, he suggested that the words "south end" be included in the motion and it would indicate that something was expected to happen. He reiterated that when it did happen, then they would have to honor it or lose the variance.

Chair Patricia Rathburn reiterated that the Hospital had stated that they would agree that at such time additional parking would be provided at the south end of the campus, the back-out parking would be removed.

Don Larson asked if in the meantime they minimized the individuals using the parking spaces, it would temporarily solve the problem. Ms. Lhota stated that they would recommend and encourage such a suggestion. Mr. Larson stressed that the employees needed to be told and not encouraged to follow such direction. Ms. Lhota reiterated that sometimes people did not do what they were told.

Binni Sweeney stated that she wanted to make that part of the condition, and therefore, part of the policy would be that the area would have employee parking. Ms. Lhota stated that signs could be posted saying "Employee Parking Only."

Jon Albee stated that he would add to the motion that  
The motion therefore now read as follows:

**Motion** made by Jon Albee and seconded Don Larson by to approve the application in regard to Sec. 47-20.15 as submitted with the condition that the ongoing parking assessment, which was in progress, would eliminate the back-out parking on 47<sup>th</sup> Street when possible. Also, that there would be parking on the south lot, and the existing 19 back-out parking spaces would be identified as "Employees Only."

Ms. Lhota stated that they were hoping that by adding the additional parking at the medical complex that they would not have individuals parking across the street. Mr. Albee remarked that this would be part of their parking assessment until such time that such parking would be available, then the back-out spaces would be eliminated.

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Don Larson clarified that they were only referring to the 18 spaces that had been discussed. Ms. Lhota agreed and stated there would be no problem.

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

**Motion** made by Binni Sweeney and seconded by Don Larson to approve the application in regard to Sec. 47-21.10 as submitted, and that the wall requested by the neighborhood be installed in lieu of the chain link fence.

Mr. Martineau asked if that request could be made as part of the conversations to be held with the landscape department in the City.

Binni Sweeney changed her motion to read as follows:

**Motion** made by Binni Sweeney and seconded by Don Larson to approve the application in regard to Sec. 47-21.10 as submitted, and that the wall requested by the neighborhood be installed, if possible, in lieu of the chain link fence and that it be architecturally consistent with the existing walls.

Jon Albee stated that when the spots were eventually removed that landscaping be installed.

Robert Dunckel stated that the words "if possible" were slightly vague and nebulous.

Chair Patricia Rathburn suggested that the issue be left up to DRC. She stated that she was not necessarily disagreeing, but her job in the public sector was to enforce these, and it was very difficult to enforce something that could be interpreted in various ways. She stated that variances were resolutions and ordinances, which were recorded, in the public records.

Binni Sweeney agreed to add the words "if agreed by DRC" to the motion.

Robert Dunckel explained that part of the problem was to try and balance out the presence of the law, while still preserving as much landscaping as possible.

Stephen Buckley stated that he preferred to see additional landscaping with a chain link fence instead of the wall. Binni Sweeney reiterated that there was already a wall around the entire back of the site.

Mr. Dunckel stated that he understood Mr. Buckley to say that provided the current landscaping scheme set forth in the site plan could be preserved instead of a wall. Binni Sweeney stated that she would agree to that recommendation.

The motion read as follows:

**Motion** made by Binni Sweeney and seconded by Don Larson to approve the application in regard to Sec. 47-21.10 as submitted with the condition that a 6'6" wall, architecturally consistent with the other walls on the property, be erected on the south side of the site provided that the permanent landscaping scheme as evidenced in the site plan be preserved. If it could not be preserved, then no wall would be required and a chain link fence would be acceptable. In addition, if the parking spots were eventually removed that landscaping be installed at the site.

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

**2. APPEAL NO. 04-06**

**APPLICANT:** John A. Mancini – *Deferred from February 11, 2004 meeting*  
**LEGAL:** Sea Island, Unit 4, P.B. 29, P. 29, Block 3, Lot 3, Less W. 27'  
**ZONING:** RS 4.4 – Residential Single Family/Low Density District  
**STREET:** 2716 Barcelona Dr.  
**ADDRESS:** Fort Lauderdale, FL

**APPEALING: Sec. 47-5.30 (Table of Dimensional Requirements)** – To permit a 15' side yard where the code requires a minimum 25' yard when abutting a waterway.

Greg Brewton, Zoning Administrator, stated that they had sent out 15 notices, and 5 had been returned in opposition and 0 were returned in favor of the variance.

All individuals wishing to speak on this matter were sworn in.

Bob Tuthill, architect, stated that during the preliminary design of the project, since the land was pie-shaped and a peninsula, they discovered there was a Code requirement for a side yard setback of 10' unless on the waterway, and then

there was a required setback of 25' from the wet base. He advised they had the 25' on 3 sides, and 25' on the road side where the cul-de-sac came in. Therefore, the shape of the house was getting tall and boxy in order to properly utilize the site. He stated that in reviewing a plat lot, he discovered this was one site of 3 in the City having such problems. He further stated that there were no houses on the street along the side where they were requesting a variance.

Chairman Patricia Rathburn clarified there would be a 25' setback on 3 sides, and then a 15' setback on the north side. Mr. Tuthill confirmed.



