

**BOARD OF ADJUSTMENT MEETING
CITY OF FORT LAUDERDALE
WEDNESDAY, SEPTEMBER 22, 2004 – 6:30 P.M.
CITY HALL
CITY COMMISSION CHAMBERS – 1st Floor
100 N. ANDREWS AVENUE
FORT LAUDERDALE, FL**

BOARD MEMBERS

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

ALTERNATES

Scott Strawbridge	P
Al Massey	P
Jon Albee	P

STAFF

Robert Dunckel, City Attorney
Don Morris
Charlie Wygant

Margaret A. D'Alessio, Recording Secretary

GUESTS

Wendy Walker	Robert Lochrie
Ron Mastriana	Scott Schwab
David Eichholtz	Barbara Hall
Mark Messinger	

CALL TO ORDER

Robert Dunckel, Assistant City Attorney, proceeded to call the meeting to order at approximately 6:37 p.m.

Mr. Dunckel explained that the Chair and Vice-Chair of this Board were not yet present, and therefore, the first order of business for the Board was to have them choose a Chair Pro-Tem to chair the meeting until the Chair or Vice-Chair would arrive.

Motion made by Fred Stresau and seconded by Scott Strawbridge to have Jon Albee be appointed as the Chairman Pro Tem for tonight's meeting until either the Chair or Vice-Chair arrive. Board unanimously approved.

Chair Jon Albee explained that the purpose of the meeting tonight was to help the applicants make their case. He stated that the Board would guide and direct during the process. He added that a hardship had to be shown for the variance, and if anyone had a problem in how to present their case, questions could be asked and assistance given. He explained that his job was to referee and direct traffic.

APPROVAL OF MINUTES – August 11, 2004 Meeting

Motion made by Fred Stresau and seconded by Binni Sweeney to approve the minutes of the August 11, 2004 meeting. Board unanimously approved.

Chair Jon Albee then proceeded to introduce the Board for tonight's meeting.

4. 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 & 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.

Don Morris, Planning and Zoning, announced that this item had been withdrawn.

9. APPEAL NO. 04-53

APPLICANT: George Gill, President (Yankee Clipper Marina Meeting Room/Banquet Facility)

LEGAL: Ocean Harbor, P.B. 26, P. 39, All of Lots 14-18, & 28 and a portion of 27

ZONING: RMH-60 (Residential High Rise Multi-family/High Density District)

STREET: 1140 Seabreeze Boulevard

ADDRESS: Fort Lauderdale, FL

APPEALING: **Sec. 47-3.2 B.1 (Continuation of a Non-Conforming Structure)** to permit the construction of a 5,461 sq. ft. Meeting Room/Banquet Facility (replacing the existing pool deck structure) to a legal non-conforming structure (hotel) where the Code prohibits the alteration or enlargement of a legal non-conforming structure.

APPEALING: **Sec. 47-5.38 (Table of Dimensional Requirements)** – Requesting a variance to build a Meeting Room/Banquet Facility with a 6' front yard setback (along Seabreeze Boulevard),

where the Code requires a 25' front yard setback, and to allow a 6' corner yard setback (along north end of Harbor Drive), where the Code requires a 25' corner yard setback.

11. APPEAL NO. 04-55

APPLICANT: Henry and Minerva Glaston
LEGAL: Brysa Park Extension, P.B. 28, P. 46, Block 2, Lots 12, 13 and 14
ZONING: CB (Community Business District)
STREET: 3619-3635 W. Davie Blvd.
ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47-25.3 A.3.d.v – Requesting a variance to allow an existing wooden fence to remain on a non-residential property, where Code requires that a 5' wall be constructed.

Motion made by Fred Stresau and seconded by Don Larson that items 9 and 11 be deferred until November 10, 2004 at 6:30 p.m. Board unanimously approved.

Don Larson disclosed that he had spoken with Commissioner Teel and Alan Gabriel regarding Item #5, Appeal No. 04-07.

Gus Carbonell disclosed that he had spoken with Alan Gabriel regarding Item #5, Appeal No. 04-07, and had spoken with Robert Lochrie in connection with Item #1, Appeal No. 04-47.

Birch Willey disclosed that he had spoken with Alan Gabriel regarding Item #5, Appeal No. 04-07, and had spoken with Ron Mastriana, Wendy Walker, and Dawn Doyle regarding Item #3, Appeal No. 04-48.

Scott Strawbridge disclosed that he had spoken with John McDonald in connection with Item #3, Appeal No. 04-48.

ALL INDIVIDUALS WISHING TO SPEAK THIS EVENING WERE SWORN IN.

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 such use is currently not listed as a permitted use in the B-1 Zoning District.

Chair Jon Albee announced that this matter had been deferred from August 11, 2004.

Robert Lochrie, attorney representing the applicant New Auto Toy Store, stated that he wanted to thank the Board for deferring this matter in the past in order for them to have additional time to work with the neighborhood association. He advised that the Auto Toy Store was located currently on the south side of Sunrise Boulevard. He stated that there were 2 items before the Board this evening which were somewhat related. He further stated that they were intended to overlap and neither one would be in existence at the same time.

Mr. Lochrie stated that the first item was a request to permit the display and sale of used vehicles at 801 E. Sunrise Boulevard. He proceeded to show the location of the site on the map. He stated that the subject location currently had an occupational license for a used car facility and had been in operation prior to 1991, and can continue to operate as a used car facility. At this time the Auto Toy Store was requesting to remove their current location which was on the south side of Sunrise Boulevard and move to the new location. He stated that this company had been in existence in the City for over 26 years and was unique. Technically, it was a used car facility under the terms and definitions of the zoning code, but it was unique from a typical used car facility in that the cars themselves, which were pre-owned, were of a high caliber. He stated that the average sale price was somewhere between the range of \$65,000 to \$95,000. He advised they also sold vehicles well over the \$100,000 price range. He stated it basically catered to a clientele that was interested in exotic cars.

Mr. Lochrie further stated that the reason for the variance was that the existing conditions did not meet the needs and were inconsistent and provided a hardship for the facility. He explained that they had to retain the existing building on the site so they could keep the non-conforming use status, but it was not an attractive one and did not contribute to the betterment of the neighborhood, nor to the aesthetic appeal of Sunrise Boulevard. He stated that the site plan would provide a new facility at the corner with a signature element providing for the sales of exotic automobiles. He further stated that there were special conditions and circumstances which affected this property making it unlike other properties. He stated that this property was currently authorized to continue as a used dealership, but any reasonable attempt to upgrade the property would require a variance. He explained that previously the property had been occupied by Lipton Toyota, and the City had engaged in a zoning change, and therefore, it had not been the result of the action of the owner of the property. The owner continued to operate the activity it had previously operated on the site.

Mr. Lochrie continued stating that the existing dealership was operating about one mile to the east and south of the site, and they did not believe there would be any new intrusive use to the area, and would remove a use from the southern area. He reiterated they would be replacing it with one brand new facility which was far superior to either of the two existing facilities. He stated that a minimum variance was necessary in order to continue operating such a luxury vehicle market. He further stated they were not going to ask for any other modifications of side yards or landscaping. He stated the existing structure had significant deficiencies in the Code, and the remaining portion of the property would be brought up to Code.

Mr. Lochrie stated that in talking to the neighbors and staff, they had made some important concessions. He stated that they had agreed that the use would run strictly to Auto Toy Store which was a unique operation, and had agreed that if they were to remove such sales from this facility, the variance would no longer continue to exist as a used car dealership. He further stated that the neighborhood had requested that a wall be constructed around the property, and they were willing to incorporate that into the site plan. He stated that another issue for the neighborhood was in regard to the access points which were at both the south and north ends of the property. He advised there was a street closure on 8th Avenue and proceeded to show the area on the map. He explained that because of that the traffic was able to go through the neighborhood into the facility, or use the facility to get to the neighborhood. He stated they agreed to permanently close the entrance so that all ingress and egress would be south of the permanent street closure off Sunrise Boulevard in order to discourage any activity or vehicular traffic through the neighborhood. He continued stating that they would not install any external audio broadcasting system and the company did not use such a system which differentiated them from other used car facilities. In this case that would be keeping within the spirit of the use.

Mr. Lochrie summarized that they were moving from one used car facility, which could continue in operation, and moving to a temporary use while the new structure was being built. He stated the structure would be the permanent home, thereby going from 2 used car facilities to one facility which was significantly upgraded with limited access to the surrounding neighborhood. He added the restriction would be that if it would ever be any other type of dealership, the variance would expire.

Chair Jon Albee proceeded to open the public hearing.

Rixon Rafter, President of the Lakeridge Civic Association, stated they had met with the owners of the Auto Toy Store, along with Mr. Lochrie, and they had come to an agreement and supported the request for the variance.

Binni Sweeney asked if the neighborhood association had conducted a meeting of the general membership regarding approval of this request. Mr. Rafter replied that there had been a meeting with the property owners adjacent to the site, along with a Board meeting. He explained that all the property owners adjacent to the site, along with the Board, unanimously agreed to support the request.

Chair Jon Albee proceeded to close the public hearing.

Robert Dunckel asked if Mr. Lochrie could run through the conditions for the variance.

Mr. Lochrie proceeded to read the conditions for the variance as follows:

1. The proposed use variance shall be limited solely to the Auto Toy Store upon ceasing business operations on the 801 property, and they may not sell or lease as a used car dealership.
2. Upon approval of the development of the Auto Toy Store, they agree to construct CV walls along the north, west, and east property lines with the western wall extending to the street closure located on N.E. 8th Avenue. He stated that the eastern wall would extend to the residential property limits which would completely block access from the street. In addition they would be responsible for landscaping and maintenance associated with the street closure.
3. They agreed not to install an external broadcasting system on the property.

Mr. Dunckel stated that during the presentation, he had heard words being used such as "luxury vehicle market," and he realized that was their intent now, but luxury vehicle market was an undefined term. He stated the Board might want to consider as a condition that a reference be made to luxury vehicle market with a definable standard.

