

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

BOARD MEMBERS

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

ALTERNATES

Scott Strawbridge	A
Al Massey	P
Jon Albee	P

STAFF

Robert Dunckel, City Attorney
Greg Brewton, Zoning Administrator
Charlie Wygant

Margaret A. D'Alessio, Recording Secretary

GUESTS

Steve Tilbrook	Chris Petera	Carol S. Waxler
Roy Green	Bud Wood	Rob McDougal
Mike Noell	Chris Wainwright	Edward Curtis
Wil Trower	John P. Brennan	George Morgan
Bill Keith	Craig Bencz	Caroline Bass
Brett Bass	Paul Wrailley	Mike Sanchez
John Hurle	Shirley Small	Paul Flanagan
Frank George	Corie Herschelman	Sydney Brown
Patrick Rizen	David Eichholtz	George Niarchos
Kent Ellen	Mitchell Beerman	

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.

4. APPEAL NO. 04-16

APPLICANT: Main Street One Financial Plaza Ltd.
LEGAL: Town of Fort Lauderdale, Block 14, Lot 20 the South 300' and the South 300' of the West 16' of Lot 21, less the South 15' 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 building identification other than the approved building identification located on the wall of the principal structure.

Chair Patricia Rathburn announced that this item had been deferred until May, 2004.

9. APPEAL NO. 04-22

APPLICANT: Emil Pawuk
LEGAL: "Las Olas by The Sea", Lots 5, 6, 7, 8, P.B. 1, P. 16
ZONING: SBMHA (South Beach Marina and Hotel Area)
STREET: 401-435 Seabreeze Blvd.
ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47-24.12A.6 – To permit a temporary use approval for a retail operation as part of the existing ground floor restaurant.

Chair Patricia Rathburn stated that there had been questions in regard to this item in connection with the notice provision. She stated that she was going to have representatives of this item appear first before the Board so that if it was not heard this evening, then everyone could leave.

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Binni Sweeney stated that she did not see it because the wrong address had been listed, and asked for the matter to be deferred until May 12, 2004.

Greg Brewton, Zoning Administrator, stated that the notices had the same address, but the legal description and the map on the back of the notice had the correct location listed. He added that had been an oversight by staff. He further stated that the agenda had the correct address.

Chair Patricia Rathburn further stated that if someone went to look for this site based solely on the address listed on the notice, one would find an office building Downtown instead of the site on the Beach. Mr. Brewton confirmed.

Fred Stresau stated that he thought the public notice was correct, but if a Board member had trouble finding the location and did not see it, then he felt it would be difficult to ask them to vote on something they had not seen.

Birch Willey stated that he felt they needed to take the Board member's remarks about this matter into consideration since they had not been able to find the site.

Motion made by Birch Willey and seconded by Binni Sweeney to hear this matter even though one address had been incorrect.

Fred Stresau suggested that Binni Sweeney could step down and an alternate could replace her in regard to this one item.

Binni Sweeney withdrew her second on the motion.

Don Larson seconded the motion.

Roll call showed: YEAS: Fred Stresau, Don Larson, Birch Willey, Gus Carbonell, Al Massey, and Jon Albee, NAYS: Patricia Rathburn. Motion carried 6-1.

Binni Sweeney returned to the Board.

Approval of Minutes for March 10, 2004

Fred Stresau stated that he had mentioned to the recording secretary that there were problems with spacing in the minutes. She had reported that when the minutes went from her to City staff spacing problems occurred during transmitting, and the matter would be looked into and resolved.

Motion made by Fred Stresau and seconded by Binni Sweeney to approve the minutes of the March 10, 2004 Board of Adjustment Workshop Meeting. Board unanimously approved.

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Motion made by Birch Willey and seconded by Binni Sweeney to approve the minutes of the March 10, 2004 Board of Adjustment Regular Meeting. Board unanimously approved.

Greg Brewton stated that in regard to the Colby case which had been continued to this month, staff had met with the applicant's representatives and they were attempting to gather the information requested by the Board. He advised that the item had not been put on tonight's agenda, but it would be brought back before the Board when the requested information became available, and then the item would be re-noticed.

Chair Patricia Rathburn asked if the Board needed to take any action in regard to that case in order to defer it indefinitely.

Robert Dunckel stated that it would be appropriate for the Board to continue the item to an indefinite time.

Motion made by Fred Stresau and seconded by Don Larson to defer the item to an indefinite time. Board unanimously approved.

1. 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 abutted residential property.

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

Chris Perera, Executive Director of Tops Revival and Just for Kids Academy, stated that they were a 501-3(c) organization that served children in Broward County. She explained they had applied for a variance regarding the buffer wall due to safety reasons. She further stated they had taken over a building which

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had been abandoned and utilized for illegal activities, and in taking it over they intended to provide a safe and secure environment for the children. She stated they had a chain link fence surrounding the property, but there was illegal activity still going on in the area that they needed to be aware of. She stated there was now a buffer wall which divided them from Speedy's and there was no visibility provided.

Ms. Perera stated that there was a 24-hour convenience store located at 1881 Davie Boulevard and there were many problems with illegal activities. She advised that they had installed cameras so they could be aware of what was going on at the site, and they had worked with the Raiders. She stated that if a block of that visibility was to be erected, then they would not be aware of what

was occurring at that site and would not be able to remove the children from the situation if warranted. She stated that the buffer wall only affected part of the property which was zoned R-O which was not visible from the street and buffered some duplexes.

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

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

Birch Willey stated that the playground was very nice and the police reports supported the activity occurring in the area.

Binni Sweeney stated that she did not understand why a higher wall would not be better, especially since the children were able to see what was taking place in the area. She felt if they could not see what was going on, then it would be a better environment for them.

Ms. Perera replied that their fears were that activities would occur on this side the same as where the buffer wall was located. She explained the building had been abandoned in the past, and their fear was that they did not have the security and the wall would only encourage such illegal activities. She remarked there was easy access to I-95. She felt their presence in the area at least curtailed such activities for part of the time.

Gus Carbonell asked who owned the property where the wall was to be located. Ms. Perera stated they were individual apartments with constant changing of clientele, and were the problem in the area.

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Fred Stresau stated that since the property was zoned RO was there anything that would give the school an exception to what was normally required to separate RO from residential property.

