

**BOARD OF ADJUSTMENT MEETING  
CITY OF FORT LAUDERDALE  
WEDNESDAY, AUGUST 11, 2004 – 7:30 P.M.  
CITY HALL  
CITY COMMISSION CHAMBERS – 1<sup>st</sup> Floor  
100 N. ANDREWS AVENUE  
FORT LAUDERDALE, FL**

**BOARD MEMBERS**

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

**ALTERNATES**

Scott Strawbridge		A
Al Massey	P	
Jon Albee	P	

**STAFF**

Robert Dunckel, City Attorney  
Don Morris, Planning and Zoning  
Charlie Wygant

Debra K. Giehtbrock, Recording Secretary

**GUESTS**

Chase Adams  
Richard Coker  
Paul E. Resson  
Sara Stewart

**CALL TO ORDER**

Chair Patricia Rathburn called the meeting to order at approximately 7:38 p.m.

Chair Patricia Rathburn introduced the board members and announced that all matters before the board are quasi-judicial by nature and individuals wishing to speak on a matter are to rise and be sworn in when the item is announced.

### **APPROVAL OF MINUTES – July 14, 2004**

**Motion** made by Fred Stresau and seconded by Birch Willey to approve the minutes of the July 14, 2004 meeting. Board unanimously approved.

Chair Patricia Rathburn asked if any of the Board members had any conflicts or sign problems regarding any items on the agenda.

### **1. APPEAL NO. 04-47**

**APPLICANT:** Anthony Family Limited Partnership (George Arthur)

**LEGAL:** Progresso, P.B. 2, P. 18, (D) Block 178, North 10' of Lot 25 and all of Lots 26 thru 38

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

**STREET:** 801 East Sunrise Blvd.

**ADDRESS:** Fort Lauderdale, FL

**APPEALING:** **Sec.47-6.11** – Requesting a variance to permit the display and sale of used vehicles where it is currently not listed as a permitted use in the B-1 Zoning District.

Chair Rathburn indicated that the applicant had requested the appeal to be deferred until September.

**Motion** by Binni Sweeney and seconded by Birch Willey to defer. Board unanimously approved.

### **2. APPEAL NO. 04-48**

**APPLICANT:** The John Needham House

**LEGAL:** Colee Hammock, P.B. 1, P.17, Block 11, Lots 1 and 2

**ZONING:** RMM-25 (Residential Mid Rise Multi-family/Medium High Density District)

**STREET:** 828 SE 4 Street

**ADDRESS:** Fort Lauderdale, FL

**APPEALING:** **Sec. 47-5.19 & Sec. 47-19.1.C** – Requesting a variance to allow a stand-alone hotel accessory use where accessory uses are not permitted without a principal use in the RMM-25 Zoning District.

**APPEALING:** **Sec. 47-19.8** - Requesting a variance to waive the criteria requiring a hotel to provide retail as an accessory use.

Chair Rathburn stated that there was a problem with the advertisement of the property and that the item needs administrative deferral until September.

**Motion** made by Birch Willey and seconded by Don Larsen to defer until the September meeting. Board unanimously approved.

### **3. APPEAL NO. 04-49**

**APPLICANT:** New River Development Partners, Ltd.

**LEGAL:** Sailboat Bend, P.B. 21, P.9, Lots 1, 2, 3, 4, 5, and portions of 6 and 7

**ZONING:** RAC-SMU (

**STREET:** 401 SW 4 Avenue

**ADDRESS:** Fort Lauderdale, FL

**APPEALING: Sec.47-13.20K.1.a** – Requesting a variance to allow three (3) pool heaters with a 1.33' property line setback along the street in the RAC where a minimum setback of 5' is required for structures on property abutting an RAC Street.

**APPEALING: Sec.47-19.2.S** – Requesting a variance to allow a 270 sq. ft. structure where 40 sq. ft. is the maximum permitted.

Chair Rathburn asked the Board if anyone had any issues with conflicts or sign problems on the property. None acknowledged.

Richard Coker, Attorney, representative of the applicant provided copies of the drawing site plan to board members. He further indicated that additional measurements of the accessory structure were taken and the second variance requested would not be necessary and was therefore withdrawn. He also provided the Board copies of letters of support from the New River Condominium Association, Tarp & River Civic Association and the Riverwalk Trust.

Mr. Coker pointed out that the heaters are on the west side of the property, not visible, and covered by fully-grown hedges. The heaters are located between the pool wall and the street. The pool heaters in the original design were to be located in a small room. When the contractor began to install them, he found that there was not enough ventilation in the room. The contractor looked for other areas on the site. The other suitable locations were in conflict with underground utilities. After selecting the current site, the contractor obtained the required permits. Upon installation, the contractor found that one of the heaters was almost 2 feet from the property line, partially due to the curvature of road. The heaters were placed as close to the pool wall as possible. No neighbors or establishments would be disturbed by noise from the heaters.