Fred Stresau asked if a description could be submitted as to the character of the business. Mr. Lochrie stated they did not have any objection to such a request. He stated this dealership was one of 12 in the Country that provided such a service. Fred Stresau stated he did not want someone selling the business in 10-15 years, and the variance running with the Auto Toy Store name, and there not being a description of the character of the business.

Chair Jon Albee asked what that business would be.

Mr. Dunckel stated that perhaps it could be defined with reference to the Auto Toy Store operation on Sunrise Boulevard with the types of vehicles observed at the site during the last 3-year period, and possibly supplement the file with some photographs. He stated that some market values had been

mentioned. Mr. Lochrie stated that \$250,000 and \$300,000 vehicles were also sold, and he added they did not object to tying the variance to the customary use of the Auto Toy Store as it existed in the last number of years. Mr. Dunckel asked if photographs could be supplied for the file so that future Zoning Administrators would have a frame of reference regarding this business. Mr. Lochrie confirmed and stated they would stipulate that as a further condition regarding the variance. Mr. Dunckel asked if they would waive for themselves, successors and assigns any right of appeal with regard to the first stipulation that this variance would expire with the sale of the land by Auto Toy Store, or the sale of the control of the corporation. Mr. Lochrie agreed.

Don Larson asked if a dollar amount could be included in the variance. Mr. Dunckel stated that would be up to the Board, but as the consumer price index escalates, the amount would change. Mr. Larson stated he realized that but was thinking of a minimum amount. Mr. Dunckel reiterated that it would be up to the Board, and it would be fair in light of the fact that as part of their presentation, they had stated it was a luxury vehicle market.

Fred Stresau stated the amount would keep changing, and he felt if they supplied the photographs and dates on the cars that would be sufficient to indicate the character of the business.

Binni Sweeney asked what was going to happen to the existing building. Mr. Lochrie stated that the property was under contract, and there was a site plan pending for a new multi-family project.

Scott Strawbridge stated that in the backup material, the Victoria Park Civic Association had urged this Board to deny the request, and he asked if further contact had been made with that group. Mr. Lochrie confirmed and stated he had spoken with Catherine Moss and suggested the matter could be tabled so a meeting could be held, but Ms. Moss did not feel that was necessary. He stated that he believed she was upholding her letter. He stated they had not informed him that they had changed their minds.

Motion made by Fred Stresau and seconded by Don Larson to approve the application per the stipulations presented by the attorney for the applicant. Roll call showed: YEAS: Fred Stresau, Don Larson, Birch Willey, Binni Sweeney, Gus Carbonell, Scott Strawbridge, and Jon Albee. NAYS: None. Motion carried 7-0.

2. APPEAL NO. 04-50

APPLICANT: Anthony Family Limited Partnership (George Arthur)

LEGAL: Progresso, P.B. 2, P. 18, (D) Block 168, Lots 10, 11, 12, 13 and 14

ZONING: B-1 (Boulevard Business District)

STREET: 1701 East Sunrise Boulevard

ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47-24.12 and Sec. 47-6.11 – Requesting a temporary non-conforming use permit to permit the display and sale of used vehicles where such use is currently not listed as a permitted use in the B-1 Zoning District.

Robert Lochrie, attorney for the applicant, stated that this property was located directly across the street from the existing Auto Toy Store, and was currently within the City's commercial land use with a B-1 zoning category. He stated it had also operated as a used car facility in the past, as well as other similar uses. He proceeded to show a photograph of the property looking to the west. He explained that the previous operation had ceased at the site. He stated that while the new structure was being constructed, the applicant wanted to move out of their existing facility upon the sale of the site, and move to this location as a temporary site. He stated that was the reason for their request for a one-year temporary use.

He stated that another property which had a history as a non-conforming use, even though the City had determined at this time that it was not a legal non-conforming, the use as a used car facility would terminate at that time. He stated they had met with the neighborhood association. He stated further that they believed the use was compatible since it was ongoing, and the impact would be diminished and they would be moving to a smaller site.

Chair Jon Albee proceeded to open the public hearing.

Rixon Rafter, President Lakeridge Civic Association, stated that they also supported this request.

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.

Fred Stresau stated that he had spoken with Robert Lochrie about this and the problem the Board and the City had with the Parking Corporation of America in connection with a temporary one-year use variance. He reiterated that company was still operating 4-5 years after receiving the variance. He stated that originally he had been inclined to vote against this request, but if they were willing to waive their right of appeal, then the City would be protected from a similar problem.

Mr. Dunckel stated that in regard to condition #1 on the last variance, where it ran for the life of the owner, waived their right to appeal, and not to the entire granting or denial of the variance. He stated if he was the applicant, he would be reluctant to waive the right to an appeal before finding out if the Board was going to grant or deny this request.

Chair Jon Albee suggested that approval could be made subject to. He explained that the Parking Corporation of America problem had proven to be a difficult situation lingering for a few years, and now they wanted to find a mechanism to avoid a repeat of such a problem. He explained that company had not been in compliance, and consistently returned year after year seeking an extension. As a result, a bad situation had become worse.

Mr. Dunckel reiterated that the Board did not want Auto Toy Store to return after the one-year period and seek a variance to stretch out the situation, but yet they did not want to see a denial of a variance in the future subject to an appeal or dispute resolution.

Mr. Lochrie stated that he realized what the Board was stating, and he had been aware of the problem. He continued stating that they were asking for a one-year temporary use, and it was clear what was being requested. He stated that when that one-year temporary use terminated, if they were to continue operation the City would have authority to take enforcement action against the applicant. He further stated it was not his client's intent to break the law, and if they did there were remedies which could be taken by the City.

Mr. Dunckel reiterated that there could be a waiver of right with the applicant's consent. It was explained that they would be waiving the right to seek a variance at the end of the 12-month period, and to waive any rights of judicial appeal or dispute resolution processes relative to the ability of applying for such variance. Mr. Lochrie stated it was not their intent to do any of those things. Mr. Dunckel stated he respected what Mr. Lochrie was saying, but the parking company might have said that originally also. Mr. Lochrie stated he would be more comfortable to waive the appeal, than in saying that no one would ever request a variance on the property. He further stated that the most important thing was that they needed a temporary site, otherwise there would be no need to build the new facility. He asked the Board for some guidance in this matter.

Birch Willey stated they were asking for more from the applicant and their attorney than what appeared to be fair in the long run. He further stated that they had learned their lesson in regard to the other situation which occurred, and he felt as long as there was a time limit and a willingness on the applicant's part, then maybe this could be tied into the CO of the building to be constructed. He stated the Board was asking this applicant to give things away that should not be given away, in his opinion.

Scott Strawbridge stated that he did not believe that construction documents could be prepared and the building built within the one-year time period. He felt the City would not be able to pull their weight to get them through the process. He reiterated that a temporary non-conforming use was a one-year deal, and if this was granted, then they would (a) either shut down their operation 12 months from now, or (b) break the law.

Mr. Lochrie stated that one of the options was if there was a way that the one-year temporary use would not start until 3-4 months from now. He stated they believed they could build the building within one year, but the question was when would the process begin. Mr. Strawbridge suggested they defer their application until they were ready. Mr. Lochrie stated that then they would be basing decisions on the unknown. He stated it was unfortunate they would not have the ability to request an extension of time.

Mr. Dunckel asked if the current operation at the location was in violation of the Code. Mr. Lochrie reiterated there was no operation at the location.

Fred Stresau stated that it would be signed by the Chairman, but he did not know if the Chairman was required to sign the document immediately.

Gus Carbonell stated it was almost impossible to get a permit and plans within a year, and they had discussed many times that the one-year time limit was too short due to today's environment, along with the fact that it was not renewable. He suggested that an effective date be included in the conditions.

Don Larson reiterated that this would not get done in the one-year time period, and he felt it was an injustice to someone trying to stay in business.

Binni Sweeney asked if the time could begin once they obtained their building permit.

Mr. Dunckel explained that the one-year period would begin from the date of the entry of the Final Order. Therefore, possibly the applicant would want to defer this matter and return when they wanted the time period to begin because he was reluctant in having the Board adopt an Order and then instruct the Chair not to sign it for 3 months. Mr. Lochrie asked if the Order itself order that it not take effect until a specific time period. Mr. Dunckel stated that could not be done because it stated "entry of the Order," and not the effective date of the Order. Mr. Lochrie further stated that it was difficult for them to defer. He reiterated he did not know how the Board would vote this evening, let alone 6 months from now.

Don Larson asked if the non-conforming use for the temporary use be extended until the CO was given on the new building. Mr. Dunckel replied that could not be done.

Gus Carbonell stated that the previous use for these buildings had been the sale of cars or boats, and he proceeded to ask once a non-conforming use left a building would the use expire automatically. Fred Stresau confirmed.

Binni Sweeney stated that she believed a consensus could be reached by this Board for a deferral of this item, if they were willing to waive their rights for an appeal. Mr. Dunckel stated that issue was no longer on the table.

Chair Jon Albee stated that he felt the Board was close to a consensus in regard to when the clock would start ticking. He added that the complexion of tonight's board was different, than what it might be in the future. He stated the Board appeared amenable to finding some sort of solution this evening.

Robert Dunckel stated he wanted to hear from the applicant in regard to the suggestion that this matter be deferred, and brought back when they were ready to have the clock start ticking. Mr. Lochrie explained that was difficult for the applicant because the location on Sunrise was assuming that they have a temporary location on Sunrise, and if not they would have to attempt to locate a site somewhere else. He reiterated that the applicant wanted to stay at this location and being at another site for 3-4 months just would not work. He further stated they would waive the right to appeal or challenge the City on any code enforcement action or any other actions they might take. He stated they wished they had more time, but they did have one year and reiterated that they would just have to find a way to get it done. He stressed that was the bottom line, and if they did not get it done, then they could not sue the City and go to Court which he realized others had done. He reiterated that this was a tough business decision for the applicant.

Robert Dunckel stated that in the ordinary course of events, frequently the Orders for this Board did not get executed or entered until shortly before the next scheduled meeting. Essentially, that would provide the applicant with 13 months from this meeting.

Motion made by Fred Stresau and seconded by Don Larson to approve the application for a one-year temporary non-conforming use with the applicant agreeing not to challenge the City beyond the one-year period.