Binni Sweeney asked if the property was for sale because there were "For Sale" signs in the area. Mr. Tuthill stated that this site was to be developed and to his knowledge was not for sale.

Robert Dunckel stated that the application showed the property owner's name as Casa Uno, Inc., and the Affidavit of Posting Signs it showed the applicant also as Casa Uno, Inc., but on Mr. Tuthill's submittal the site was referred to as the Mancini residence.

Mr. Tuthill explained the owner was a corporation which was developing the site.

Chair Patricia Rathburn proceeded to open the public hearing.

Maurice Debroff, resident to the north, stated that he had a problem with this variance because he felt it would be setting a serious precedent. He explained there existed a one-story dwelling on the site, and this owner was probably going to build 2-3 stories. He felt with such a building the scale of the neighborhood would be altered. He also stated that he felt there would be an impact on the environment as well. He felt if such a precedence was set, they would be altering the economic value of the lot dramatically. He did not think the City should be made totally of concrete. Therefore, he was opposed to this variance. He stated they should build on the footprint that was already there.

Mr. Tuthill stated that if he was a resident of the neighborhood he would have the same concerns. He further stated that the property would be about 50% green space. He proceeded to show a sketch of the proposed site.

Chair Patricia Rathburn remarked that they could not build on the same footprint, and if they could, they would be closer than the variance that was being requested. Mr. Tuthill confirmed and stated that was not the sensible thing to do. He reiterated that the hardship was not self-imposed, but caused by the land.

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

Binni Sweeney stated that she felt this was an example of a self-imposed hardship. She stated further that the lot was not small and a large house could be built. She continued stating that the shape of the lot would not preclude the applicant from building a lovely large home on it. Because there was now an encroachment, if the house was demolished it would not be grandfathered in and the same 25' setback would still be required. She felt it did not make sense that they were asking for less than what they had previously.

Stephen Buckley asked how much of a normal rectangular shaped lot was buildable. Mr. Tuthill believed it was about 75%, and stated that this lot would be

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about 50% buildable. He explained on the map the section of the site that they were asking for relief and emphasized the unusual shape of that area. He felt with the variance they could build on about 58% of the lot. Mr. Buckley asked how firm they were in the design or was it only tentative. Mr. Tuthill replied that the plans were firm, but there was some flexibility available. Mr. Buckley stated that the land was unique, and he felt the 25' setback all around did reduce the buildable area, and felt it was a hardship.

Robert Dunckel stated that on the reverse side of the revised notice was a map showing the parcel in question. He advised they were looking at block 3, and to the west were lots 1 and 2. He asked if the applicant also owned lots 1 and 2. Mr. Tuthill replied he did not. Robert Dunckel further stated that it appeared that Barcelona Drive went into a dead-end at the western boundary of lot 1, but then there was the cul-de-sac on the remaining area. Mr. Tuthill advised that the lot was in conflict with the survey, along with the plat map. Mr. Dunckel stated that it would be shown as a paved area on the survey, but he was still puzzled as to whether that portion of Barcelona Drive was a private driveway or a publicly dedicated right-of-way. He proceeded to explain the area in more detail with the map.

Birch Willey stated that he had walked the site and he felt it was a self-imposed hardship.

Al Massey asked when the land had been purchased. Mr. Tuthill replied it was about 4 months ago for the purpose of developing the site. Mr. Massey felt it was a self-imposed hardship. Mr. Tuthill stated that the same house could be built as proposed without the variance, but it would be denser, boxier and more compressed.

Binni Sweeney asked for comments from staff in regard to this matter. Mr. Brewton stated that one of the issues discussed was that there was less than 25' on the water sides, and the Code previous to 1997-1998 only referred to the 25' yard requirement for a rear yard on the waterway. The Commission reviewed the existing Code and had made a determination to amend the Code to make the requirement that all waterway yards were to be 25'.

Don Larson asked if the applicant would be permitted to demolish the existing structure but leave the north wall, and then build right on that line as previously built on. Mr. Dunckel replied that he did not think that could be done. Mr. Brewton stated that could not be done. He further stated that they would not recognize a partial demolition.

Stephen Buckley stated that he still felt the site was unique and could see this as an exception.

Chair Patricia Rathburn stated that she agreed that this was a unique site, and they were requesting less of a setback than what existed.

**Motion** made by Jon Albee and seconded by Binni Sweeney to close the public hearing. Board unanimously approved.

**Motion** made by Binni Sweeney and seconded by Don Larson to approve the application as presented. Roll call showed: YEAS: Don Larson, Stephen Buckley, and Patricia Rathburn. NAYS: Birch Willey, Al Massey, Binni Sweeney, and Jon Albee. Motion failed 3-4.