Mr. Brewton stated that the exception could only come by way of a variance.

Jon Albee stated he was familiar with the property and there had been problems for a long time in the area. He felt they were making a good case in order to be able to see what was occurring at the site. He stated that he was concerned because a variance ran with the land, and if a fence went forward today, which he felt was a good idea in this case, then it would be there forever. He stated that hopefully the neighborhood would turn around, and then the property would have to come into compliance, and asked if the variance could be based on the use of the land.

Robert Dunckel stated that it would not be appropriate to have the variance run with the owner of the property. However, other mechanisms were available, and the variance could run for a 5-10 year period of time, or it could run with the use of the property.

Jon Albee stated there had been schools in the area over the past years, and he felt there would not be a change of use for the property. Ms. Perera stated she was not anticipating any change in use of the land. Jon Albee remarked there was a real need for such a service in this neighborhood. Ms. Perera remarked that there had been a private school previously, but the area did not warrant such an establishment. Jon Albee stated if the Board put a time limit on the variance, then the applicant could return and the Board could revisit the matter.

Robert Dunckel reiterated the applicant would come back and the Board would revisit the matter, and if the applicant did not reappear before this Board, then the variance would expire and the property would be in violation. He further stated the incentive would be for the applicant to return before the Board and seek an extension based on the existing conditions.

Don Larson suggested that the variance be given based on the use of the property, and then the applicant would not have to come back before this Board.

Binni Sweeney asked what would happen if the neighborhood improved because the individuals in the apartments had the right to a buffer. Fred Stresau stated that hopefully the neighborhood was going to get better, and the purpose of the buffer wall was so the people who had the more protected use would not have to view the playground. He felt that consideration should be given and pointed out to the Board they had a similar case where an applicant asked for an 8' wall instead of a 5' or 6' wall due to wanting protection. He reiterated that request had been approved by this Board because it appeared the applicant wanted further protection from the abutting neighborhood.

Jon Albee stated that was a good point, but it was not this Board's job to design such things. He further stated that it could be an alternative, but on the other hand having been a school teacher he knew they wanted to have their eyes on the children and what was taking place on the other side of the fence. He felt that was very critical and leaned toward the fence idea, but with a time limitation.

Ms. Perera stated that the school was in the area before the other buildings. She stated that she had no objection to a 5-year limitation, and also hoped that the neighborhood would improve. She stated that her major concern was that she could not see what was taking place at that property.

Motion made by Jon Albee and seconded by Birch Willey to approve this application with the stipulation that the variance run for a period of 5 years. Board unanimously approved. Roll call showed: YEAS: Birch Willey, Gus Carbonell, Jon Albee and Patricia Rathburn. NAYS: Fred Stresau, Don Larson, and Binni Sweeney. Motion failed 4-3

Don Larson stated that he felt 5 years was too short and suggested that the time limit be moved to 10 years, and that was why he had not voted in favor of the previous motion.

Fred Stresau stated that the applicant could come back for an extension, and felt extending the period of time would be jeopardizing the residents in the areas. Fred Stresau reiterated that the school was there, but he was sure the zoning for the RO and residential had been in place. Ms. Perera stated that she had some old documentation showing that it had been zoned CF and then changed to RO.

Jon Albee stated that he felt that 10 years was a long time.

Chair Patricia Rathburn stated that there might be a motion to reconsider the previous vote based on the comments made by Don Larson.

Motion made by Don Larson and seconded by Jon Albee to reconsider the previous vote. Board unanimously approved.

Jon Albee reiterated that the variance would run for a period of 5 years, and any time during that period the applicant could appear before the Board and request permission to erect the buffer wall due to changes in the area.

Motion made by Jon Albee and seconded by Don Larson to approve the variance for 5 years, and then the applicant could reappear at any time before the Board and request that a wall be erected. Roll call showed: YEAS: Don Larson, Birch Willey, Gus Carbonell, Jon Albee, and Patricia Rathburn. NAYS: Binni Sweeney and Fred Stresau. Motion carried 5-2.

2. APPEAL NO. 04-13

APPLICANT: ARB Realty, Inc. c/o Searock Inc.
LEGAL: Herzfeld's Addition to Lauderdale Harbors, Block 6, the East 405' of the West 985' less the South 520', P.B. 35, P. 22
ZONING: B-1 (Boulevard Business)
STREET: 1445 SW 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.

Chair Patricia Rathburn announced that this matter was being continued from the March 10, 2004 meeting.

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

Carol Waxler, Vice-President and General Counsel for Searock, Inc., stated that as a matter of history yacht sales had been conducted at this site since the '60's. She stated that Allied Marine Group had occupied this site since 1993, and added that the property was unique because the rear of the property was open to the River. She remarked that yachts up to 100' could be maintained in the rear of the building. She stated they also sold new and used vessels and provided services for such vessels employing approximately 250 people. She stated that they sold 4 new boat products.

Ms. Waxler stated they were requesting a variance in order to place 4 point-of-purchase product signs on the facility. She stated that their showroom was a destination for the marine industry, and it was important to their business to be able to let the buying public know what they had for sale. She added that individuals driving down the street were not aware of the products being sold, and therefore, they were at a disadvantage in only advertising two product lines. She proceeded to show photographs of the site. She explained that there was a restriction on the property placed by this Board in 1993 allowing them to only use the southern portion of the site for advertisement. She explained further they had about 8,500 sq. ft. of building frontage, and the signs being requested would only consist of 141 sq. ft. She stated they were requesting 1.7% of the entire building to be used for point-of-purchase product signs. She explained the signs would be flush with the building and would not be illuminated, and would only be visible from 16th Street. She remarked they faced the rear of a Publix store, and therefore, they would not be impacting any other commercial use or residences in the area.

Ms. Waxler continued stating that the hardship for the variance was the loss of their ability to sell products for which they were in the business of doing. She reiterated that losing half of their ability to advertise what they were selling would

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be a negative impact to the business, and also cause them to have to choose between the products they would advertise. She advised that they could possibly lose the product lines that were not being advertised.

Chair Patricia Rathburn proceeded to open the public hearing.