Birch Willey stated they were giving the applicant the choice to decide whether the fine imposed by the Code Enforcement Board would be worth paying in order to obtain some extra time. He further stated that would be their business decision to make. He reiterated that all aspects were being discussed and he felt this should be placed on the table also.

Mr. Lochrie stated they would not challenge this in Court.

Roll call showed: YEAS: Don Larson, Birch Willey, Binni Sweeney, Gus Carbonell, Scott Strawbridge, Fred Stresau and Jon Albee. NAYS: None. Motion carried 7-0.

3. 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

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 required for interior access to a hotel accessory use to allow exterior access.

APPEALING: Sec. 47-5.36- Requesting a variance to allow the existing 5.6' west side yard and 20' front yard setbacks to remain where the Code requires a 20' sides yard and a 25' front yard setback.

APPEALING: Sec. 47-20.4.B.1 – Requesting a variance to allow the utilization of a portion of the adjacent City parcel for expanding the existing parking on the site, thereby allowing 10 parking spaces to fit on site (while providing 3 spaces off site) where parking facilities are required to be located on the same lot or parcel of land that such facilities are intended to serve.

APPEALING: Sec. 47-20.18 – Requesting a variance to permit 3 off site parking spaces to be provided pursuant to a month-to-month lease agreement where the Code requires a 50-year lease.

Chair Jon Albee stated that this case had been deferred from the August 11, 2004 meeting. He asked the Board how they wanted to hear this case. Gus Carbonell stated that all the requests were related, and therefore, he suggested that the Board hear the entire case before voting.

Ron Mastriana, attorney, stated that he was representing the property owner and the tenant. He proceeded to show a map of the site.

Mr. Mastriana stated that he wanted to provide some history regarding the property because that was where the hardship tied in. He continued stating that the Historic Preservation Board, along with many citizens of the City, considered this structure historic. He stated that Dawn Doyle had been the owner of the property since 1979, and a variance was granted on the property in 1959. He stated that Ms. Doyle moved her school to the site after she had purchased the property, and continued operating it at the site until approximately 1994. He explained that it had been approved for such use, consisting of about 10-12 classrooms, and about 300 students per week attended classes at the site. He stated that the owner wanted to preserve the structure, but over the years since it was located in the RMM-25 district and located between 2 condominium structures, the taxes had continually increased. He stated the highest and best use of the property would be demolition of the house and construction of about 7-8 condominium units. He stated they did not want to do that and he did not believe residents of the City would want that either. Therefore, the owner had found a tenant, who was an option purchaser, John McDonald who was going to lease the site under the name of St. Regis Landing. He explained that Mr. McDonald was also one of the developers and owners of the 5-star St. Regis Hotel, which was being constructed on the beach and expected to open in about one year. He stated that Mr. McDonald had agreed to rehabilitating the structure, and he proceeded to show a photograph of the finished product.

Mr. Mastriana stated that in order to conform to the historic designation, they had two choices. The first choice was to request a rezoning to H-1, and then the use would be permitted. He explained that staff recommended that not be done because H-1 would not fit into the City's land use designation requirements. Staff, therefore, requested the applicant to go through the process and request the variances. He stated that the issues were as follows:

1. Variance for the stand-alone accessory hotel.
2. St. Regis on the Beach.
3. Access to the hotel not through the accessory, but would be separate.
4. Setbacks.
5. Code requires 13 spaces for this use, but in doing so they would have to use a portion of the City's right-of-way, and 3 spaces in the parking garage that was within 700'.

Mr. Mastriana further stated that the property was next to the right-of-way, which at one time was to be a bridge over the Intracoastal. He stated that was never going to happen. He explained it was now one of

the busiest water taxi stops in the City, and added it was a great way to get to Las Olas. He admitted that at the present time it was in a deplorable condition. He explained they had agreed to re-landscape the area and enhance it for individuals using the water taxi. He stated they would be using an area of about 12' x 50' for such a purpose. He stated that the Right-of-Way Committee had granted approval for such use. He stated they would be executing a License Agreement to allow them to use that site and have 10 parking spaces on site. He stated that would be presented to the City Commission in the near future and the cost for such enhancement would exceed about \$100,000. He felt it would put the entire package together.

Mr. Mastriana continued stating that the condominium structure which had an impact on the site was the River House, and they met with that group first because originally they had wanted to bring a restaurant to the site, and that group had raised various concerns. He proceeded to read the following into the record:

"The property will be purchased by an entity controlled and/or owned by me, John McDonald, partner of the St. Regis Hotel in Fort Lauderdale Beach. I am requesting that it be used for a private club, although the property is zoned multi-family. I will also request and permit the City to designate this home as an historic facility after the variance has been obtained in order to protect it from subsequent demolition. I agree to limit the variances that I am requesting so that it runs with the current owner, Dawn Doyle, then myself as owner, so long as I am Operational Manager for the clubs at St. Regis. Should I sell the project or property, the variance will expire and the new owner will be required to seek the conditional approvals. The limitations on the various uses as a private club are as follows:

- (a) The facility and dock will not be open after midnight.
- (b) No liquor or food will be for sale in the facility.
- (c) The existing kitchen will be utilized for minor food preparation.
- (d) The club membership will be for golf members of the clubs at St. Regis which is limited to 250 members, hotel guests of the St. Regis Resort may use the facility for access to Las Olas, but may not use the club facilities.
- (e) Outside events will be limited to 4 per year, unless otherwise approved by your condominium association. There will be no outside dining.
- (f) There will be no use of outside speakers."

Mr. Mastriana further stated that the intention was to minimize any impact. He stated it was his understanding that based on these limiting factors, the River House endorses this project.

Birch Willey stated that it was not the River House, but was the River Crest. He stated there was a large building known as the River House which was being built on the River.

Mr. Mastriana continued stating that he wanted the Board to understand their hardship. He explained there was no other way for citizens or property owners to protect a historic facility which was not in the same zoning category, except through adaptive uses. He stated that this was done all over the entire US. He stated they took a use which was not a major impact to the neighborhood, and converted it to remain historic. He explained that was the only way to preserve these facilities. He stated when the property was used as a school, it had been a more intense use than the one being proposed. He stated further that the desire was to keep this a first-class facility. He explained there was a need for only 5 parking spaces at the facility, but Code required 13 spaces. He stated that if there were any events held at the facility, there would be valet parking. He stated they now had a contract for 3 spaces at the Las Olas garage, and requested that be sufficient. He further stated that they believed the use of the facility would be accessed mostly by water taxi.

Mr. Mastriana stated that they were trying to limit impacts on a property, and in this case they would be preserving this property with minimal use.

Chair Jon Albee proceeded to open the public hearing.

Diane Smart stated that she was speaking on behalf of the Board of Directors of the Broward Trust for Historic Preservation. She continued stating that the Trust was concerned about shrinking heritage because it was hard as the decades went on to preserve great architecture. She stated they felt this was a good opportunity to look at a strong program for adaptive reuse, which they hoped to persuade the City to take more seriously than it had in the past. She stated that the history was rich and was flaked with mysteries involving visits by Churchill and Roosevelt. She added there were other aspects of this property which were beautiful, graceful and noble, along with being full of stories. She stated it was very important to preserve this building. She added that the alternative would be a 55' building wedged into the community, and the character of the area would be lost.

Charles Jordan, President of the Broward Trust for Historic Preservation, stated that their organization had favored the rezoning of this property to H-1, but unfortunately the Planning Director at that time felt such zoning application should not proceed. He stated they strongly disagreed in that matter. He further stated that the goal in this case was to preserve a historic treasure. He continued stating that they applauded the applicant for making such a comprehensive effort to provide an adaptive reuse for the property and were asking the Board to grant the requested variances. He advised that the Historic Preservation Board had recommended historic designation for the property, and applauded the owner for letting such process continue and having the building saved for posterity.

Wendy Walker stated that she lived east of the project, and advised that they had not been contacted by the attorney representing this project. She stated they had been advised by Birch Willey of the situation. She added they were in favor of preserving the building, and wondered why Rio Vista had not been invited to join in regarding the proposed project.

Dawn Doyle, owner, stated that this was a very emotional situation for her. She reiterated that she loved the building and John McDonald had done a fabulous job rehabilitating the building. She added that she had been approached by a number of developers regarding the property. She stated that most individuals wanted to demolish the structure, but she could not imagine doing that. She reiterated that the taxes were too high and she was unable to maintain it at this time. She stated further that she wanted to find someone who would cherish and take care of the building. She stated they needed to preserve the other buildings in the area. She hoped the Board would look upon this as a special project and approve the requested variances.

Gerald Jordan stated that he lived down the street from the subject property, and advised that this property was about 100 yards out of the boundary of the Colee Hammock Homeowners Association. He stated that he was against this project because they had been fighting the parking problem for a long time. He reiterated that their neighborhood was becoming inundated with parking. He felt adding this property would just add to the parking problem. He further stated that when the Riverside Hotel wanted their setbacks for expansion, he thought they had agreed that they would not allow people to use their parking if they were granted permission to build it. He thought the parking was only for the merchants on the street. He further stated that there was a nice little park at the site and everyone used it to look at the Intracoastal. He did not understand how the City could give away 1,000 sq. ft. of the right-of-way. He stated the landscaping appeared that it would be directed over to the Needham property with a small gap to get through from SE 4th Street to the park. It appeared that it would be closed off and one would have to go through their property to get to the area. He stated that individuals would think it was private property if

it was closed off. He reiterated that their neighborhood was fighting density and he did not think anyone would construct a 55' building in the area. He stated they were getting more organized in their opposition.

Chase Adams, River Crest Condominium, stated they were the apartments immediately to the west of the subject property. He stated that Mr. Mastriana's letter dated August 30, 2004, in which the limitations had been outlined, advised that the condominium had been in support for the variances. He stated that was not an accurate statement. He stated it would be good to preserve this building. He further stated that it was his understanding that the Commission were the only ones who had the authority in regard to licensing the park. Mr. Dunckel confirmed and explained that the irrevocable license could only be approved by the Commission. He recommended to the Board that facet be contingent upon the Commission entering into such a license.