**3. APPEAL NO. 04-07**

**APPLICANT:** Cassandra Colby Tansey/World Fitness Association  
**LEGAL:** Hoys Business Center, P.B. 39, P. 22, Block 1, Lot 2  
**ZONING:** B-1 – Boulevard Business  
**STREET:** 5800 N. Federal Highway  
**ADDRESS:** Fort Lauderdale, FL

**APPEALING: Sec. 47-20.11** – To permit parking stall depth of 16' 10' 9/16" where the code requires a depth of 19' 1 1/8" for 45 degree parking and to permit an overall parking dimension of 46' 9 1/8" where the code requires a minimum overall dimension of 51' 2 1/8". **Sec. 47-20.2.B** – To exclude a 2<sup>nd</sup> floor area of 1,773 sq. ft. a 1<sup>st</sup> floor area of 1,540 sq. ft. and 233 sq. ft. hallway area from the parking calculations where the code requires that the parking calculations be based on the total gross floor area of the building. **Sec. 47-20.2.A** – To permit 31 parking spaces where the code requires a minimum 39 parking spaces for the proposed change of use. **Sec. 47-23.9.A.1** – To permit an 18.6' inter-district corridor yard where the Code requires a minimum 20' inter-district corridor yard.

Robert Dunckel asked if a parking reduction was in order from Planning and Zoning.

Greg Brewton, Zoning Administrator, confirmed and stated that the applicant had elected to appear before this Board instead of Planning and Zoning.

Mr. Dunckel asked if they had all the studies and materials which would otherwise have gone to Planning and Zoning for a parking reduction order. Mr. Brewton explained they did not and stated it was not listed as a requirement in the Code, but if the Board wanted such information, then such a request could be made.

All individuals wishing to speak on this item were sworn in.

Birch Willey advised that he had spoken to Alan Gabriel in regard to this matter. Don Larson stated that he also had spoken to Alan Gabriel. Binni Sweeney stated that she had spoken to one of the area neighbors. Patricia Rathburn

disclosed that she also had spoken to Alan Gabriel. Stephen Buckley advised that he also had spoken with Alan Gabriel.

Binni Sweeney asked what studies would be required of Planning and Zoning that were not submitted at this time. Mr. Brewton stated that in accordance with the Code, a parking study would be required for such a reduction and would have to be reviewed by an independent traffic engineer. The report would then be forward to the Planning and Zoning Board as it related to the impacts that the reduction would have on traffic within the area.

Binni Sweeney stated that she lived in this area and the traffic was bad and there was not sufficient parking. She asked whether this Board thought a traffic study would be in order. She reiterated that she was adamantly against any parking reduction.

Alan Gabriel, attorney, stated that before they could prepare a parking study, there were square footage questions regarding the building which needed to be addressed through the variance process. He further stated that certain areas of the property were not available for any type of use. He also stated that item #3 of the variance request stated: "To permit 31 parking spaces where the code requires a minimum 39 parking spaces for the proposed change of use." He stated that if the first 2 requests were granted, then this request would not be necessary. He explained if either of the first 2 requests were not granted, then he could go through the variance process to get a change of parking or do a parking study. He advised that Molly Hughes, transportation planner, was present tonight and had been hired to give expert testimony information regarding parking and traffic issues.

Robert Dunckel asked who the City's counter-part was in this scenario. He added that normally Molly Hughes served as the City's expert. Mr. Gabriel stated if it was deemed necessary to go that route. He stated the first item he was asking for was a reconfiguration of the parking area. He advised that the second request was to consider the floor area in the building and determine that it should

not be calculated for parking within the building space. He reiterated that the area was unusable. He stated the third request was for a reduction in parking which could be done in various ways. He added that the fourth request was for the inter-district corridor variance.

Robert Dunckel asked that in the event of a parking reduction order that the applicant's expert would meet with the City's expert. Mr. Brewton stated that their report would be reviewed by the Traffic Division. Robert Dunckel clarified that it would not be reviewed by an independent expert. Mr. Brewton explained it would be reviewed by an independent expert in accordance with the process for the applicant. Mr. Dunckel reiterated that Molly Hughes had rendered expert services on behalf of the City and explained that was the reason for his concern. He

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added that he was satisfied that Molly Hughes would not be representing both parties.

Chair Patricia Rathburn stated that if the Board decided that a parking reduction order should have been requested, the applicant still needed a variance to determine that the square footage of property would be for the first floor only because the second floor could not be used due to a calling by the Fire Marshall. In calculating the parking that space still had to be included, and therefore, she wanted to move forward with this matter.

Mr. Gabriel advised that this property had come before this Board for a temporary non-conforming use permit in July, 2003. At that time, the Board had granted a specific approval allowing for the instructional sports recreation of this property with 27 parking spaces. He stated there were presently 27 parking spaces and the building size had been calculated at that time at 10,000 sq. ft., but the building size was actually 9,788 sq. ft. He proceeded to show a photograph of the building as it existed in July, 2003. He explained there had been angled parking and little landscaping at the site. He further stated that the building had been used as a furniture retail store when built in the '70's, and then an area had been added for storage and warehousing. He explained that area was located in the rear of the property.

Mr. Gabriel explained that while going through the process to obtain the approvals for this business, which had opened in March, 2003, the Fire Marshall and Building Officials had stated that the second floor located in the rear of the building to the east, which was being used for storage, needed a new exit feature and without it the area would be inhabitable and unusable. Due to the expense of adding such a feature, it was determined to close that area of the building off. He explained the size of that area was 1,773 sq. ft, and part of the calculation requirement was that they had to add a separate new interior emergency fire exit within the area. He stated that area consisted of 233 sq. ft. and was unusable. If those 2 areas were reduced from the calculation of the 9,788 sq. ft, then they

would be down to the required 31 parking spaces. Presently, the front of the building was being utilized for instructional classes. He reiterated that there had been no complaints regarding parking or any other problems from the surrounding neighbors. He stated there was a letter of endorsement from the neighborhood association who was in support of the variance being requested with the condition that when the parking lot was redone, the lighting situation be addressed.