Chair Rathburn asked if other individuals wished to speak on this matter. There were none and requested a close the public hearing.

**MOTION** was made by Binni Sweeney and seconded by Don Larson to close the public hearing. All members approved.

Al Massey asked if the condominium association had been reverted to the New River Development Partnership. Paul Resson, representing the New River Development, LTD indicated that it was turned over on June 17, 2004 and the Condominium Association had complete control. Massey also indicated that the first sketch only showed a portion of the wall. He asked if there was anything showing the wall continuing. A yellow line was drawn on the 11" x 17" sketch showing the wall, the pool and the heaters. A spa was shown on the drawing as well as the pool pump. Massey asked if the heaters could be put on the inside of the wall rather than the public side of the wall.

Fred Stresau asked for clarification on the permits that the contractor had obtained. Members of the Zoning and Planning Board did not review the permits. For the record, Stresau indicated that these types of construction need to be reviewed by planning and zoning so that issues of this type would not come up again. The structural inspector from zoning that would catch these types of problems. The variance would not be in question if Construction Services were involved.

Coker indicated that the contractor had acquired the proper permits. Larson advised that if the contractor had built in Broward County before he would have known the setback requirements and the Board would not be meeting on this issue.

Fred Stresau asked if there were other places although inconvenient where the pool heater could have gone. He further indicated that there were other energy methods for pool heating and asked if these avenues had been explored. Mr. Coker advised that the contractor had made a mistake but had looked at all other places and because of the conflict with other utilities, there were no other places. Fred Stresau asked if there was a parking garage adjacent to the property and whether or not there was a place in any corner of the garage where the heaters could be placed. Mr. Resson indicated that the layout of the garage was such that there was not room for the heaters. Fred Stresau indicated that the need for an alternative pool-heating source was apparent so that the board was not in the position to approve a variance. The solution of utilizing a heat exchange system or placing the heaters in the garage are viable alternatives.

Binni Sweeney indicated that while complying with codes requiring heaters not to be located in a setback area was very costly and it was the contractor's responsibility to comply. Mr. Coker indicated that the contractor's mistake was not an effort to cut costs, but put the heaters in a location that would not impede anyone in any way. Binni Sweeney reminded everyone that it was the contractor's responsibility to abide by the Code.

Birch Willey indicated that the heater on the right of the three was the one in question but he could not remember what was to the left of the three heaters. He asked why the heaters could not be moved to the left. Mr. Coker indicated that it was his understanding that the City's underground utilities were the problem with the other locations. Mr. Coker further indicated that they had listened to the Board's questions but he could not provide accurate

answers at this time. He requested that this item be tabled until next month so he could be able to return with answers regarding the Board's concerns.

Fred Stresau indicated that if the Board approved the deferral to the next meeting, that Mr. Coker should bring the original plans so the Board could see the evolution from where it started to where it was now and show why a variance was being requested.

**Motion** was made by Binni Sweeney and seconded by Don Larson to defer the item until the next meeting. Chair Rathburn indicated that the meeting would not be held on the regular meeting night but would be held on September 22, 2004. Time was to be determined.

### **REPORT and FOR THE GOOD OF THE CITY.**

Chair Rathburn indicated that the issue of the date and time of meetings needed to be addressed by Assistant City Attorney Robert Dunckel. Robert Dunckel had provided a draft proposal to change some of the provisions in the ordinance. He indicated that a prior request to move the meetings to 6:30 pm had been addressed. Unfortunately, the ordinance was rather specific to and indicated that the Board of Adjustment was to meet on the second Tuesday of each month at 7:30 pm. Moving the meeting to 6:30 pm could not be done by a vote of the Board, but would have to go through the process of amending the ordinance. When looking into this process, Robert Dunckel stated it would have to go before Planning and Zoning because they had changed their starting time. The process would be to eliminate the section indicating the starting time. There was an allowance for variance in the schedule when the regular meeting fell on a legal holiday or Election Day. Since the meetings were scheduled on Wednesday, the first elimination would be reference to Election Day. The second provision came about from the September conflict where the City Commission, because of Labor Day, moved its meeting to the second Wednesday of the month, rather than the first and third Monday as scheduled. This conflict with the Planning and Zoning meeting enabled the provision that on an intermittent basis, the meeting date could be changed. There was also a provision that a regularly scheduled meeting could be cancelled if the Chair or the Planning and Zoning Administrator had an emergency.