Mr. Adams further stated that this did not comply with the 5 parameters that the Board was obligated to follow in this matter. He felt the reference made regarding the building being used by 300 students was not relevant to the Board's decision. He stated also that the money spent by the hotel on the property was not relevant either. He reiterated that the site was to be used for a water taxi access. He stated the street was only 5 blocks long from SE 6th Avenue to SE 11th Avenue, and at the eastern end was the Riverside Hotel. He proceeded to state that he had not heard any special conditions or circumstances presented this evening to justify the variances being requested. He felt the reasonable use of the property was as a single-family home. He reiterated that every building to the east of the site was a single-family dwelling, and the most recent home built in the area had cost about \$10 Million. He stated if it was sold for commercial use, it definitely would bring a greater profit to the owner. He reiterated that he did not see any evidence of a unique hardship in this matter. He further stated that the applicant was not coming into this situation with "clean hands," because they had already publicly announced their club being in existence at this site since April 21, 2004. He continued stating that they were already operating a business at the site regarding memberships for the club at St. Regis. He urged the Board to deny the request.

Robert Heebner, attorney, stated he was not speaking in opposition of these requests. He stated that the letter dated August 30, 2004, listed the conditions if the variances were granted. He continued stating that knowing such conditions would exist as part of the variance, he asked about the variance running with the current owner and Mr. McDonald, and not with the land. Mr. Dunckel stated that he had addressed that issue in the past with this Board, and to the best of his knowledge there was no case in Florida on point. He admitted there were cases in other jurisdictions which addressed the issue, and some stated that it was invalid and if challenged the underlying variance would remain, but the condition restricting it to one owner would be stricken. In the past to soften that, he stated he had attempted to request a stipulation that the applicant for themselves, their successors and assigns waive any right of appeal or collateral attack. Mr. Heebner felt that needed to be clear for the record in regard to the River Crest Condominium. He stated if the attorney for the applicant agreed with the statement made by Mr. Dunckel, then he assumed the other conditions listed would be included in the variance itself as a condition, and therefore, any conditions violated would be a violation of the variance. Mr. Dunckel stated that would be the case if incorporated as conditions in the variance.

Stephen Buckley stated that he was unable to get past the first issue, which was a request for a variance to permit a stand-alone hotel accessory use where such use was not permitted without a principal use. He felt that was really the issue. He stated that the magnitude of this decision was a Commission issue couched in a different manner. He felt it was a greater hurdle for this Board to overcome, and one that should be addressed by the Commission.

Robert Dunckel stated that Mr. Buckley had not spoken as a member of this Board since he was not seated on the panel, and was not present when the case first began. His comments should be construed as those of a private citizen.

Mr. Mastriana stated that it was important that the Board realize that this property was not voluntarily requesting historic designation. He stated that the Historic Board, on their own, had taken 3 or 4 houses and this facility, and had decided they were important to preserve. He stated no input had been received from Ms. Doyle regarding such designation. He added that this facility would not work as a single-family house. He stated that the water taxi was at the site constantly, and next door was a 5-story condominium. He stated no desire had been expressed by anyone to use the site as a single-family home. Therefore, he stated the comments made that this was not a reasonable use were not true. He stated they had referenced the school use because for the last 20 years it had been used as such a facility. In between those times, it had been used as a catering facility. He stated this was a special use and everyone wanted to preserve the structure. He reiterated that the only way to preserve the building was through the requested variances. He agreed that they would waive appeal regarding the variance being limited to the current owner and Mr. McDonald as long as he was the Operational Manager for the club at St. Regis, and in waiving any further rights of appeal, it would also include collateral attack.

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.

Robert Dunckel further stated that the Board might want to consider what had been stated in the letter which read as follows: "I will also request and permit the City to designate this home as a historic facility." He explained that the Board might want to consider making the historic designation a condition precedent to the effectiveness of the variance. He stated that individuals had talked about events held at the site and the impacts they had across the River in Rio Vista, and he did not see anything limiting the number of people on the property. He stated that the Board might want to consider such a limitation in regard to the maximum capacity for the building. He also suggested that in regard to Item #4 which was a request for a variance allowing the utilization of a portion of the adjacent City parcel for expanding the existing parking on the site, that the condition for that be the granting of the irrevocable license by the City. He stated that in the letter there had been no inclusion of valet parking.

Mr. Mastriana stated that in the language permitting a certain number of special events, the condominium had requested that a valet be hired on such occasions. Robert Dunckel stated that should be included as a condition, or the Board should consider it as such. Mr. Mastriana stated that he would stipulate to that condition.

Binni Sweeney asked if the Association had approved this. Birch Willey stated that he sat on the Board and a meeting had been held which was an opened meeting, and the issue had been addressed. Later on a Board Meeting had been held consisting of 5 members, and all had voted to accept the terms in the letter, and had agreed to the use and the variances pertaining to the club. He advised that the Board had not discussed the other issues in question, such as the historic designation or parking. He explained they had been concerned about the use of the house itself and its preservation.

Scott Strawbridge stated that he appreciated everyone's hard work in this matter. He reiterated that he was an advocate for historic preservation, and he felt this was an excellent opportunity to breathe life into this building. He stated no one wanted this building demolished. He felt this was a good solution, but he did not feel it was the only solution available. He stated there would be no solution without economic viability. For such reasons, he stated he was concerned about some of the conditions. First, he stated that for the good of the City in general and for salvation of such a heritage resource, allowing the variance to

run with the owner instead of the land put the potential for the building to be back in the same "jackpot" years down the road again. He stated that he would be more comfortable if the variance ran with the land because life brought changes all the time to everyone. He stated a new owner might try to bring in a different use, but at least there would be an approved use allowing a revenue stream in the interim. He asked if they had the ability to reduce the parking requirement for the site because he did not think they needed the 3 additional spaces. He felt they had more than enough parking, and it would solve the problem for the Colee Hammock Homeowners Association wanting access to the park. He added that he was not comfortable giving up park space for parking, and rather have them underserved and overflow parking go to the lot or a meter. He stated this was a wasted effort and bad use of City-owned land. He felt the deal could work without it. He felt they had gone overboard with some of the conditions, and he wished they could pull back some of those conditions and make it a more durable deal.

Birch Willey stated that he wanted to make a comment regarding the use variance and how it should run. He stated the letter had been worded as it was, and Mr. Heebner had come forward as he did, because if the use was granted as a private club, and should a substantial person using it as such disappear, he would not want someone like Mr. Flint coming in and taking over the building.

Robert Dunckel stated that one of the questions posed by Scott Strawbridge had been if the Board had authority to grant the variance regarding parking. He stated the Board did have such authority. He further stated that the adjacent property had been referred to as a park, but it was not a park and was considered public right-of-way. He reiterated that the City could not convert public right-of-way into a park. He stated they had been challenged on that in the past, and they had lost, and it would amount to an abandonment of the corridor. He stated it was used as a vehicle for transportation, but it was not a park per se.

Fred Stresau stated that in regard to the use running with the current owners, he felt if it ran with the land then they would be achieving what the Historic Preservation Board wanted. He felt one of the easiest ways was to make sure that the building achieved its historical designation prior to their being able to use the property. He stated also that a question had been raised regarding limiting the maximum capacity on the site, and he felt they would not want 300 to 400 people on the site. He did not think any comments had been made by the applicant in regard to that issue.

Mr. Mastriana stated that the idea was that this be a private and small used facility, and they did not want a large amount of people at the site. He stated he did not know how the cap was set for facilities.

Fred Stresau stated that the Fire Department would have something to say regarding the maximum capacity for the inside of the building, but he was concerned about the exterior on the River. He reiterated that he wanted some indication from the applicant in regard to capping the amount of individuals that would be able to use the property for a party. Gus Carbonell explained that the Fire Code would determine the amount of people. He stated in a place of assembly, there were different categories. He further explained if there was a dining area without fixed seating, then it would be one person per every 1500 sq. ft, and if it was a standing bar, it would be one person per 7 sq. ft., but he was not sure about the exterior of the building. He felt the outside would not really be capped because there would be no concerns regarding egress in case of a fire.

Robert Dunckel stated that the Board could not grant a reduction in parking this evening because it had not been advertised. He stated that in regard to the first item, he wanted to offer to the Board for their consideration expanding the conditions so as to tie them specifically to the St. Regis on the Beach.

Mr. Mastriana stated that was the only purpose at this time. Robert Dunckel stated that it had not been explicitly stated anywhere in the documentation. Mr. Mastriana stated that whatever the resort was named because they could be bought out by someone, such as the Hilton.

Motion made by Fred Stresau and seconded by Scott Strawbridge to approve the variance in regard to Sec. 47-5.19 & Sec. 47-19.1.C with the following stipulations: (1) limitations on the various uses as itemized in the letter dated August 30, 2004 as submitted to the Board of Adjustment; (2) the applicant waive the right of collateral attack on the property to the City; (3) the property could not be used until historic designation was achieved; (4) incorporate into the record that any violation of the stipulations would be in violation of the ULDR; (5) subject to the irrevocable trust issue to the City Commission regarding the use of the right-of-way; (6) the cap on the number of participants should be limited to not more than 100 on the exterior of the building; and (7) that this variance be tied to the St. Regis Hotel on the Beach, as owner.

Binni Sweeney stated that comments had been made about the variance running with the land, and it had not been included in the motion. She stated she had a problem with that. She preferred that the variance run with the land and not the individuals.

Motion made by Binni Sweeney and seconded by Scott Strawbridge that the variance run with the land and not with the individuals.

Fred Stresau stated that was why he had asked that the owner achieve historical designation before it could be used because he felt it should run with the land and not the present owner.

Binni Sweeney clarified if there was a historical designation, then the variance then run with the land. Fred Stresau confirmed.

Robert Dunckel clarified that the historic designation would run with the land, but the question was whether the Board wanted to follow the motion to amend which would have the variance not run with the land, or did they want to vote on the main motion which would have the variance expire upon sale of the land.

Scott Strawbridge stated he felt there was a difference. He stated that Fred Stresau's point was well taken that the historic designation would run with the land, and it would provide a substantial layer of protection. He reiterated that it would not guarantee a useful existence for the property, and the underlying zoning would still exist.