Mr. Gabriel stated they had attempted to figure out how they could attain additional parking spaces in the subject area. He reiterated that the building had been built in the '70's and could not be modified unless demolished, and no additional land was available for expansion. He announced there had been some

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discussion as to individuals crossing Federal Highway in order to reach this site. He stated they were not aware of that situation.

Mr. Gabriel further stated that the gross floor area was 9,788 sq. ft. which required 39 spaces, and they now had the existing 27 spaces. He explained if they excluded the uninhabitable area of 1,733 sq. ft., then 7 spaces could be eliminated from the requirement. Also, if the emergency hallway consisting of 233 sq. ft. was eliminated, then another parking space would be eliminated. He explained they had calculated the best means to put in the additional spaces. He explained further they wanted to add spaces, but felt they were still meeting the needs of their clientele at this time. He continued stating that space could possibly be taken from the existing landscaping, but since it was barren the neighborhood preferred the landscaping. He stated they deliberately had chosen not to intrude into the landscaped areas, but to work around it and make the lot more usable giving additional spaces.

Molly Hughes, traffic consultant, stated they were here to discuss the dimension variance that was needed in order to increase the parking lot by 4 spaces. She stated that they had conducted a parking study and such information would be submitted later on when necessary. She explained they had not gone in such a direction first because without a variance for the depth of the parking stall, they would not be able to increase the lot. She stated they were here this evening to debate the merits of shortening the dimension and making it possible to expand the lot by 4 spaces.

Binni Sweeney stated that the first item was technical in nature and she felt it should require a report from the City's parking engineer in regard to design and proper ingress and egress.

Mr. Brewton stated that normally that fell within the DRC process. Binni Sweeney stated that she did not feel the Board had enough expertise to make a determination as to the reduction, and she felt a report should be submitted by the City.

Molly Hughes stated that she would like to address such concerns. She explained they were not supplanting the remainder of the process by appearing before this Board.

Chair Patricia Rathburn clarified they were requesting a reduction in the length of the parking stall, and there was a concern that a report should be given by the City advising whether such a reduction would cause a safety issue. She reiterated they did not have the technical expert to render such a decision.

Molly Hughes explained that her testimony would be comparing the standards and demonstrate that this was commonly accepted.

Chair Patricia Rathburn reiterated that was the concern of this Board.

Robert Dunckel reiterated that Ms. Hughes stated they were not present to supplant the process, so he was becoming confused. He thought Mr. Gabriel was putting forth the proposition that if the variance, in regard to the second floor and hallway, was granted, then they would have the requisite number of spaces and they would not need to request a parking reduction. He stated if the variance was granted for the second floor, would there be any need for them to consider the geometrics of the parking spaces.

Molly Hughes confirmed that still had to be done and both were needed.

Binni Sweeney stated that she did not feel this Board was qualified to make such a decision. Chair Patricia Rathburn reiterated that she felt the Board was qualified to make this decision, but felt they needed some further information. Ms. Sweeney agreed.

Don Larson stated they needed to decide if the back portion of the building was to be calculated towards the parking requirement. He felt the length of the stall would be acceptable.

Binni Sweeney stated that when the Board had granted the temporary use for 1 year, it was done so with certain conditions. She stated that one of those conditions was that the use would be limited to personal trainer certification classes only, and not to be opened to the general public. Within a short time of that variance being granted, a large sign appeared in front of the building stating: "Membership Available." She reiterated that the use of the building was not for training, but was a gym opened to the public. She emphasized there was not sufficient parking at this time. She stated that people were walking across Federal Highway to gain access to the site.

Robert Dunckel stated they were beginning to cross the line of a Board member becoming a witness, and asked the Board to disregard Ms. Sweeney's comments because it was more in the nature of testimony than opinion.

Ms. Sweeney apologized and asked the Board to disregard her comments.

Mr. Gabriel asked where they were heading because he had witnesses present who worked at the facility that would testify no memberships were available to the public, and that the public was not permitted to use the facility. He stated he was confused because on one hand they were continuing with the variance request, but he was also being asked to present other documentation.

Chair Patricia Rathburn stated they in order to determine how much parking was needed and what variances were necessary, they needed to make a decision in regard to what space had to be calculated for such a decision. She stated she was comfortable to move forward with that matter, and added that she was also comfortable discussing the inter-district corridor. She felt there was a problem

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regarding the parking stall depth because input was desired by the Board from the City's traffic personnel.

Robert Dunckel asked in regard to the counting of the uninhabitable space, and asked if that factor would be considered by the Planning and Zoning Board in the case of a parking reduction.

Mr. Brewton confirmed. Chair Patricia Rathburn asked if they had the determination to disregard it without a variance being granted. Mr. Dunckel stated that was strictly up to the Board of Adjustment. Chair Patricia Rathburn clarified that before it could be determined as to how many parking spaces were needed, they had to see how this Board looked upon that issue.