Brad Wood, Vice-President of Merlwood & Associates Yacht Brokerage and Wood Development Company, stated they owned the building across the street from Allied Marine. He stated that he disagreed with the statement made that they were losing sales due to inadequate signage. He did not think anyone purchased a yacht due to just driving by, and major due diligence was done before making such a large purchase. He stated they intended to build an office building at their site and would be coming under the same guidelines as this business, and therefore, it would not be fair if they did not receive the same

consideration from this Board for their business. He stated they were located behind Publix loading docks and it was not a major thoroughfare for clientele. He did not feel that any brokerage company would state that they sold vessels due to a drive-by purchase. He stated that all such companies did advertising in magazines, and had repeat clientele, and word-of-mouth business.

Ms. Waxler stated this was on the way to Bimini Boatyard, and she reiterated that individuals did see the advertising and came in and made purchases. She stated if there were no signs, the individuals would not know what products were being offered.

Robert McDougal stated that their products ranged in price, and reiterated that people did come into the business and looked at boats. He felt if they could not advertise the products they represented, then they would have a difficult time. He added they did not rely on any one mode of advertising, and he stated that people went down 16th Street and visited their competitors.

Chair Patricia Rathburn asked if the products could all be part of the name of the building. Chuck Wygant stated that it had to be the name of the business on the building.

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.

Gus Carbonell asked if the building was leased to various tenants, then could there be additional signs for each tenant. Greg Brewton stated that if there were multiple tenants, then additional signs would be permitted.

Ms. Waxler stated that the maximum square footage for signs was 300 sq. ft. and they were at 141 sq. ft, and added they had a stand-alone sign which was under

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separate guidelines. She stated they were requesting something tasteful well within the limited footage.

Gus Carbonell asked what was the material of the letters on the building. Ms. Waxler replied they were made of PVC. Gus Carbonell asked how car dealerships were governed in regard to their signs. Greg Brewton explained that he was not certain such businesses were in compliance with the Code, and should not be used as an example. He reiterated that they did have separate buildings.

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

Binni Sweeney proceeded to read part of criteria (c) as follows:

“It should be of no importance to this criterion that the denial of a variance sought might deny to the owner a more profitable use of the property, provided the provisions of the ULDR still allowed reasonable use of the property.”

Binni Sweeney stated that they were proving the fact in this application that they were requesting the variance due to an economic hardship, which was not one of the criteria to be considered. She stated that she had visited the site and agreed it was a large building comprised mostly of windows. She felt the effect would be having one long streamer sign, and she felt the rules existed for a reason. She remarked that many requests for sign variances were denied because the buildings would consist of nothing but signs. She stated she was not in support of this application. She reiterated that she did not think large purchases for their products were made from drive-bys.

Ms. Waxler stated that she did not think it was an impulse of the individuals to buy a boat, but was an impulse regarding brands and availability. She added it was a competitive market, and if they subleased their building would be distasteful.

Motion made by Birch Willey and seconded by Jon Albee to approve the variance as requested.

Chair Patricia Rathburn stated that she felt these individuals had come before this Board in order to conduct their business in the proper manner. She felt there were 3 different ways this company could get what they wanted by not doing things the right way. She felt they should be commended in their efforts.

Birch Willey agreed with the comments made by the Chairman, but stated he was not in support of the request.

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Roll call showed: YEAS: Gus Carbonell and Patricia Rathburn. NAYS: Birch Willey, Binni Sweeney, Jon Albee, Fred Stresau, and Don Larson. Motion failed 2-5.

3. 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. 2nd floor addition to an existing single-family structure where the Code requires a minimum 5' side yard.

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

Chair Patricia Rathburn stated that this matter was being continued from the March 10, 2004 meeting.

Mike Noell, architect, stated that they were requesting a variance in order to build a second story on an existing garage encroaching 3" into the existing setback. He explained they had been before this Board last month and the matter had been tabled in order for them to bring back 3 items requested by a neighbor, Mr. Curtis. He stated the plans had been revised and specifications submitted for the air conditioning unit, pool pump, and site wall.

Edward Curtis, abutting neighbor, stated they had agreed to the present conditions and felt they would benefit his property, especially from a noise standpoint. He urged the Board to approve this request.

Robert Dunckel asked if the Chair could read the conditions into the record, and added he had a written copy that would be incorporated into the Final Order.

Mr. Curtis proceeded to read the conditions into the record as follows:

1. Change the existing packaged air conditioning unit to a Dave Lenox Signature HSX-15 air conditioner, the quietest central air conditioner that one could buy.
2. Change the existing pool pump to a quiet whisper flow energy efficient pump.
3. Add a 6' wall above finished grade, a CMU wall, 8" inside the east property line. The new wall is 51'8", the length of the existing residence and would have a painted stucco finish.

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Chair Patricia Rathburn asked if the variance was contingent upon putting in these products, when those products broke down and parts were no longer available would this variance lapse.

Robert Dunckel stated he did not think that was the intent behind it, but it was a valid question to raise.

Fred Stresau stated they would have to appear before this Board if such products were no longer available. Chair Patricia Rathburn stated that a successor product with equal or better standards could be used.

Mr. Noell explained that part of their submittal had stated that the newer existing air conditioner units were to be Lenox Signature HSX-15 air conditioner, or equal to, or better. Fred Stresau stated that such language would be sufficient. Mr. Noell reiterated that the same language was included for the pump also.

Motion made by Fred Stresau 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 this application, including the conditions read into the record, along with the language that units of equal or better standards would be used as replacements.

Jon Albee remarked that this was interesting and wondered how it was going to be enforced. He added that a variance ran with the land. Binni Sweeney stated that if it was not done right, then they would have to reappear before the Board.

Roll call showed: YEAS: Binni Sweeney, Gus Carbonell, Fred Stresau, Don Larson, Birch Willey and Patricia Rathburn. NAYS: Jon Albee. Motion carried 6-1.

4. 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 (S.E. 17 St. Causeway) and along the Westerly Right-of-Way line for Eisenhower Blvd.

ZONING: B-1 (Boulevard Business)

STREET: 1680 SE 17 Street

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.

Chair Patricia Rathburn announced that this item had been deferred from the March 10, 2004 meeting.

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

Chair Patricia Rathburn stated that conversations were held earlier today in regard to there being some confusion as to the definition of a reader board.