Chair Rathburn mentioned that the change on an intermittent basis due to an emergency such as a hurricane would not necessarily mean that the meeting could be held the next day, and she felt the requirement for holding the meeting the next day should be eliminated.

Robert Dunckel suggested that this was not the way the instruction was identified, but only that if the meeting date fell on a legal holiday, should the meeting be scheduled for the next day. It did not apply to the other instances. Chair Rathburn indicated that they did not generally run into the holiday provision, but scheduling the meeting for the day following the holiday was not necessarily in the best interest of the Board.

Stephen Buckley wanted to make sure that a change in a meeting should not be changed intermittently without proper notification to all parties involved. Robert Dunckel stated that a meeting changed on an intermittent basis still required that the change be announced at the meeting immediately preceding the change so that proper notifications could be made.

Chair Rathburn suggested that any change in a meeting date should be announced at the beginning of the meeting in case of a conflict. Birch Willey asked that if they were operating under an ordinance for several years and the time simply stated 7:30 pm, couldn't they just request it be changed to read 6:30 pm. Robert Dunckel pointed out that the Board would not want it to be changed to another time, but to allow the flexibility in case of an unusual caseload, then the Board would be able to set a meeting time suitable for the agenda. He further stated that the Board might also want to return to 7:30 pm.

Fred Stresau pointed out that in Section 3 the Chair had the provision to cancel a meeting. He questioned whether this should be postponed. Robert Dunckel stated that there was no provision to postpone or defer a meeting, but the Chair or the Zoning Administrator could cancel a meeting.

Chair Rathburn then indicated the next issue was as to whether or not the provision to allow only two alternates, rather than three was appropriate. Robert Dunckel indicated that the provision allowed only two alternates, but perhaps the provision should be removed because when there were potential conflicts of interest or there was not a full Board, the third alternate may not be utilized. Fred Stresau indicated that by adhering to this, they were sending the general public away, and giving the applicant the opportunity to bring the matter to the Board at the next meeting. He explained that this placed a burden on the public that might have attended to object, and would have to return the following month. Binni Sweeney questioned why the provision when the alternates had been there, and understand the proceedings and should be able to participate. The applicant still has the ability to defer to the next meeting if he or she was unhappy with the structure of the Board.

**Motion** made by Birch Wiley and seconded by Binni Sweeney that the second sentence be changed so that the Board could allow three alternates to sit at a meeting.

Robert Dunckel reported that there was discussion regarding amending the Code in such a manner that if there was an alternative remedy available under the ULDR, such as the parking reduction order from P&Z, then one must go before the Planning and Zoning Board, and one did not appear before the Board of Adjustment. Something would be drafted along those lines and this Board would become a part of the decision because there were several philosophical hurdles that have to be jumped over. One approach could be that the Board may have a lack of jurisdiction over the matter, or the applicant might have to exhaust all other alternatives before they appeared before this Board. There was a case where a property owner had a Pub with a beer and wine license and a church had moved within 500 feet of the property. The owner wanted to upgrade to a full liquor license, but the Board had denied the variance by a vote of 4 to 3, and they had to file an appeal. This was being raised so the Board could see how such things were litigated. Oral arguments would be presented in the next two months.

Fred Stresau brought up another case that in several past meetings, The Parking Corporation of America was denied an application to continue operating. The Code Enforcement representative was not present, but Robert Dunckel was asked to explain to the Board the situation that had resulted in the Board's decision to deny the variance 7 to 0. Robert Dunckel indicated that the appeal in the process was called Dispute Resolution. He explained that this was an administrative mechanism created at the same time as the Harris Act by the legislature. A mechanism that allowed an aggrieved property owner to appeal a decision, or in this case a denial of a variance to go before a Special Master. A Special Master's first function was to mediate a settlement between the property owner and the city. If that failed and the Special Master was not able to precipitate a mediated settlement then he would go to the next step which was similar to an evidentiary hearing where the burden was on the property owner to prove that the decision was unfair or unreasonably burdened his property rights. If the Special Master found this to be the case, he or she could make a recommended order that could require specific recommendations. It would then go to the City Commission who had the authority to dispose of the matter. Robert Dunckel explained a couple of other cases and the results of those settlements. In this particular case, it would be about 60 days before they would have a date for such a hearing. He would report to the Board on that date so that Fred Stresau could attend and perhaps testify before the Special Master.