Mr. Brewton stated that regardless of that, they were going to need the first variance being requested in regard to Sec. 47-20.11. Chair Patricia Rathburn stated that would not occur this evening because the Board wanted some additional information. Mr. Brewton stated that if the first variance was not discussed and approved, then in regard to the second request the number of spaces would change.

Mr. Gabriel explained that the 9,788 sq. ft. building required 39 parking spaces, and if he went before Planning and Zoning and requested a parking reduction, he would have to use the 39 figure. He stated he wanted to know the legitimate parking requirements of the building, and he felt it would be fair for the reduction to be granted as a variance. He further stated that if the area was ever utilized than the variance would go away.

Robert Dunckel stated that the other question which came to mind was whether it made more procedural sense to the Board to hear the requests all at once, or to hear them in a piecemeal fashion.

Chair Patricia Rathburn stated there was no point in them doing any further work if the Board wanted to count the entire building. In order for the applicant to know what direction to proceed, she felt the Board needed to decide what part of the building should be counted towards the parking calculation. She reiterated that if the Board did not grant the variance from the inter-district corridor, then there was no point in the applicant moving forward.

Al Massey asked if the Board had the authority to exclude counting space. Robert Dunckel explained that typically variances were given with respect to size, location and area, and were not granted with regard to procedural requirements that had to be reached in order to reach the geometrics of the parking. On the other hand, one could argue that this was in the nature of size, but he was troubled how a hardship would be found in that regard. He suggested that they move forward and weigh the arguments.



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Chair Patricia Rathburn stated that it appeared to be an interpretation issue. Mr. Dunckel disagreed. Chair Patricia Rathburn stated that she recalled they had done the same thing with the Pizza Place previously.

Mr. Brewton confirmed and stated that the only difference was that they had a solution which they presented to the Board stating that parking would be provided elsewhere. Chair Patricia Rathburn stated that was before they were going to use the other spot, but this applicant stated that they were not going to use that spot, and if they chose to do so, then the variance would go away.

Mr. Gabriel reiterated that they were saying they could not use the spot due to orders from the City. Mr. Dunckel agreed.

Don Larson stated that the Fire Marshall had closed down the rear portion of the building stating it could not be used, and had required that a fire exit be installed. He felt if the variance was granted and the company went out of business, then the variance would go away and a new business would be back to square one. Mr. Dunckel stated that the variance did not automatically go away with the sale of the business, and reiterated that it ran with the land. He felt that if the area they were seeking to exclude from the calculations rose to the dignity of usable space, then they would no longer be meeting the conditions for the variance, and then they would either lose it or return before the Board with a proposed solution. Mr. Gabriel agreed and reiterated that the space was not usable.

Mr. Dunckel stated that in regard to Anthony's Coal Fire Pizza, if they wanted to use some of the bays in the future, they would have to return for an overall solution.

Mr. Gabriel stated that the building would either have to be remodeled or torn down, and either way permitting would be required by the City. He further stated that there was a provision in the Code, Sec. 47-2.2.D, which took into consideration the floor area net, but he felt it did not apply in this case. He further stated that it did not count the inhabitable areas or areas not open for service to the public. He felt it showed that the Code already took into consideration when there were unusable areas, and it could be calculated out from the parking requirement. He stated this would not be harmful to anyone in the neighborhood, and was unique to this building.

Mr. Gabriel continued stating that the inter-district corridor situation was similar because the building had been built in the '70's and the corridor line was established later, and had not been modified in any fashion. He stated the 1.4' encroachment was a hardship that could not be changed, and it came forward now because of the change in use. He stated it was not heard last month because after the materials had been submitted, staff had reviewed the plans and realized the situation with the inter-district corridor line.

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Mr. Brewton asked if there had been an order from the Fire Marshall restricting the use of the area. Mr. Gabriel stated that the final plans identified the area as uninhabitable by the Building Official.

Chair Patricia Rathburn proceeded to open the public hearing.

Fred Williams stated that he, along with 14 business owners and the owners of the Imperial Square Shopping Center, were in opposition to the variances being requested. He explained they were located across the street from the subject property, and they felt there would be more of a parking problem. He proceeded to show photographs of the parking in the order.

Mr. Gabriel stated that such photographs were out of this order at this time because they were not discussing the parking, but the square footage of the building. Mr. Dunckel disagreed.

Chair Patricia Rathburn stated that Mr. Williams was speaking in regard to the entire issue.

Mr. Dunckel further stated that the granting of the variance had to consider neighborhood compatibility into the issue.

Chair Patricia Rathburn clarified that presently they were discussing whether or not part of the building should be considered for the parking calculation, and asked Mr. Williams if he had an opinion in regard to that matter.

Mr. Williams replied that he was in opposition of the entire situation. He referred the Board to the photographs depicting parking problems.

Mr. Gabriel asked Mr. Williams if he had been sworn in. Mr. Williams replied he had not been. Therefore, he was sworn in. Mr. Dunckel asked Mr. Williams if he swore that what he had previously testified to had been the truth. Mr. Williams confirmed.