Chuck Wygant, Zoning Plans Examiner, explained that they were requesting a stationery changeable copy board, such as advertising sale items. He explained further it was not a message center sign which was comprised of moving copy.

George Morgan, Morgan Real Estate, stated they were the developers of the property for the Walgreen's at 17th Street Causeway and Eisenhower Boulevard. He proceeded to show photographs of the various sites where Walgreens were located. He added there had been little or no consistency to the signs which had been approved because the Code gave a great deal of latitude as to how signs could be designed. Signs were restricted in regard to height, square footage, but little about the copy of the sign.

Chair Patricia Rathburn stated that Mr. Morgan needed to address the issue at hand. She remarked that he had cited examples of businesses in violation of the Code, but he had not explained why they should be permitted a reader board. Mr. Morgan stated that it was not his belief that it was not permitted by Code. Chair Patricia Rathburn explained that would be an interpretation issue and not a variance issue. She added that they had not advertised the matter as an interpretation issue. She explained that in order to obtain the variance, the applicant needed to show a hardship. Mr. Morgan explained that the hardship was the inconsistency by which the Code had been applied throughout the City.

Mr. Morgan reiterated that there was nothing within the sign code that prohibited a reader board.

Greg Brewton stated that they were venturing into an interpretation issue. He explained it was staff's interpretation that since it was not mentioned as a permitted activity, it was thereby prohibited and supported by language in the Code. He stated there might be an instance whereby an applicant might want to challenge it, but staff was firm in their interpretation.

Chair Patricia Rathburn clarified that the applicant was disagreeing with staff's interpretation as to the application of the sign code. She explained that would involve a different hearing. Mr. Morgan stated he understood, but the City was permitting reader board signs on public buildings and at parks within the City. He reiterated that what they were dealing with was different staff interpretation. Chair Patricia Rathburn emphasized that Mr. Morgan was arguing an interpretation issue, and she did not say she would disagree if they were hearing an interpretation matter. She reiterated that a variance was being requested and the applicant had to show a hardship at this site that would warrant such a variance.

Mr. Morgan stated that he found it hard to believe that these signs had been erected without permits. Fred Stresau stated that staff was stating if that was the reason Mr. Morgan was here, then those boards were in violation of the Code. Mr. Brewton confirmed and stated he did not have the statistics in regard to the signs being shown as examples. He explained that the current zoning staff, along with Charles Wygant, were responsible for 99.9% of the signs permitted during the last few years and such signs shown were not accepted by Code. He explained that some had been erected and possibly mistakes were made during inspections, but he was not sure. He stated that the City Planning and Review Staff, along with zoning, did not permit changeable copy signs.

Fred Stresau clarified that the Board could either hear the case and vote, or the applicant could return and ask for an interpretation. Mr. Brewton stated that the Board was possibly hearing two different issues in regard to this matter. He stated that Mr. Morgan was stating that previous interpretation did not interpret the Code as it was being understood today. Fred Stresau stated that if the applicant wanted to save money, they might want to continue the item until a meeting was held with staff. Mr. Brewton stated that in many instances in the Code where it had been interpreted in the past, they had gone back and showed misinterpretation and it was then applied accordingly. He explained that he had become Zoning Administrator 6-8 years ago was because the Code had been misapplied and the City wanted to change the entire zoning staff and review the Code and apply it to the best of their knowledge. He explained that the Code had been rewritten in 1997 and adopted in 1998, and therefore, were firm in their belief that they were interpreting it correctly. He stated it would be up to the Board to be the arbitrator in this instance, if the Board felt that staff was misinterpreting the Code.

Robert Dunckel suggested that the applicant possibly entertain continuance of this item, and return next month with an interpretation issue. If he was unsuccessful, then he could request a variance.

Motion made by Binni Sweeney and seconded by Fred Stresau to continue this item until May 12, 2004. Board unanimously approved.

6. APPEAL NO. 04-21

APPLICANT:	<u>Parking Company of America</u>
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. **Sec. 47-13.20, I & Sec. 47-13.20.H.1.a** – To maintain a parking lot without a building on an image street where the Code requires a minimum of 75% of the linear frontage on an image street be occupied by a ground floor building wall 10' from the property line.

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

Mitchell Beerman, attorney, stated that he was representing Parking Company of America. He proceeded to introduce various individuals that were present with him this evening. He added that Kim Cavendish, President and Director of the Museum of Discovery and Science had submitted a letter in support of this application since she was unable to attend tonight's meeting.

Mr. Beerman stated they were requesting to extend the 5 variances they had received last year which permitted a parking lot to be operated on the site identified on the map and located in front of the parking garage serving the Performing Arts Center. He explained they wanted to continue having the interim use of the parking lot while the area continued to undergo preparation for redevelopment.

Mr. Beerman explained that the original application had been submitted in 2003 and variances had been sought so as to use the property as a parking lot for a period of 5 years. He stated the variance had been granted for one year, but the application had been for 5 years due to the considerations that dealt with the redevelopment of this property. He explained they needed more time in order to complete the assemblage of a deal to develop the property. Two parcels had been acquired to the east of the site, but had been unable to acquire the Rosen property which was located to the west. He stated the redevelopment of this property would be an enhancement to the neighborhood. He explained that 4 of the variances were minor technical ones needed to maximize the parking. He felt the last variance request was the real use one requiring a building wall along 75% of the frontage. He explained having a surface parking lot did not allow them to meet such a requirement.

Mr. Beerman stated that the family who owned this property had invested great amounts of money in order to clean up the site. He proceeded to show before and after photographs of the site. He explained that the property had been used for repair of automobiles and had been in derelict condition.

Chair Patricia Rathburn asked why this matter had been deferred. Mr. Beerman stated it had been deferred due to a notice problem. Chair Patricia Rathburn asked if Mr. Beerman had any new information to give to the Board.

Mr. Beerman felt the photographs were significant because in the process of preparing the site for redevelopment, they had made progress in making it an enhancement to the area. He stated he understood the Board's reluctance in grant another extension, but now they had individuals interested in the property and development could occur in the next 1-2 years. Until that happened, an interim use was needed to prevent the property from becoming an eyesore once again. He stated vacant lots made it harder for them to market for a buyer for redevelopment.