Another matter Robert Dunckel wanted to elaborate on was a matter regarding Code Enforcement. He explained he was working on a case involving a routine follow-up on the denial of a variance. Many times Code Enforcement had a policy of holding off on adjudication of an issue when a property owner was in the process of bringing a property into compliance. One of the ways a property owner could show effort to bring a property into compliance was by bringing the matter to dispute resolution. The Code Enforcement officer asked the City Attorney to look into the matter. Robert Dunckel advised the Code Enforcement officer that his office was not going to assume the posture to allow this person to continue to operate this parking establishment when the Code Enforcement Board had denied the variance, and it was not a permitted use. The Officer should continue to prosecute the case. Robert Dunckel was informed that the parking lot was still in operation. Another Code Enforcement Operator contacted his office for information and he was advised to go forth with prosecution of the case.

Binni Sweeney asked what the criteria was and how it differed from the criteria this Board used in granting a variance. Robert Dunckel indicated that the criteria were much less stringent and that the Special Master only made a recommendation.

Fred Stresau indicated that he felt responsible in allowing the variance because the property owner indicated that they were going to do enough to provide an upgrade to the area and therefore the Board approved the variance. They had done considerable landscaping and had added lighting. They were clearly advised that they only had one year to operate. Fred Stresau indicated that he felt very strongly that they testify to the Special Master regarding these issues.

Binni Sweeney questioned the status of the Candi Colby case as to whether or not it was going to come up before the Code Enforcement Board because that variance had expired in August 2003. Chair Rathburn made mention of the fact that this case had expired and Robert Dunckel agreed that when a license had expired, Code Enforcement had to get involved. The Zoning Administrator stated that he would raise this matter with Code Enforcement.

Birch Willey advised that they needed to take into consideration who was at the meeting when the variance was granted. He indicated that he had voted for the variance, and that the vote had been 6 to 1, because he felt it was in the City's best interest to allow the parking lot to operate, rather than letting the property return to a sand lot. He wanted the record to reflect that all points were reviewed when the initial vote had been taken.

Binni Sweeney made mention of the fact that this had gone past the initial year, onto three or four years. This variance was approved for one year but then it took two more years for it to get back to the Board. Fred Stresau added that these people did not have an occupational license and had not been truthful in their intentions. The use variance to obtain the building was an excuse to conduct their business, which was to operate a parking lot. The City Commission had settled for half of the fine. This case has been before the board three or four times, and it was time for Code Enforcement to act on the issue.

Robert Dunckel explained the appeal process. He further stated that it was open to the general public and that the minutes and findings were presented, and the information such as that presented by Fred Stresau would be accepted. He saw nothing in the ordinance that would prevent a Board member from attending and testifying. He further indicated that this was not a quasi-judicial hearing, nor was there a right to appeal the Special Master's recommendation.

John Albee approached the Board and pointed out that property owners receiving temporary variances be required to come back before the Board. He felt that the City had been taken advantage of, and it was his hope when it came before the Special Master it would stop. He suggested that when a period to reappear was set that stringent methods could be implemented so that matters simply did not fall through the cracks. Binni Sweeney agreed because people were supposed to reappear and did not show up and no one knew why.

Further discussion on the responsibilities of the Board of Adjustment in deciding these variance issues ensued. Fred Stresau reiterated that the Board must provide these issues to the Code Enforcement Board to carry out such decisions so that the Board members were not wasting time deciding such matters. It was the Board's responsibility to monitor these cases.

Chair Rathburn informed the Board that the next meeting would be held on September 22, 2004. Fred Stresau said he had made a motion at an earlier meeting that the September meeting be held at 6:30 pm. He now realized that this would place an undue burden on the Chair and that he was now suggesting that the meeting be moved back to 7:30 pm. The



ordinance to change the meeting time would not be implemented by the next meeting. Robert Dunckel indicated that he was not at the meeting when this decision was made.

Robert Dunckel again brought up the decision to change the next meeting to September 22, 2004. He had not been at the meeting and would not have approved such change. There was no authority to move the meeting. The proposed change to the ordinance would not be approved by September. Discussion on using other meeting rooms ensued. Room arrangements needed to be made quickly so that the room on the eighth floor could be reserved. If audience participation was expected, it was extremely inconvenient because only a limited number of people could be seated in the room. There were no recording devices, people had to stand in the halls and view the meeting on television. The meeting date issue would be resolved and notice given so everyone would know when and where the meeting would be held.

**Motion** made by Binni Sweeney and seconded by Birch Willey to adjourn the meeting. All approved.

There being no further business to come before this Board, the meeting was adjourned at approximately 9:00 p.m.

Chairperson

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Patricia Rathburn

ATTEST:

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Debra K. Giehtbrock  
Recording Secretary

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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