Robert Dunckel clarified that the historic designation would run with the land, but if the building was destroyed or if the Historic Preservation Board and City Commission would allow demolition of the building, they could end up with a different type of building at the site, and the use could be continued in another way, shape or form. He felt this should be considered by the Board, but he also stated that he felt the probability of the Historic Preservation Board and the Commission permitting something to be rebuilt which would not replicate the existing building would be unlikely.

Charles Jordan stated that had never arisen before, but he did not feel that the Historic Preservation Board, nor the Commission, would vote to have this building demolished. He further stated if it was demolished, then he believed the landmark status would go away.

Robert Dunckel confirmed they could end up with a different type of building. He stated that this Board probably wanted to be assured that the building which existed would remain. Charles Jordan

suggested that the variance go with the land, and that they include the building in the conditions. He explained that they would then solve both the issues because he did not feel it should be tied to various business structures. He felt the importance of the building should travel with it forever.

Robert Dunckel stated that the Board might want to consider the additional condition of tying the variance to the building.

Birch Willey stated that part of the protection that the neighbors felt they would have regarding the use of the property, whether it was historical or not, would be that it was limited through the use by the owner. Should such person disappear, then the process would have to begin over again. He stated that this was important to the amendment.

Chair Jon Albee asked the Board's input regarding the idea of it being specific to the building. Fred Stresau stated he thought that had been done through his condition of the applicant having to achieve historical designation for the building.

Mr. Heebner stated that he heard the discussion in regard to the variance running with the land, and the Board of Directors had bought into this based upon the reputation of Mrs. Doyle and Mr. McDonald. If the variance was granted as a private club and the owners went away, then any type of private club could exist at the site.

Robert Dunckel stated that they were looking at this being granted as a private club and accessory use tied to the St. Regis on the Beach, which was the principal use.

Mr. Heebner asked if the St. Regis could sell out. Mr. Dunckel reiterated that it would travel with the principal use building which was going to be a significant hotel on the beach. Mr. Heebner stated they did not know the corporation, but they had confidence in the owners. He stated that was why the residents had not come to object to this matter this evening.

Mr. Mastriana further explained that they had tied this to the St. Regis which had sold for the highest value of anywhere on the beach at about \$1,000 per sq. ft., and those people demanded a lot. He explained that it was extremely expensive and the membership in the club, which was a Jack Nicholas Golf Course, ran about \$85,000.

John McDonald, owner, stated that the issue was how the building would survive should he go away. He stated that the bottom line was that once the building was placed on the National Register, it would prevail because it would be unique in its own time frame. He hoped they could get past that concern. He stated that he had committed to preserve the building, and he was about out of assets for pursuing this dream, and he felt a resolution was needed in good faith, along with common sense and enforceability.

Pat Rathburn stated that she was speaking as a citizen, and wanted to see the building preserved, but she was concerned how the discussion was going among the Board. She further stated that in talking about the variance running with the land, it meant it went with the ground and the dirt. She stated if a motion was being made because the Board wanted the building preserved, then she felt the Board was saying that it should run with the structure that was on the land. In that way, they could not add on to it, and if a hurricane destroyed it, they could not rebuild. Whereas, if it ran with the land, they would be able to rebuild whatever they wanted.

Mr. Mastriana stated they would accept the designation that it run with the two individuals and they realized it was very limiting, but they were convinced that what they were trying to do was very special that it would do well and would continue.

Binni Sweeney stated that she would then withdraw her motion and the second, Scott Strawbridge, agreed to do likewise.

Chair Jon Albee reiterated the Board would then focus on the main motion which had previously been made.

Robert Dunckel stated that if he was following the discussion correctly, he did not think the main motion included a condition tying the variance into this building. Chair Jon Albee confirmed.

Fred Stresau asked for some clarification about his condition regarding historic designation. He did not feel it could be deemed for any other building.

Robert Dunckel stated that he believed Charles Jordan had explained that if the building was destroyed, the historic designation would vanish and they could rebuild something that would not replicate what presently existed. Chair Jon Albee confirmed and stated that the RMM-25 would be the underlying zoning. Therefore, in the event of a disaster the existing building would have to be reconstructed or something similar.

Fred Stresau suggested that they include "existing structure" in the historic designation. Therefore, it was clarified that the motion would include the building, the individuals, and the St. Regis on the Beach.

Mr. Mastriana asked what would happen if a hurricane destroyed the building. Chair Jon Albee stated that the concept being discussed was that if more than 50% of the structure was destroyed, then the reconstruction would have to replicate, to the best extent possible, what presently existed on the site. He stated the idea was to remove as much as possible the underlying RMM-25 zoning.

Roll call showed: YEAS: Birch Willey, Binni Sweeney, Gus Carbonell, Scott Strawbridge, Fred Stresau, Don Larson, and Jon Albee. NAYS: None. Motion carried 7-0.

Motion made by Scott Strawbridge and seconded by Birch Willey to approve the variance in regard to Sec. 47-19.8 as submitted, including the conditions specified in the previous motion. Roll call showed: YEAS: Binni Sweeney, Gus Carbonell, Scott Strawbridge, Fred Stresau, Don Larson, Birch Willey, and Jon Albee. NAYS: None. Motion carried 7-0.

Motion made by Birch Willey and seconded by Fred Stresau to approve the variance in regard to Sec. 47-5.36 as submitted, including the conditions specified in the previous motion. Roll call showed: YEAS: Gus Carbonell, Scott Strawbridge, Fred Stresau, Don Larson, Birch Willey, Binni Sweeney, and Jon Albee. NAYS: None. Motion carried 7-0.

Motion made by Birch Willey and seconded by Fred Stresau to approve the variance in regard to Sec. 47-20.4.B.1 as submitted, but the applicant should return in the future to request a parking reduction.

Scott Strawbridge stated that he would support this, but he did not want the project stonewalled because of this, and asked if the applicant would consider returning before this Board and getting a

variance for a parking reduction. Fred Stresau stated if the Board denied this request, then they would have to come back. Birch Willey asked if the request was denied, could they immediately come back before the Board and ask for it in another way. Robert Dunckel stated that the provision in the Code was if a variance was denied, the applicant could not come back in the next two years requesting the same variance. He explained what was being proposed would be a different variance, and therefore, not covered by the two-year rule.

Birch Willey stated that he wanted to make some further clarification, and stated that the Condo Board, he and Mr. Heebner had discussed that they were concerned because people used the area as a park, even though technically it was not considered such. He stated they were concerned that there would be no attempt to limit the use of the area to people getting on and off a water taxi or some similar type of vehicle. He explained that the intent was to improve the area aesthetically and have it remain open to the public. He stated there was no question that the intent was to have it used as an open space park area.

Chair Jon Albee stated that this referred back to the irrevocable license to be issued by the Commission. He further stated that it appeared they were looking at the preservation of the right-of-way which was important, and he felt the issue of parking in regard to the neighborhood was also critical. He stated that he agreed with the residents that the parking in the area had been allocated various times over.

Robert Dunckel stated that the Property and Right of Way Committee had recommended approval of the revocable license, but it did not mean that the Commission would approve such. If they did, it was a revocable license which meant it could be revoked in the future. He stated the overall plan might be more solid if they had the reduction in parking. Chair Jon Albee reiterated that issue would have to be advertised and the applicant would have to come back before the Board.

Mr. McDonald proceeded to read a poem by Kipling. He proceeded to show the site plan and explained that they were spending about \$60,000 on the open area and providing shelter and a paved area. He felt it was a good civic thing to do, and it improved the area. He stated it was being supported by the water taxi individuals.

Scott Strawbridge reiterated that he did not want the applicant to pull the improvements off the table.

Chair Jon Albee stated that he was concerned about the parking and the impact on the surrounding neighborhoods. He believed that there needed to be further investigation regarding such situation.

Mr. Mastriana further stated that if they were concerned about the parking, they could relocate it to a different area.

Roll call showed: YEAS: Birch Willey, Gus Carbonell, Scott Strawbridge. NAYS: Fred Stresau, Don Larson, Binni Sweeney and Jon Albee. Motion failed 3-4.

Motion made by Fred Stresau and seconded by Binni Sweeney to table the variance regarding Sec. 47-20.18 until the applicant can further review the parking situation.

Don Larson asked why they could not grant relief for 5 or 6 spaces.

Roll call showed: YEAS: Binni Sweeney, Fred Stresau and Jon Albee. NAYS: Don Larson, Birch Willey, Gus Carbonell, and Scott Strawbridge. Motion failed 3-4.

Robert Dunckel stated that they could not grant relief for 5 spaces because the advertisement was only for 3 spaces. He explained that the Board lacked jurisdiction to grant a variance in excess of what had been advertised. He stated that someone on the prevailing side could reconsider the motion to table.

Mr. Mastriana stated he would prefer the Board approve the 3 spaces, and then possibly they could redesign the parking lot. Fred Stresau stated that more parking might not be the best thing for the building or the site. He felt there was a lot of public parking in the area, and therefore, he preferred they come back and request a parking reduction, assuming it would come before this Board and not before Planning and Zoning. Mr. Mastriana reiterated that he preferred they grant the 3 spaces, and if that did not work, then they would come back before the Board.

Scott Strawbridge stated he wanted to support the motion, but encourage them to come back with an alternative. Fred Stresau stated he would approve a reduction in parking in order to create more green space around the building.

Motion made by Don Larson and seconded by Scott Strawbridge to reconsider the motion to table.

Robert Dunckel explained that if this motion passed, then they would go back to the motion to table and voting could be done again.

Roll call showed: YEAS: Birch Willey, Binni Sweeney, Don Larson, and Jon Albee. NAYS: Gus Carbonell, Scott Strawbridge, and Fred Stresau. Motion passed 4-3.

Robert Dunckel clarified that the motion to table was now back before the Board.

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

Motion made by Fred Stresau and seconded by Don Larson to approve the original application in regard to Section 47-20.18. Roll call showed: YEAS: Gus Carbonell, Scott Strawbridge, Fred Stresau, Don Larson, and Birch Willey. NAYS: Binni Sweeney and Jon Albee. Motion passed 5-2.