Mr. Gabriel proceeded to ask Mr. Williams his name, if he had a business in the area, and what type of business he ran. He then asked Mr. Williams if he was concerned that the applicant might provide competition to his fitness business. Mr. Williams replied that if the applicant spoke the truth as to their type of business, then it would not be competition for him. Mr. Gabriel asked if Mr. Williams had been aware of any circumstances where membership had been issued to the public or to anyone he knew. Mr. Williams replied that when everyone appeared before the Board last year, there had been a lawyer representing the Plaza who had sent individuals into the facility prior to the meeting, and they presented information regarding available classes and membership, along with prices. Mr. Gabriel stated that Mr. Williams was suggesting to the Board that the facility was conducting business that had been prohibited by the permit they had and what they were requesting. Therefore, he

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asked if Mr. Williams had any knowledge that such membership and classes were taking place. Mr. Williams replied that he did not have such knowledge within the last week or so, but as of last year it was occurring. Mr. Gabriel stated he was talking within the last 6-8 months. Mr. Williams' answer was no.

Mr. Gabriel asked if Mr. Williams had sent individuals to the facility inquiring about membership. Mr. Williams stated that the lawyer who had represented the Plaza had done so as he explained. He added that the applicant at that meeting had stated they had changed their mind in that regard and no longer were offering such memberships. Mr. Gabriel asked if Mr. Williams had sent individuals making such inquiries at the facility recently. Mr. Williams stated he had not sent anyone over to the site. Mr. Gabriel stated it was good that Mr. Williams had not done so since it would be a matter of harassment between business owners. Mr. Gabriel asked if Mr. Williams had seen individuals crossing the street. Mr. Williams replied he had not, but the pictures depicted individuals doing so. He added that he had not taken the photograph, and did not know when it had been taken. Mr. Gabriel stated that his client had informed him that a graduation class had taken place and that could have been the circumstances being discussed. He added that she did not realize what a problem it had created, and therefore, would not do it again.

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.

Mr. Gabriel further stated that the plan had been modified and the staircase had been closed due to orders by the Fire Marshall. He proceeded to show on the map the emergency exit area being discussed.

Mr. Brewton asked if the layout had been the result of the request that the second floor not be utilized. Mr. Gabriel stated that going through the process, the Fire Marshall had issued his order and made his recommendation.

Jon Albee asked if the stairway area had been blocked off, and if so, how had it been done. Mr. Gabriel confirmed and explained that drywall had been installed. Mr. Albee stated that he was concerned because ownerships changed and someone without a permit could remove the drywall and utilize the area. He felt there was concern on the part of this Board regarding the parking reduction, and the information he reviewed appeared to indicate that membership at the site was taking place. He stated that would not be keeping within the order of the Board of Adjustment that had been issued in 2003. He felt they needed more information and that it should be presented in its entirety so the entire case could be heard.

**Motion** made by Jon Albee and seconded by Binni Sweeney to continue this case until April 14, 2004. Board unanimously approved.

**4. APPEAL NO. 04-12**

**APPLICANT:** Tops Revival

**LEGAL:** Riverside Park Addition, Block 13, Lots 4, 5, 6, 7, 8, 9, 10, 11, P.B. 10, P. 37, Lying North of the North right-of-way line of Davie Blvd. And being located at the Southeast corner of Lot 15; together with all of Lots 16 and 17 of Block 13, and Lots 1, 2, 3, and 4 of Block 14 lying North of the North right-of-way line of Davie Blvd. and being located at the Southeast corner of Lot 1 together with all of Lots 38 and 39.

**ZONING:** R-O (Residential Office)

**STREET:** 1801 Davie Blvd.

**ADDRESS:** Fort Lauderdale, FL

**APPEALING: Sec. 47-25.3C(iv)** – To permit a 6' high chain link fence where the Code requires a minimum 5' high buffer yard wall when non-residential property abuts residential property.

Greg Brewton announced that this item had been deferred until April 14, 2004.

**5. APPEAL NO. 04-13**

**APPLICANT:** ARB Realty, Inc. c/o Searock Inc.

**LEGAL:** Herzfeld's Addition to Lauderdale Harbors, Block 6, The East 405 feet of the West 985 feet, less the South 520 feet P.B. 35, P. 22

**ZONING:** B-1 (Boulevard Business)

**STREET:** 1445 SE 16 Street

**ADDRESS:** Fort Lauderdale, FL

**APPEALING: Sec. 47-22.3L** – To permit four (4) point-of-purchase signs where the code permits only two (2) point-of-purchase signs.

Rob McDougal stated that in order to adequately demonstrate their hardship, he needed to provide some background. He advised that Searock, Inc. a/k/a Allied Marine, had been conducting business from 1445 SE 16<sup>th</sup> Street for more than 10 years. He stated their sister company was Richard Bercham Yachts which dated back to the '50's. He further stated that in April, 2002, they had finalized a marketing merger with the two companies. He advised that the company was known as Allied Richard Bercham Marine Group with headquarters of both companies in this City. He advised further that they employed about 235 people with an annual payroll in excess of \$8 Million, and they paid about \$150,000 in taxes.

Mr. McDougal stated that they were not located on 17<sup>th</sup> Street and their visibility to the public was very limited. He stated their hardship stemmed from the limited traffic on 16<sup>th</sup> Street, and the Code limiting their ability to advertise their products.

He added that further down the street there were approximately 15 competitors. He stated they were proposing to add the advertising of 4 products instead of 2 on the building. He stated that they did advertise in other medias.

Jon Albee asked for the applicant to show the signs which they currently were using.