Mr. Beerman stated that the hardship was that the lot was too small for development without an assemblage of additional properties. He stated that past offers consisted of such things as Burger Kings, and they did not want such businesses in the area. He explained they wanted something that would enhance the area and increase the property values. He explained they were discussing the issue with the Performing Arts Center at this time since they were interested in acquiring the property, along with discussions with Flagler Holding Group. He stated their proposal still covered a 16-18 month time line before construction of any type of redevelopment. He believed that time line was realistic for good development.

Mr. Beerman explained the Code stated that surface parking was permitted in the area or a garage. He stated he did not understand how that could be interpreted to have a building wall on a surface parking lot because it was inconsistent. He stated further that the bottom line was that there was no other commercial reasonable use for the site, nor any higher or better use for purposes of the City until good redevelopment could occur. He felt that a two-year extension would be more realistic. He reiterated that they cared about the property, but the process to redevelop the area would take time.

Bill Keith, Engineer, stated that he felt this was a unique situation. He stated that some of the variances requested could be resolved easily. He stated the issue of the 75% wall along Broward Boulevard was not a reasonable request. He urged the Board to grant this request.

Chair Patricia Rathburn proceeded to open the public hearing. 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 Fred Stresau and seconded by Don Larson to close the public hearing. Board unanimously approved.

Fred Stresau stated that he wanted someone on the development team to explain to the Board that while being a good neighbor, what was their status in the last 3-4 years in regard to operating, and what fines had been imposed by Code Enforcement.

Mr. Beerman explained there had been a problem about 1 ½ years ago because he felt there had been a less responsible attorney who had not advised their client properly of code violations. He stated that a 50% mitigation had been given regarding the fines, and they were paid without question. He felt the problem was that there had been a temporary non-conforming use which had lapsed but they had not been advised to seek a renewal. He believed there was a problem of lawyer/client communication. He urged this Board to consider this application as submitted.

Fred Stresau stated that years ago the owner had come before this Board asking to develop a piece of property where the City Commission did not want surface parking. He further stated that issues had been solved, and this Board had approved a one-year temporary use permit. He added that they had been cautioned by various members of this Board that they would have one year from the time the development order was filed and signed to use the property as a surface parking lot, but would not be allowed to continue to use it any longer than that time. He continued stating that the applicant kept returning and asking for more and more in the face of what the Commission had stated they did not want in that area. He added that he did not approve the 75% requirement in the Code, but that was how it read for the Downtown Core. Perhaps, staff should be more specific as to what the Code permitted in that area.

Greg Brewton stated that he was assuming that Mr. Stresau was responding to the comment regarding parking facilities being allowed on an image street. He stated that the description of how parking facilities were defined could be a surface parking facility or a parking garage. He added that all development in the past in conjunction with parking had specific Code requirements for image streets, and how the City wanted these parking facilities to occur. He explained the reason for that was that in the past properties had been located in the City which were considered asphalt jungles, and buildings did not invite pedestrian participation, especially in the Downtown area. He explained further that the criteria was established for image streets and if someone wanted to build a parking facility, they would be forced to build a structure and not have a surface lot.

Jon Albee stated that he had been a member of this Board when this case had appeared the first time, and he recalled that they had been granted a one-year temporary use. He stated they had returned many times and he felt it was time to stop the clock.

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Birch Willey reiterated that he too had heard this case previously, but he did not want them to "cut their nose to spite their face." He stated that he had called Ms. Cavendish at the Museum who had stated this group had been a good neighbor, and the parking was used many times for visitors at the Museum. He explained that higher vans could not park in the garage, and therefore, the surface lot was used in such cases. He further stated that he did not want this matter to go on indefinitely, but would support one more year so as to prevent this from being a vacant piece of land. He felt they were treading on thin ground regarding the useage for the neighborhood.

Chair Patricia Rathburn stated that she was usually the person who declined extensions, but in this case she felt their bad behavior was in the past, they were maintaining the property, and appeared to be good neighbors. Therefore, she preferred they continue for another year with the clear understanding that they would not receive such leniency from her if they returned seeking an extension.

Binni Sweeney stated she also had heard this case previously, and remembered a different attorney making the same claims. She stated that time has run out in this matter.

Mr. Keith stated that there was a hardship involved, but he could not argue with the comments made by this Board. He stated that in reviewing the shape of the site, the hardship was that a parking structure could not be built on this parcel. He reiterated they did not want a strip center, and during the past year 3 inquiries had been made regarding the property, and had 2 serious proposals made in the last few weeks. He stated they wanted the ability to negotiate with those individuals, and he could see no damage being done to the City in granting such an extension. He stated there would be a hardship on the client if they could not properly use their facility.

Robert Dunckel stated that it appeared the Board was either in favor of this request or totally against it. He reiterated that 5 separate things were being requested, and felt that possibly a single vote would be appropriate to dispose of all items together.

Chair Patricia Rathburn agreed and stated that probably only one vote would be necessary in this matter.

Motion made by Fred Stresau and seconded by Binni Sweeney that the application in regard to Sec. 47-13.20.H.1.a be approved. Roll call showed: YEAS: Don Larson, Birch Willey, Gus Carbonell and Patricia Rathburn. NAYS: Jon Albee, Fred Stresau, and Binni Sweeney. Motion failed 4-3.

Motion made by Binni Sweeney and seconded by Fred Stresau to approve the balance of the variances requested. Roll call showed: YEAS: Birch Willey, Gus

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Carbonell and Patricia Rathburn. NAYS: Fred Stresau, Don Larson, Binni Sweeney, and John Albee. Motion failed 3-4.

7. APPEAL NO. 04-14

APPLICANT: G. Brett & Caroline D. Bass

LEGAL: Beverly Heights, Block 21, Lot 1 together with the North 5.0' of that certain 10' alley lying adjacent to the South line of said Lot 1, Block 21, P.B. 1, P. 30

ZONING: RM-15 (Residential Low Rise Multi-family/Medium High Density District) – As recommended by Planning and Zoning at its March 17, 2004 meeting.

STREET: 221-229 SE 12 Avenue

ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47-18-21.C.3 (Locational Limitations) – To permit a mixed development at the subject location, where the Code does not permit a mixed-use development in a residentially zoned district at the subject location.