MEETING RECESSED AT 9:01 P.M.

MEETING RECONVENED AT 9:10 P.M.

Jon Albee stepped down as Chair, and Patricia Rathburn conducted the remaining portion of the meeting. Stephen Buckley also sat as a regular Board member.

5. APPEAL NO. 04-07

APPLICANT: Cassandra Colby Tansey/World Fitness Association
LEGAL: Hoys Business Center, P.B. 39, P. 11, 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 17' 10 9/16" where the Code requires a depth of 19' 1 1/8" for 45 degree angled parking to permit a drive aisle width of 11' where the Code

requires a drive aisle width of 13'; these two modifications resulting in an overall parking dimension of 46' 9 1/8" where the Code requires a minimum overall dimension of 51' 2 1/8".

APPEALING: Sec. 47-20.2.B – To exclude a 2nd floor area of 1,773 sq. ft, a 1st 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.

APPEALING: 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.

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

Alan Gabriel, attorney for the applicant, stated that this was an involved case. He stated that he wanted to begin with the history of this case in order to refresh the Board's memory. He explained that this building had been built in 1972 as a furniture warehouse facility with 27 parking spaces that had been part of the original site plan with no landscaping. He proceeded to show a photograph of the property in 2002. He stated that this matter had come before the Board for a temporary use, and part of those conditions was to provide landscaping on the site because the surrounding neighborhood wanted the site upgraded. He reiterated that had been done. He further stated that over a year later, the final CO had been issued with a condition imposed by the Building Official and the Fire Marshall that the stairway to the second floor would be blocked off as if it did not exist. He further stated that the second floor was not to be used in any way. Also, an emergency exit area was required on the first floor. He then proceeded to show the site plan.

Mr. Gabriel further stated that in 1976 the second floor storage area had been added with no additional parking spaces required. He reiterated that the property always had 27 parking spaces. He explained the plan had been changed after submitting it to the City, and he proceeded to show such plan. He reiterated that they were then able to put in 28 parking spaces, along with the required landscaping. He stated that he was not going to address the parking stall requirements and request because he had an expert who would explain the calculations. He proceeded to show the parking layout as it existed today, along with the landscaping.

Mr. Gabriel continued stating that he wanted to address the request for the exclusion of the gross floor area from the parking lot calculations. He explained that they had a use presently which was sports, and recreational that was permitted in the B-1 zoning district. He stated it was 250 sq. ft. for every parking space, and if they were to provide parking for the entire building space, they would have to have 39 parking spaces. Since the second floor area was not accessible due to the order by the Building Official, they had 1,773 sq. ft. which was uninhabitable. If that area was deleted from the calculations, then they needed 7 spaces. He stated that the first floor emergency exit area was 233 sq. ft. which was unusable property, that would eliminate another space. Therefore, that would give them 31 necessary parking spaces. He explained they had attempted to make the property legal in order to conform for parking spaces.

Mr. Gabriel further stated that the applicant had operated at this location for almost 2 years with concerns raised by both the Board and the community. He stated that none of the concerns had come to fruition. He reiterated that previously they had submitted letters from the neighborhood association who had recommended approval of the requested variances. He added they also had a letter from Wendy's which was located to the north of the site. He stated that when they had first began this process, they had made great efforts to try and find alternative parking at the site. He continued stating that they had talked to the properties to the north and there were no available

parking spaces to be secured. He stated they also spoke to the property owner to the south, who also had parking issues, and there was no available parking in that area either. He explained that to the west was Federal Highway and a shopping center who also had parking issues.

Mr. Gabriel continued stating that the third item this evening pertained to the inter-district corridor line which was enacted in 1997. He stated that the existing building encroached into that corridor line in the northwest corner by 1.4'. He explained that particular variance had not been found out until they came before this Board previously. He stated that had been one of the reasons they had requested a continuance.

Mr. Gabriel stated that in regard to the exclusion of the gross floor area, the Code stated that they should take parking/loading requirements based upon the square footage of the building, but provided in Section 47-2.2.C that the measurements were according to the gross floor area, less certain areas which could be excluded. In reviewing Section 47-20.2.B, Exclusions, it identified areas which included elevator shafts, stairwells at each floor, floor space use for mechanical equipment, covered or enclosed parking areas, and exterior unenclosed private balconies. He reiterated that the request they were making was not unheard of according to the Code. He stated that Molly Hughes would explain further the request and why they felt the dimensions of the parking lot made sense.

Chair Patricia Rathburn stated that she recalled the last time they were here to discuss the parking width and length, there had been a comment made that the City parking official would be present at tonight's meeting to provide further information.

Molly Hughes, Traffic Consultant, stated that information had been submitted to the City. Alan Gabriel stated that a letter had been given to them from a City Official indicating that the report submitted was appropriate and acceptable. Fred Stresau stated that a letter had been submitted by Tim Welch, but he was not sure whether it totally approved.

Molly Hughes continued stating that she had been working on this project for over a year with Ms. Colby. She explained that she was going to provide the basis of staff's conclusion. She stated that staff agreed the requests were modest and insignificant. She proceeded to show the parking configuration. She stated that the parking stall depth was not measured along the stripe, but was measured perpendicular to the drive aisle, and therefore, it was hard to judge based on the size of a car. She explained the depth was the key dimension for which they were asking for a 14 ½" reduction. She stated that they had based their request on a series of technical codes and documents that their industry relied upon which supported a slightly smaller parking space than what the City Code permitted. She stated that staff had been provided with 6-7 technical documents as a basis for their conclusion. She stated further that she had color coded those documents since they were extremely technical. She referred the Board to Tim Welch's letter which stated that he had reviewed the submitted material in depth, and the shortage was insignificant because the Code allowed for a more generous space. She stated it was larger than necessary and the reduction had Mr. Welch's support.

Molly Hughes further stated that she wanted to show an illustration as to how insignificant the space reduction actually was, and proceeded to show that to the Board.

Binni Sweeney asked why the Fire Department did not want them to use the second floor. Mr. Gabriel stated there was no second emergency exit and had not been built with one.

Stephen Buckley stated that the buildings to the south did not have the extra 20' to 30', and asked why they did not tear that part down. Mr. Gabriel replied they could demolish the entire building and start from scratch. He reiterated that only the second floor was unaccessible and the remaining portion on the first floor was useable except for the fire exit area. He further stated that one of the items they had originally requested was the reduction on the second floor to be used for storage, and he was withdrawing such request. He stated they were requesting the minimum variance to make this work. He stated he was asking that the area which was uninhabitable be excluded.

Chair Patricia Rathburn clarified the request and stated they were to delete "a 1st floor area of 1,540 sq. ft."

Mr. Gabriel stated they could have requested a variance in connection with the landscaping requirement, but they did not think they would be successful in having that granted by the Board. He stated that he wanted to list all the options that were available to modify the parking area. He further stated that as part of this, they had numerous discussions with the manager of the gym who had previously objected to their request. He stated they agreed to come up with some type of limiting language that would explain their use so it would be consistent with the use presently existing. He stated that he had prepared some draft language which specifically would allow them to continue with their operation as it existed under the temporary use, and also provided benefits to the person objecting. He explained that person had been concerned that the applicant was offering an open gym and having parking requirements that would overflow onto his property.

Mr. Gabriel stated that in November, 2003, the applicant had submitted a request for a sign modification in an attempt to clarify the use of the property as a certification facility. He proceeded to show an example of the sign. He explained that due to the continued unknown use for the site, zoning did not sign off on the signage, and was waiting for a decision from this Board regarding the variance.

Fred Stresau asked for further clarification regarding the conditions for the landscaping. Mr. Gabriel stated that when the temporary use had been granted, they were required to incorporate into the plan, the landscape plan which had been submitted at that time. He proceeded to read as follows: "Approval conditioned on training and certification of fitness instructors and not opened to the general public, and was subject to the Rhett Roy landscape plan to be implemented."

Chair Patricia Rathburn proceeded to open the public hearing.

Fred Williams, representing the business owners in the Imperial Square Shopping Center, stated that there were 14 such businesses. He explained they had been concerned about this from the beginning due to the parking problems in the area. He stated there were signal lights on Federal Highway and people were able to cross and go back and forth. Previously, he explained they had brought photographs and showed the Board that parking was a problem in the area. He stated they were in favor of the variance as long as the stipulations were a condition to the approval of the request. He asked about the enforceability of such conditions.

Chair Patricia Rathburn stated that Code Enforcement would not be checking the facility, and if they were in support they would have to trust the people they were dealing with in this matter. Mr. Williams stated further that the 3 items submitted by the applicant were to be conditions for the approval of the request. He stated that two years ago when they appeared for their temporary non-conforming use permit, flyers had been advertising general membership at the site. He further stated that at that meeting, the applicant had stated they were not going to sell memberships any longer.

The permit had been granted. He stated he was not opposed to the business if it was a certification business, but he was concerned what would happen in the future.

Chair Patricia Rathburn stated the conditions gave teeth to the matter, and if they violated the conditions, it would be questionable whether such variance would continue.

Fred Stresau stated that he did not understand how the permitted uses applied to conditions #1, #2 or #4. Chair Patricia Rathburn explained it was a voluntary thing they were offering to appease the neighbors in regard to the use being restricted. She stated it applied to condition #3. Fred Stresau stated he did not know how that could be enforced, and he did not see what it had to do in regard to granting any one of the 3 variances being requested.

Mr. Gabriel explained that since they were asking for a parking consideration and the lot would be modified, the parking calculations were based upon usage. He further stated the applicant's business was an instruction sports, and recreation as permitted in B-1. He stated that as a condition, the applicant was willing to not operate a facility that would permit independent any time workouts to the general public. Fred Stresau stated that would still not change the required number of parking spaces. Mr. Gabriel confirmed.

Mr. Williams stated that if weekly, monthly or daily memberships were permitted, the parking would be insufficient. Fred Stresau reiterated that would not change the parking count based on square footage. Chair Patricia Rathburn stated that it made the neighbors feel better. Fred Stresau reiterated that he did not think this would be enforceable.