Binni Sweeney stated that the boats sold by the applicant were not types of boats that were purchased on an impulse, and therefore, she did not understand how there could be a hardship. Mr. McDougal agreed their boats were not impulse items, but in the same vein why were cars advertised. He reiterated that the industry had an impact on the area, and they wanted to do whatever possible to stay in business.

Chair Patricia Rathburn stated that she was sympathetic to the situation, but due to the applicant's location they did not have street traffic. She felt that made them slightly unique, but she felt they should request a continuance and return next month with the square footage of their signage.

Binni Sweeney asked if the applicant could erect a monument sign.

Roy Grinn stated they had a pole sign. Mr. Brewton explained that a ground sign was less in height. Mr. Grinn reiterated that previously they had removed 100 sq. ft. of the sign, and they were asking now for signs to identify their products.

Mr. Brewton stated they could not have a pole sign and a ground sign.

Chair Patricia Rathburn suggested the applicant take the time to determine how big the signs were to be and what was permitted, and return next month with such information.

**Motion** made by Binni Sweeney and seconded by Don Larson that this item be continued until April 14, 2004. Board unanimously approved.

**8. APPEAL NO. 04-17**

**APPLICANT:** George McKee  
**LEGAL:** Parcel "A-1", Tower Park Subdivision," according to the Plat Book 46, Page 49 of the Public Records of Broward County, Florida  
**ZONING:** RS-8 – Residential Single-Family/Low Medium Density  
**STREET:** 601 SW 26 Avenue  
**ADDRESS:** Fort Lauderdale, FL

**APPEALING: Sec. 47-5.31 (Table of Dimensional Requirements)** – To permit a flag lot with a width of 12.05' at the right-of-way for the construction of a proposed single-family dwelling where the code requires that a lot have a minimum width of 50'.

It was stated that this matter had appeared before the Board in 2001 to request permission the construction of a single-family dwelling on a flag lot with a 12.05' width at the right-of-way, where the Code required 50'. The variance was granted 7-0 at the September 12, 2001 Board of Adjustment meeting. He stated that he now had a contract for someone to purchase the property and for him to construct the single-family residence.

Binni Sweeney asked how many notices had been sent regarding this matter. She stated that previously the neighbors had spoken on this item. Mr. Brewton stated that 55 notices had been sent out and none had been returned.

The owner who had spoken previously was the individual whose property abutted the 12' driveway to the site, and that person no longer owned the property.

Robert Dunckel stated that when the variance had been granted in 2001, they had attached conditions. One condition was that there was to be a 25' front yard setback, a 15' rear yard, and a 5' side yard. He stated that assuming this Board was in favor of granting this variance, he asked if staff would recommend that the same conditions be included. Mr. Brewton confirmed.

**Motion** made by Don Larson and seconded by Al Massey to approve this request with the same conditions previously applied in 2001. Roll call showed: YEAS: Birch Willey, Al Massey, Don Larson, Stephen Buckley, Binni Sweeney, Jon Albee, and Patricia Rathburn. NAYS: None. Motion carried 7-0.

**10. APPEAL NO. 04-20**

**APPLICANT:** Mark Falconer  
**LEGAL:** **Riverside Estates Addition Revised Plat, Block 2, Lot 20, P.B. 37, P. 27**  
**ZONING:** **RS-8 (Residential Single Family/Low Medium Density)**  
**STREET:** **1431 SW 19 Ave**  
**ADDRESS:** **Fort Lauderdale, FL**

**APPEALING: Sec. 47-19.5** – Seeking a variance to permit the construction of a fence with a 0' setback from the property line where the Code requires an average 3' setback from the property line.

Sarah Stewart, consultant, stated this property had been built in 1955. A copy of the zoning history had been distributed regarding this property. She stated that a chain link fence had been erected in 1967 which faced a pool which had been built in 1973. She further stated that the map showed where the chain link fence was situated, and in blue it illustrated where the wood fence had been erected in 1973. She stated that when the pool had been built it had been done so in a free form with a free form Chattahoochee around it. In 1976 a permit was obtained and the Chattahoochee had been expanded to the property line on the north and

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west sides. She advised that the wood fence had been extended around the house in 2001. She stated that everything in blue represented the wood fence. She advised that part of the wood fence which had been constructed in 1973 was beginning to deteriorate. She stated that the applicant only wanted to replace that portion of the fence. She stated that he could not bring back the fence 3' due to the Chattahoochee being permitted to the property line.

Ms. Stewart stated they were requesting that Mr. Falconer be permitted to build his fence.

Jon Albee asked why this applicant was before this Board because this appeared to be a maintenance item. Mr. Brewton explained that when more than 50% of an area which was non-conforming was removed, the maintenance requirement was not being met. He stated that the fence ordinance had been amended about one year ago, and one of the things that had been in the Code was that if there was

something that prevented the movement of the fence or wall, then that person would be exempt. He stated they were not sure if it had been removed intentionally. He advised that he had spoken with Liz Holt who had been the staff person involved, and she believed it was intended to be removed. He stated that in speaking with one of the committee members today, they had been of the opinion that it was not to be removed. Therefore, they were still attempting to finalize whether that had been part of the process.

Chair Patricia Rathburn proceeded to open the public hearing. There being no individuals who wished to speak on the matter, the public hearing was closed and discussion was brought back to the Board.