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

Caroline Bass, owner, stated that their object was to save the building since it had architectural significance and had been built in the '40's. She explained they were actually one building from Las Olas, and not one block. She stated they were currently surrounded on all 4 sides by commercial and office uses. She proceeded to show the site on a map. She added that they wanted to use the building for a mixed-use.

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

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

Motion made by Jon Albee and seconded by Don Larson to approve the application as presented.

Breg Brewton stated that the applicant had appeared before Planning and Zoning seeking a rezoning which had been approved and had gone forward to the City Commission. He further stated that if the Board approved the waiver to the location limitations, then the mixed use project would be permitted at this site and would be subject to a conditional use process.

Chair Patricia Rathburn stated that her decision to permit this would be based on the applicant's intent to preserve the building.

Motion made by Jon Albee and seconded by Binni Sweeney to approve the variance in order to permit a mixed use in the existing structure as it may be rehabilitated to do so.

Mr. Brewton asked if the Board would add to the motion that it would be subject to Planning and Zoning approval.

The motion was restated as follows:

Motion made by Jon Albee and seconded by Binni Sweeney to approve the variance in order to permit a mixed use in the existing structure as it may be rehabilitated to do so, along with the item being approved by Planning and Zoning. Roll call showed: YEAS: Don Larson, Birch Willey, Binni Sweeney, Gus Carbonell, Jon Albee, Fred Stresau and Patricia Rathburn. NAYS: None. Motion carried 7-0.

8. APPEAL NO. 04-19

APPLICANT: Paul Weakley
LEGAL: Orchid Grove, the East 40' of Lot 22 together with the West 20' of Lot 23, P.B. 25, P. 2.
ZONING: RD-15
STREET: 817 SW 16 Court
ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47-5.32 – To permit the expansion of an existing carport to a 1.5' side yard where a minimum 5' side yard is required. **Sec. 47-19.2** – To permit the construction of an 800 square foot two-story accessory dwelling (cottage) where the Code allows a maximum 800 sq. ft. accessory dwelling (cottage). **Sec. 47-20.5(c)(3)(a)** – To permit a 9.6' two-way travel access drive where the Code requires a minimum 20' two-way travel access drive. **Sec. 47-20.11** – To permit a 20' aisle width for 90 degree parking angle where the Code requires a minimum 24' aisle width for 90 degree parking angle.

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

Marvin Jackson, architect, stated that the applicant was requesting a variance to allow for a two-story cottage. He explained that the existing building was a one-story structure, and was not conducive for a two-story addition. He stated the best way to do this was to add on in the rear of the property, and added that trees on the site prohibited them from adding square footage to the existing building.

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

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

Binni Sweeney asked for further clarification of the 960 sq. ft. requirement. Greg Brewton stated that the Code required there to be a certain width for parallel parking, and stated he was not an engineer to specify whether sufficient room was being supplied or not. Binni Sweeney stated that she had been to the site and this neighborhood was one where individuals took pride in their homes. She stated the reason for the existing restrictions were so that changes were only made for the betterment of the community. She felt these variances were not for the betterment of the City and its future.

Fred Stresau stated that one of the variances addressed was the 9'6" traffic aisle, but it appeared to him that the Building Department staff was requiring driveways that accessed the back of this single-family home and required them to have a 20' driveway. Mr. Brewton confirmed. Mr. Stresau stated that a new house in Rio Vista had the same exact 9' driveway. He stated if a single-family home serviced one family, and had a 20' driveway which occupied about 45% of the width of the lot, he felt that was a stupid part of the Code that he had ever heard of. He felt this item should be placed on the "to do list."

Chair Patricia Rathburn stated that she did not think this was going to serve a single-family house, and she felt since they were building a cottage in the back, they had intentions of renting out the structure. Fred Stresau stated that if there was an office building with the same square footage, and to require a 20' driveway with only 5-6 employees, was the same issue. Chair Patricia Rathburn stated that her concern was not the width of the driveway.

Mr. Jackson stated that it was his understanding that they were not permitted to use the property as rental income.

Greg Brewton stated that RD-15 permitted a duplex or two-family dwelling.

Fred Stresau stated that he believed that each of the requested items should be voted on individually.

Motion made by Binni Sweeney and seconded by Fred Stresau to approve the application as submitted in reference to Sec. 47-5.32. Roll call showed: YEAS: None. NAYS: Birch Willey, Binni Sweeney, Gus Carbonell, Jon Albee, Fred Stresau, Don Larson and Patricia Rathburn. Motion failed 0-7.

Motion made by Binni Sweeney and seconded by Fred Stresau to approve the remaining variances as requested. Roll call showed: YEAS: None. NAYS: Binni Sweeney, Gus Carbonell, Jon Albee, Fred Stresau, Don Larson, Birch Willey, and Patricia Rathburn. Motion failed 0-7.

9. APPEAL NO. 04-22

APPLICANT: Emil Pawuk
LEGAL: "Las Olas by The Sea," Lots 5, 6, 7, 8, P.B. 1, P. 16
ZONING: SBMHA (South Beach Marina and Hotel Area)
STREET: 401-435 Seabreeze Blvd.
ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47-24.12A.6 – To permit a temporary use approval for a retail operation as part of the existing ground floor restaurant.

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

Binni Sweeney stepped from the Board in regard to this item, and Al Massey would serve as the alternate.

The following disclosures were made by the Board in regard to this item: Patricia Rathburn stated that she had spoken with Steve Tilbrook. Birch Willey stated that he also had spoken with Steve Tilbrook, Frank Gurner and Pete Witschen. Gus Carbonell stated that he had spoken with Steve Tilbrook. Jon Albee stated that he had spoken with Steve Tilbrook on this matter.

Steve Tilbrook, attorney, stated that Frank Gurner the owner of Pro-Dive and tenant at the site, was present at today's meeting, along with Mike Sanchez, Project Architect; and Pete Witschen who was serving as a consultant.

Mr. Tilbrook stated that they were requesting a temporary use permit so as to use 1780 sq. ft. of a retail operation as part of an existing ground floor restaurant in the former Coconuts Restaurant. He stated that the criteria was that the use could be permitted for one year upon demonstrating that it was not incompatible with the adjoining properties in the area. He stated this was not a hardship variance. He stated the concept of the project was a mixed-use restaurant with retail. He explained the restaurant theme would be that as a dive-shop.