Mr. Gabriel stated that he had misunderstood and that would be a change of use. He explained that a gym had a different parking calculation, than an instruction sports, and recreation calculation.

Robert Dunckel stated that by incorporating these conditions, if they sold the building for a different use, the variance would expire. Mr. Gabriel confirmed and explained that he had added the language regarding the type of use because though the Code identified instruction, sports, and recreation, it did not have a real definition. Therefore, he explained they were attempting to include what they were doing. He stated that they had no problem excluding the gym area as a condition of approval.

Binni Sweeney asked how many parking spaces were needed with the revised square footage. Mr. Gabriel replied they needed 31 spaces, and they presently had 28 spaces. With the revised footage, they would then have the required 31 spaces.

Robert Dunckel stated that in regard to the language "...additionally scheduled instruction classes, seminars and workshops may be offered to those who would like training in the sports and recreation subject areas," he asked if it was their intent that the patrons of the establishment would be there to attend classes and workouts. He asked if some further clarification could be provided.

Mr. Gabriel explained that students had to take specific classes and do training exercises to be certified.

There being no further 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 Binni Sweeney to close the public hearing. Board unanimously approved.

Motion made by Fred Stresau and seconded by Don Larson to approve the application for a variance in connection with Section 47-23.9.A.1. Roll call showed: YEAS: Gus Carbonell, Fred Stresau, Don Larson, Stephen Buckley, Birch Willey, and Patricia Rathburn. NAYS: Binni Sweeney. Motion carried 6-1.

Binni Sweeney stated that she consistently voted against any variance for front footage on image streets.

Motion made by Fred Stresau and seconded by Birch Willey to approve the application for a variance in connection with Section 47-20.2.B as submitted, excluding the request for a first floor area of 1,540 sq. ft.

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

Fred Stresau asked for some further clarification regarding the landscaping because he felt he had a different solution for the Board to consider. He explained that the landscape plan submitted by Mr. Roy and approved and installed had to do with the granting of the temporary use variance, but it did not say that what had been installed had to stay or run with the land. He continued stating that it only was an element to a condition for the variance. He stated that Tim Welch was probably well meaning, but his letter stated: "He acknowledges that the dimensions are not within the minimum operational standards for the City and insignificant reductions can have acceptable results" as was the case here. He further stated that the reduction was about 4.5 sq. ft. which was about 10% from the City's mandate. In looking through the landscape code for lots which were less than 100' in width, the Code allowed for the parking lot to be expanded to the property line or to a minimum of a 30" high wall. He stated he was opposed to decreasing the width of the drive aisle because he thought it would be dangerous, if another alternative was available. He felt the alternative was to follow Section 47-21.9.A.2.B which stated:

"Parcels of land with less than 100 sq. ft. of frontage may provide a perimeter masonry wall at least 30" high between the vehicular use area and the abutting property line in lieu of the perimeter landscaped area."

Fred Stresau continued stating that he was not sure the 4' 6" they showed was consistent throughout the entire length of the parcel from west to east, but it could be incorporated into the drive aisle. He stated he did not have a problem with the length of the stalls. He felt reducing the drive aisle from 13' to 11' would be asking for trouble because people would be backing into the cars across the way. He felt the Board should consider the fact that the landscaping installed was substantial and looked great, but that did not mean it could not be incorporated into the new plan. He stated that in regard to 45 degree angle parking, the triangles would create areas for landscaping. He felt that was why that section of the Code had been included. He felt they recognized the need for flexibility on smaller lots. He felt some minor adjustments would be needed, but not the 9.5% they were requesting.

Rhett Roy stated that Mr. Stresau's observations were 100% correct, and one of the reasons they were pursuing the matter in this way was that when the initial request had come in and landscaping had been installed, they were anticipating that when the final representation would be done with the

parking change that they would have the least amount of change and impact on the area. He stated that when they purchased the land, it had been all asphalt and building. He stated that the area resulting in a 9" thick CVS wall and 30" high would be about 2'. He stated the net result would be adding 1'3" to the asphalt or leaving it green. He stated that part of the negative image of the area was the adjacent property to the south which had no landscaping.

Fred Stresau further stated that the same planting could be put in the triangles if the wall was built. Mr. Roy confirmed.

Gus Carbonell stated that by reducing the green area, they could trigger the site to be more non-conforming. Fred Stresau stated they would then have to reduce the square footage within the building in order to make the accommodation. He stated the Board's problem was granting the change in the driveway width and the length of the stalls, and how they solved that was the applicant's problem.

Binni Sweeney stated if they were asking for a 6" reduction was one thing, but she felt 2' was a lot, and she felt they would end up backing into the cars across the way.

Chair Patricia Rathburn stated that previously the neighbor had brought in pictures of the lot and it appeared there had been a lot of SUVs present at the site. She stated that she was concerned about the drive aisle in that regard.

Fred Stresau stated they were going to have to solve the 20% required landscape area, and they might have to take out a few hundred more square feet of the interior of the building.

Chair Patricia Rathburn stated the Board appeared to be uncomfortable with the width of the drive aisle.

Molly Hughes stated that there were code after code, and recommendation after recommendation of industry standards that allowed down to 11,' and in some cases 10' drive aisles, and none of those created a situation where individuals exiting a 45 degree parking space would ever collide with the cars across the way. She felt that they did not see 45 degree parking that often because normally it was 60 degree angle parking. She explained that at 45 degrees it was more of a severe angle and that was why there were so recommendations supporting a narrower drive aisle at such a severe angle. She further explained that the industry no longer required what the Code was set at years ago.

Don Larson stated that he did not object to the 45 degree angle.

Mr. Gabriel stated that as one of the approvals earlier with the neighborhood was that a wall was to be constructed. He further stated that it was both of their decisions to keep the wooden fence and the trees as they existed. Mr. Stresau stated that it had nothing to do with the wall they were discussing that ran east/west along the southern property line. Mr. Gabriel reiterated that there was a building on the south property line.

Mr. Roy stated that the Board might want them to come back and demonstrate the issue in detail, but in general if one looked at sheet L-3 at the bottom, there was a layout plan that specifically called out a 3' 4 1/4 " space that was not paved along the south property line. He further stated that they had done that in order to obtain the open space requirement. Fred Stresau reiterated if they

could not get the 20%, then they would have to take out some of the parking spaces and reduce the square footage on the inside of the building.

Mr. Roy stated that if they made the 3' 2' and put the 1' back in the drive aisle, they then would go back along the south property line, and instead of a straight pavement edge that ran east/west, they would have a saw-toothed configuration in order to get the 20% open space. He stated they would claim each of the triangles in front of the angled parking spaces along the south property line, and they would more than compensate for the 1' given up for open space. He stated they would commit to that condition.

Mr. Gabriel proceeded to show a photograph of the property from March, 2004, and stated that the building was right on the property line. Fred Stresau stated that he would not want the building next door have the cars parking adjacent to the wall. He felt that was the reason for the masonry wall.

Gus Carbonell stated that he was not aware that the triangular areas could be dug out and made into landscaping, and he felt it would be a better plan if the masonry wall was built on the property line to prevent cars from crashing into the building, and the 3' 4" lost would be made up on those triangled areas. He suggested that this could be made as a condition to the variance and then the applicant would not have to return.

Fred Stresau reiterated that his concern was in doing what he had proposed based on what the ordinance suggested, they might not be able to come up with the 20% landscape area. He stated he wanted to see what percentage that would be and possibly a compromise could be reached.

Chair Patricia Rathburn stated that she would prefer to see what it would look like before voting on the matter.

Motion made by Fred Stresau and seconded by Gus Carbonell to table this item to October 13, 2004. Roll call showed: YEAS: Stephen Buckley, Birch Willey, Gus Carbonell, Fred Stresau and Patricia Rathburn. NAYS: Don Larson and Binni Sweeney. Motion carried 5-2.

6. APPEAL NO. 04-44

APPLICANT: Joy Duval

LEGAL: Brysa Park, P.B. 8, P. 45, Block 8, Portion of Lots 19 and 26

ZONING: CB (Community Business District)

STREET: 3701 Davie Blvd.

ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47-6.10 – Requesting a variance to permit the display and sale of used vehicles where such use is not currently listed as a permitted use in the Community Business District.

APPEALING: Sec. 47-18.3 – Requesting a variance to permit the display and sale of used vehicles on a lot that has a front property line that is 73.21' in width and a lot area of 6,702 sq. ft. – .154 acres where the Code requires a front property line with a minimum width of 100' and a minimum lot area of 15,000 sq. ft.

Russell Chase, architect, stated that when the client had purchased the property it had been zoned business, and a used car lot had been opened. He explained that she had obtained a license from the City to operate the business and continued to do so for 14 years. He stated the owner became ill and the family had leased the property to another used car agency. In the interim the owner had

died, and now the family was seeking a variance to permit a used car lot at the site. He explained that the zoning had changed, and therefore, new requirements were being projected, and this was not a permitted use in the area.

Chair Patricia Rathburn asked if this had been a continuance use by her or her family. Mr. Chase stated the lease had been broken due to the present tenant. He stated that he had photographs showing the property when the owner was running the business, and now the tenant.

Fred Stresau stated that even though the lease had been terminated did the tenants have a current occupational license. Mr. Chase stated he was not sure, but he did not think they had one.

Don Morris, Zoning Administrator, stated that he did not believe there was a license and that it had lapsed, and that was why they were before the Board.

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 Fred Stresau and seconded by Don Larson to close the public hearing. The Board unanimously approved.

Gus Carbonell asked if this was an abandonment of the property meaning that the use ceased to exist.

Don Morris stated that the issue was that if there was no occupational license, then they were not legally using the property.

Chair Patricia Rathburn stated that she thought there was a time limit involved, and that it had to be non-conforming for 180 days. Don Morris stated that the issue was the occupational license. From the application, it appeared they had been operating the business without one for quite some time. Don Morris stated that it had been interpreted in that way. Chair Patricia Rathburn stated this was then an interpretation issue.