**Motion** made by Jon Albee and seconded by Binni Sweeney to close the public hearing. Board unanimously approved.

**Motion** made by Jon Albee and seconded by Binni Sweeney to approve the request as submitted. Roll call showed: YEAS: Birch Willey, Al Massey, Don Larson, Stephen Buckley, Binni Sweeney, Jon Albee, and Patricia Rathburn. NAYS: None. Motion carried 7-0.

**11. APPEAL NO. 04-21**

**APPLICANT:** Parking Company of America  
**LEGAL:** Lot 37 less N. 15' together with Lots 34, 38 & 39, Block 19 of Bryan Subdivision of Blocks 5, 8 & 19 of Town of Fort Lauderdale P.B. 1, P. 18  
**ZONING:** RAC-WMU – Regional Activity Center – West Mixed Use  
**STREET:** 500 West Broward Blvd  
**ADDRESS:** Fort Lauderdale, FL

**APPEALING: Sec. 47-24.12 A. (10)** – To grant an extension to a previous Board of Adjustment approval to: **Sec. 47-13.20C.1.d** – To permit a 15' setback of a vehicular use area from an image street (Broward Blvd), where the code requires a 20' setback. **Sec. 47-21.9.A.2.a** – To permit a 2' perimeter landscape area where code requires a minimum perimeter landscape area of 5' when abutting a street. **Sec. 47-21.9.A.2.b** – To permit a landscape area of 0.5' where the code requires an area of 2 ½' when not abutting a street. **Sec. 47-21.9.A.3** – To permit 710 sq. ft. of interior landscape area where code requires an area of 960 sq. ft.

Mitchell Bierman, attorney, stated that Bill Keith, a professional engineer, was with him this evening who had prepared the site plan. He added that Bill Smart was also present who was a resident in support of this request. He stated they were seeking an extension of 5 variances, and 4 had been listed on the agenda. He reiterated that one year ago this Board had granted 5 variances which were necessary to operate a parking lot on this site. He explained that the 5<sup>th</sup> variance

was that there was a requirement on an image street that 75% of the frontage have a building wall 10' from the frontage of Broward Boulevard.

Chair Patricia Rathburn clarified that the package submitted had not contained everything that was needed by the applicant. Mr. Bierman stated that the title had not included all 5 variances. He stated that he and Mr. Dunckel had discussed the matter earlier.

Robert Dunckel stated that was not entirely accurate, and stated they had talked generally as to whether the applicant needed an extension or not. He further stated that they had not discussed the fact that what had been advertised was a request for extensions on 4 variances, but 5 had originally been granted. Since the 5<sup>th</sup> variance had not been advertised, the Board lacked subject matter jurisdiction to do anything this evening. He suggested that possibly the applicant might want to return with all the pertinent information.

Chair Patricia Rathburn stated that there were 5 appeals listed on the agenda, and asked if there were 6 and one had not been advertised. Mr. Bierman stated there were only 5 variances. Chair Patricia Rathburn proceeded to read the 5 appeals as listed.

Chair Patricia Rathburn asked for a motion so that this item could be properly advertised and return at a later date.

Mr. Bierman stated that he would appreciate that and they would be pleased, but there was one small issue because this was a time sensitive matter. He explained that the variances would expire on April 8, 2004, and this Board was not scheduled to meet until April 14, 2004. He asked if there was some procedural way to preserve the status quo until the next meeting. Otherwise, he stated as of April 8, 2004, the applicant would be in violation.



Chair Patricia Rathburn stated that if the Board voted to extend the variances for a period of one month, the 5<sup>th</sup> variance would still expire. Mr. Dunckel confirmed. He stated that in reviewing the minutes of February 3, 2003, he was not sure what was missing.

Mr. Bierman stated in that case they would be happy to move forward.

Mr. Willey disclosed that he had spoken with Kim Cavendish regarding this matter.

Mr. Dunckel reiterated that in the minutes of February 3, 2003, he stated that the matter had been presented to the Board in March, and an additional item had been listed which was Sec. 47-13.28 which was not in the minutes from February 3, 2003. Therefore, he concluded that they must have looked at it in February

and saw that one more was needed, and it had been amended in March. Mr. Brewton confirmed. Mr. Dunckel stated that the Board could grant a one-month extension and have the applicant appear in April.

Chair Patricia Rathburn stated that she would entertain a motion to grant a temporary extension until the Board's meeting on April 14, 2004.

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

**Motion** made by Jon Albee and seconded by Binni Sweeney to close the public hearing. Board unanimously approved.

**Motion** made by Jon Albee and seconded by Binni Sweeney to grant an extension of the variances as set forth in Appeal Sec. 47-24.21 for a period of one month until April 14, 2004. Roll call showed: YEAS: Birch Willey, Al Massey, Don Larson, Stephen Buckley, Binni Sweeney, Jon Albee, and Patricia Rathburn. NAYS: None. Motion carried 7-0.

**"For the Good of the City"**

No report or comment given.

**Motion** made by Jon Albee and seconded by Don Larson to adjourn the meeting.

There being no further business to come before this Board, the meeting was adjourned at approximately 11:00 p.m.

CHAIRMAN

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Patricia Rathburn

ATTEST:

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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.

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