Chair Patricia Rathburn asked if retail and restaurant use was permitted in this location. Mr. Brewton confirmed. Chair Patricia Rathburn asked why they needed a temporary use permit. Mr. Brewton stated that in reviewing what had been proposed, staff believed that the existing restaurant and the use currently being requested were different. He added they had discussed that issue with the applicant and he did not believe there were any discrepancies in their opinions. He stated they were going to seek the necessary procedures to make this a permitted use. He reiterated that today they were not dealing whether this was a permitted use or not, but the applicant wanted to utilize the property while going through the process which would involve an extensive review.

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Mr. Tilbrook stated they had been working with staff to solve their problems. He explained the problem they were attempting to solve was somewhat of a code compliance nightmare where they were currently locating. The building was losing its parking in connection with the Ocean Dunes project across the street. He explained there was a labyrinth of code compliance issues which were not attributable to his client, but because they had been outstanding the City had revoked their occupational license and they needed to move quickly. He advised that the plans were to be submitted with the next month or so.

Mr. Tilbrook proceeded to show photographs of the site. He explained the area was zoned as SBMHA, and the building was comprised of two floors with 10,469 square feet. He stated the application involved a small portion of the ground floor restaurant which was about 6500 sq. ft. in a possible change of use.

Mr. Tilbrook explained that Pro Dive was a dive operation and retail shop which had been in the City for the last 29 years. He stated they served about 20,000 customers a year, and trained about 200 dive instructors per year. He explained that it had a significant economic impact on the City and generated over 8,000 room nights per year. He stated that this was a tourist oriented retail and service use which was called for in the SBMHA area, along with the City's Redevelopment Plan for the Central Beach area.

Mr. Tilbrook proceeded to show a drawing of the site. He explained that the actual improvements to the site would consist of a two-story building and a parking lot. He stated that 58 parking spaces would be provided. He stated that the impacts associated with retail were parking and trip impacts, which were less than associated with restaurant use. He further stated that the restaurant as it existed was a legal non-conforming use, and they would be bringing it back into compliance, at least for the temporary use permit, and once through site plan approval the site would definitely be brought into compliance.

Mr. Tilbrook continued stating that as part of the application process, they had commenced upon community outreach and stated that it was unfortunate that the notice had the incorrect address. He added they had met with the CBA, and an e-mail had been sent stating that there had been no opposition against this project. He stated that they had also met with the Venetian Condominium and would continue to do so. He advised that they had received several letters in support.

Fred Stresau asked if the 58 parking spaces included stacked or double stacked spaces. Mr. Tilbrook replied they did not and advised it was all single-stacked parking.

Chair Patricia Rathburn proceeded to open the public hearing.

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Paul Flanagan, owner of the Quarter Deck, stated that he was in support of this application. He stated that this City billed themselves as the Yachting Capital of the World and anything they did to encourage that should be kept in mind. He also stated that in fighting for the tourist dollars in competition with South Beach and Palm Beach, their competitive advantage was the reef system which were superior. He added that Pro Dive had cultivated that over the last 29 years. He also stated that from a micro-economic standpoint, the Beach was in poor condition and he was, along with others, fighting to make it was about 5 years ago.

Shirley Smith, resident at the Venetian Condominium, stated that she was in support of this request and added that it had been presented to the Beach Redevelopment Advisory Board and there had been no negative comments. She felt this would be an asset to the area.

Chair Patricia Rathburn proceeded to close the public hearing and bring the discussion back to the Board.

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

Motion made by Jon Albee and seconded by Don Larson to approve the application as presented.

Fred Stresau stated that it appeared the applicant had made a good presentation on what they intended to do, and he hoped as the plans went through the normal process that it would be approved. He reminded the Board about the Parking Lot of America having a temporary use permit granted 5 years ago, and tonight the Board voted 3-4 because some of the Board felt since they had it, they should continue to use it. He stated he was not sure where they would be one year from now if Planning and Zoning did not approve the application. He stated he wanted it to be clear that this was being presented for a one-shot, one-year deal.

Mr. Tilbrook confirmed.

Jon Albee stated that this was a good project which made sense, and he felt it was good that the applicant had met with the surrounding residents. He reiterated that he was in favor of this variance.

Roll call showed: YEAS: Gus Carbonell, Al Massey, Jon Albee, Fred Stresau, Don Larson, Birch Willey, and Patricia Rathburn. NAYS: None. Motion carried 7-0.

10. APPEAL NO. 04-23

APPLICANT: Marc and Corie E. Herschelman
LEGAL: Lot 1, Block 13 of "Rio Vista Isles Unit 5," P.B. 8, P. 7
ZONING: RS4.4
STREET: 1501 SE 11 Street
ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47-5.30 – To permit a 596 sq. ft. 2nd floor addition to an existing single family dwelling with a 12' 3 5/8" waterway yard along the west side of the property where the Code requires a minimum 25' waterway yard.

Corie Herschelman, owner, stated that they wanted to make the best use out of the available space and had lived at this address for 8 years. Due to having twins recently, they had outgrown their house. She stated they had added a pool and retaining wall in the rear of the house. She advised that the footprint of the house was not changing.

Chair Patricia Rathburn proceeded to open the public hearing.

Binni Sweeney stated that she had visited the site and there was already an existing second floor addition. Ms. Herschelman explained they only wanted to add a bedroom to the existing structure. Binni Sweeney stated further that the addition was in the setback. Ms. Herschelman stated that was how the house had originally been built. She remarked that the second story was shorter than the ground floor, and they only wanted to extend the second floor to match the first floor. She stated that presently it was 12' from the waterway, and asked if it had been permitted properly originally.

Fred Stresau stated it had been permitted properly because it was a corner lot, and was the same as his lot. He explained that in 1980 the setback was 20%.

Gus Carbonell stated that he had been the original architect for the house and he was in support of this request.

There being no other individuals who wished to speak on this matter, Chair Patricia Rathburn proceeded to close the public hearing and bring the discussion back to the Board.

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

Motion made by Don Larson and seconded by Binni Sweeney to approve the application as submitted. Roll call showed: YEAS: Jon Albee, Fred Stresau, Don Larson, Birch Willey, Binni Sweeney, Gus Carbonell, and Patricia Rathburn. NAYS: None. Motion carried 7-0.

11. APPEAL NO. 04-24

APPLICANT: Sydney Brown
LEGAL: Lot 1, Block 3, Lauderdale Manor Homesites, P.B. 34, P. 21
ZONING: CB
STREET: 1880 NW 24 Terrace
ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 4-25.3. A.3.d.iv – To exempt the minimum 5' masonry buffer yard wall required for non-residential property when abutting residential property.

Binni Sweeney stated that there were no signs at the site and she believed this greatly affected the neighbors. She added that without proper signage, she did not feel it would be fair to hear this item this evening.

Sydney Brown stated that a sign had been posted on the speed limit sign. He added that the other sign was near the STOP sign at 19th Street and 24th Terrace. Binni Sweeney reiterated that she did not see any such signs.

Motion made by Jon Albee and seconded by Don Larson that this item be deferred until May 12, 2004. Board unanimously approved.

Fred Stresau commented that signs should not be attached to other existing signs in the area, and added they should be independent and perpendicular to the street.

12. APPEAL NO. 04-25

APPLICANT: Patrice Rizzo
LEGAL: Lot 4, Block 8, C. J. Hector's Re-subdivision of Rio Vista, P.B. 1, P. 24
ZONING: RS-8
STREET: 1008 SE 5 Court
ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47-19.2 cc.1 – To permit the construction of a pool at 8.5' which is above the finished floor elevation (7.64') of the ground floor of the principal building where the Code requires that such use not exceed the ground floor elevation of the principal building when located within the required yard.

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

Patrice Rizzo stated that she was applying for a variance to construct a pool in the front yard. She stated the house had been built in 1944 and sat only 7' from the back of the property line. She stated the problem was that the elevation in the front was higher than the elevation of the existing house.

Chair Patricia Rathburn stated that she had discussed this matter with staff, and asked if the owner had explored the possibility of scraping off the soil in the front in order to bring down the elevation.

David Eichholtz, architect, stated that the pool followed a garage addition which would be placed in front of the house, and to dig down would create a bad drop-off with the driveway.

Fred Stresau stated that some of them had spent 10 months studying the relationship of pools, pool decks, spas, and such items in relation to the finished floor of an existing residence. He stated that he had tried to promote this when he had stated that all lots in the City were not level and the houses were not above the center line of the street. He further stated that the Planning and Zoning Board did not see it that way, and did not change that portion of the ordinance. He stated what was before this Board this evening was perfectly legal, and reiterated that the people could not do it any other way due to the configuration of the lot. He added this was a good application for the variance.

Gus Carbonell stated that they had a non-conforming house which was 2' below the crown of the road, and to try and continue something that was not good and make an individual build something that would not be right, would not be a good situation. He felt this was a clear hardship.

Chair Patricia Rathburn proceeded to open the public hearing.

George Niarchos stated that he lived in the house next to the one in question. He stated that the pool in question was part of a larger project at the site. He stated they were constructing a two-car garage, a play room, and a pool. Originally, the pool was to be constructed near the base of their 80-year old Oak tree, but Dave Gennaro had inspected the tree and found it to be in excellent health, and stated that it would be harmed if they would dig close to the roots. He felt the issue was whether the pool could be built at grade level of the principal residence. He stated that the homeowner and architect had begun with a blank canvas. He stated further that the garage and play room were being placed on the west part of the property which had been scraped to grade. He felt pushing for approval and beginning to lay the footers, and now following with a request for a pool, attaching to it a hardship seemed to be more of a self-inflicted one rather than one which could have been avoided if the design was in accordance with the existing Code. He stated he did not want to deprive anyone of a pool, but the layout which existed at this time was very unsightly.

Mr. Niarchos further stated that many children lived in the neighborhood and this pool would be right up to the sidewalk with only a 4' fence for security.

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Mr. Eichholtz stated that the grade was not being removed, and that Mr. Niarchos also had a pool in his front yard and did not have a fence, but only hedges around it.

Kent Ellert stated that they lived across the street from the property in question. He further stated that he felt this project would improve the quality of life for the individuals and for the neighborhood.

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

Jon Albee stated that he felt this property was unique and did qualify as a hardship meeting all the criteria listed.

Chair Patricia Rathburn stated she felt the opposite, and that in reading the criteria she felt this did not meet any of the requirements. She stated there was no absolute right to have a pool, and having a lot that did not support one did not create a hardship. She stated there was no view of the pool from the house and would be blocked by the garage. She felt that was a safety issue.

Motion made by Jon Albee and seconded by Don Larson to approve the application as submitted. Roll call showed: YEAS: Fred Stresau, Don Larson, Gus Carbonell, and John Albee. NAYS: Birch Willey, Binni Sweeney, and Patricia Rathburn. Motion failed 4-3.

“For the Good of the City”

Fred Stresau stated that the criteria board presented this evening had been created by Greg Brewton’s secretary and staff. He commended them on their efforts.

Chair Patricia Rathburn advised that the County had the criteria reduced to letter size sheets which were laminated and handed out to the Board in advance of the meetings, to be returned afterwards.

Fred Stresau stated that he wanted to have some further discussion as to how they could proceed having the Board meetings start earlier as discussed and decided upon in the Board’s previous workshop. He asked how this matter could be presented to the City Commission so that the time of the meetings could be changed.

Greg Brewton stated that Robert Dunckel would have to create the ordinance and have it advertised. He added that they needed to speak to their

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Commissioners and have it placed before them in a timely fashion. He explained they could then instruct staff to move forward with the ordinance amendment.

Fred Stresau reiterated that the Board had decided to have the meetings start at 6:30 p.m. instead of 7:30 p.m.

Binni Sweeney commended staff on the yellow signs which had been created.

Motion made by Binni Sweeney and seconded by Fred Stresau to adjourn the meeting.

There being no further business to come before this Board, the meeting was adjourned at approximately 10:27 p.m.

CHAIRMAN

Patricia Rathburn

ATTEST:

Margaret A. D'Alessio
Recording Secretary

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