Robert Dunckel proceeded to read the Code as follows: "If a non-conforming building or structure or non-conforming use is discontinued for a continuous period of 180 days in accordance with this section, there shall be a presumption of discontinuance of use if any one or more of the following occurs for a continuous period of 180 days. (1) Goods or services previously provided on the premises are no longer provided. (2) There is no water or electricity provided to the site and this is not due to natural causes. (3) A Certificate of Occupancy had not been issued for the structure located on the site. (4) Other evidence that the use has been discontinued.

Robert Dunckel stated that the lack of the occupational license could fall under the 4th category, but that would only give rise to a presumption.

Chair Patricia Rathburn stated that whether there was an occupational license or not, the site had been a used car lot.

Robert Dunckel stated that such provision allowed a property owner to apply to the department for a continuation of legal non-conforming status and laid down certain circumstances, but he felt there

had been a determination by the department that there had been a loss of the non-conforming use status. He stated they may or may not agree with such determination.

Motion made by Fred Stresau and seconded by Don Larson to approve the application as presented.

Fred Stresau stated that unfortunately for the owners of the land, the reason the use was excluded from the Code was because they were attempting to upgrade the neighborhood.

Birch Willey asked if originally it had been a permitted use. Don Morris stated that he was not sure and would have to check. Birch Willey stated it appeared when this was changed to the CB, then it became non-conforming.

Mr. Chase added that originally the site had been a flower shop. Don Morris stated that the zoning would have permitted the used car lot, but he could not verify that. Mr. Chase reiterated that the family wanted to lease the land.

Binni Sweeney stated that the reason the ULDR was changed was to upgrade the City, and if everyone was granted a variance, then things would never change.

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

7. APPEAL NO. 04-51

APPLICANT: Robert A. Ross & Annette Costello Ross

LEGAL: River-Lanes, P.B. 22, P. 24, Lot 3

ZONING: RS-3 (Broward County)

STREET: 2350 SW 27 Terrace

ADDRESS: Fort Lauderdale, FL

APPEALING: Broward County Code Sec. 39-275(12)(a) – Requesting a variance to allow a dock to extend 6' into the waterway where 5' is the maximum permitted and to allow said dock to extend to the north and south property lines where a 10' setback is required.

Chair Patricia Rathburn asked if this was a portion of the City which had been annexed from the County, and was still under the County Code. She asked if the City Code allowed a dock to extend 6' into the waterway.

Don Morris explained that the City Code actually mirrored the County Code in regard to the width of the waterway. He further stated the dock could extend to the property line, but the boat itself could not extend past the building setback line.

Chair Patricia Rathburn stated that the difference between the City Code and the County Code was that there was no setback on the side for the dock itself, and if the canal was 50' or more, they would be permitted the 6' extension. Don Morris confirmed.

Sarah Stewart, Consultant, stated that the owners of the property and the builder of the dock were present this evening to answer any questions.

Chair Patricia Rathburn asked how wide was the canal. Ms. Stewart stated it was over 100'. She further stated that when the rezoning occurs, the dock would be in conformance with the City Code. She felt it was a hardship and the owners should be able to build it according to City Code.

Don Larson asked if their boat would not extend beyond the sideline setbacks. Mr. Ross stated that he had a small boat.

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

8. APPEAL NO. 04-52

APPLICANT: Scott Schwab

LEGAL: Imperial Pointe 1st Section, P.B. 53, P. 44, Block 2, Lot 17

ZONING: RS-8 (Residential Single Family/Low Medium Density District)

STREET: 2132 NE 62 Street

ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47-5.31 – requesting a variance to permit an existing carport to be converted to a garage that will setback 23' 1" from the front property line where Code requires a 25' front yard setback.

David Eichholtz stated that the variance was being requested to enclose a carport. He explained it was within the required setback of 25', but unfortunately when it was built it had been installed at 24' 1" from the property line and was inadequate in length. He explained they wanted to enclose the carport for security reasons.

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

Motion made by Binni Sweeney and seconded by Don Larson to approve the application as presented.

Stephen Buckley asked if they approved the enclosure of the carport was it their stipulation that it would only be used as a carport and not converted to anything else. Mr. Eichholtz reiterated it would only be used as a garage.

Binni Sweeney stated that would be a condition to the motion. The Motion now read as follows:

Motion made by Binni Sweeney and seconded by Don Larson to approve the application as presented, and that the area would only be used as a garage. Roll call showed: YEAS: Binni

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

10. APPEAL NO. 04-54

APPLICANT: CalvaryChapel of Fort Lauderdale, Inc.

LEGAL: Harris Corporation Tract A, a portion of Parcel "A", P.B. 100, P. 15

ZONING: CF (Community Facility District)
P (Parks, Recreation and Open Space District)
AIP (AIRPORT INDUSTRIAL PARK)

STREET: 2401 NW 62 Street

ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47-8.30 (Table of Dimensional Requirements) – Requesting a variance to permit lights for athletic fields at a height of 80' where the Code allows a maximum height of 60'.

APPEALING: Sec. 47-8.30 (Table of Dimensional Requirements) – Requesting a variance to permit a proposed Christian Education Building at a height of 80' where the Code allows a maximum height of 60'.

Fred Stresau disclosed that he had spoken with Robert Lochrie regarding this matter. Stephen Buckley also disclosed that he had spoken with Robert Lochrie.

Robert Lochrie, attorney for the applicant, stated that they were requesting 2 variances. He stated the first variance was to allow the installation of light poles for the athletic field at a height of 80', and the Code required 60'. He stated further the second variance was to permit the construction of a proposed Christian Education Facility at a height of 80', where the Code permitted 60'.

Mr. Lochrie further stated that this property was located on Cypress Creek west of 21st Avenue, and across from the City's general aviation zoning district, and to the east of the City's airport industrial zoning park district, and to the west of another B-3 and B-2 zoning district. He explained that the site was south of the Palm Aire residential area. He explained further that it was a unique site because of its significant land size consisting of 72 acres. He stated it was buffered from the adjoining neighborhoods. He stated that under the old zoning there was no maximum height and it was limited by the FAA. He explained that CF zoning was to protect the neighborhoods from certain community facilities, such as churches and schools. He stated that based on the dynamics and size of the site, they felt it was appropriate that the Board take into consideration what the old zoning would have permitted. He further stated they were going through the process for FAA approval at this time.

Mr. Lochrie continued stating that the main sanctuary building was located in the middle of the site, and other administration and school buildings were located to the east. He stated the new building being proposed would be located directly in the middle of the site. He further stated the ball fields included a baseball diamond at the far northwest corner, and a football field at the southwest portion of the site. He stated the lights were designed at 80' to provide the minimum height, but not have the spill-over affect one would have from lower lights. He advised they had a letter of support from the neighborhood association for both variances. He further stated that a strict application of the zoning code to a site of this size would deprive them of the types of uses that were consistent with a campus of this size.

Don Larson asked if the stair tower pushed the proposed building to 80'. Mr. Lochrie replied that the stair tower pushed the building to 72' to 73', and the final structural engineering was not yet complete and that was why they had requested 80'.

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

Stephen Buckley asked if the building would also be subject to FAA approval. Mr. Lochrie replied that both the light poles and the building had to be subject to FAA approval. He pointed out that the light plan was conceptual in nature, and modifications might be required to the light fixtures but they would remain at 80'.

Binni Sweeney stated that she had a problem with the light poles which were adjacent to the single family homes in the area. Mr. Lochrie stated they would meet the City's requirements and he believed that they had to be half-a-foot candle at the property line, and in this case they were about 170'. He further stated that there were certain shielding devices which they would be required to provide, and he wanted that noted in the record. Binni Sweeney asked if they had met with the property owners directly behind where the light poles were to be placed. Mr. Lochrie stated he did not know if they actually knocked on their doors, but they had met with the Association President. The Association did review the placement of the lights and had voiced their approval in the submitted letter. He also pointed out that the two lights everyone was concerned about were directed away from the neighborhood. He added that the City would make sure there would be no spill-over into the neighborhood.

Don Morris stated that there was a .5 foot candle requirement for lighting in the Code at a residential property line.

Mr. Lochrie stated they would meet that requirement. Fred Stresau proceeded to read the Code as follows:

"No source of incandescent or mercury vapor illumination shall be directly visible from any abutting residential property."

Fred Stresau stated it would be interesting to see how they would shield the light source at the south end of the fields. He continued stating it was not the ones immediately adjacent that would be a problem. He stated the City's Building Department would recognize any complaints in this matter. He remarked that this was a new section of the Code in connection with glare.

Stephen Buckley stated that he believed they were talking about two different things because Mr. Lochrie referred to the lights at the property line, but the Code referred to the light source visible from the property line.

Mr. Lochrie stated that the actual amount of light had to be down a half-foot candle at the property line, but it appeared the new section provided additional requirements stating that regardless of whether there was light in a backyard, the light source could not be visible. He further stated that the

higher up one went, the less chance of someone seeing it. He explained that the meter reading taken at the property line should be down to a negligible amount.

Birch Willey asked about the number of lights that were to be installed. Mr. Lochrie replied there would be 17 poles for both fields. He reminded the Board that the number was conceptual. Birch Willey asked why they were going 80'. Mr. Lochrie explained that they had to make sure there was enough light on the playing field, and they also had to make sure the light was down to a level required by Code. He stated that the lighting engineers had determined that the 80' was the factor they could light the fields with a minimal amount of glare.

Motion made by Binni Sweeney and seconded by Don Larson to approve the application as presented in connection with Section 47-8.30 permitting lights for athletic fields at a height of 80'. Roll call showed: YEAS: Gus Carbonell, Fred Stresau, Don Larson, Stephen Buckley, Birch Willey, Binni Sweeney and Patricia Rathburn. NAYS: None. Motion carried 7-0.

Motion made by Don Larson and seconded by Binni Sweeney to approve the application as presented in connection with Section 47-8.30 permitting a building at a height of 80'. Roll call showed: YEAS: Fred Stresau, Don Larson, Stephen Buckley, Birch Willey, Binni Sweeney, Gus Carbonell and Patricia Rathburn. NAYS: None. Motion carried 7-0.

12. APPEAL NO. 04-56

APPLICANT: TRG&S Las Olas Beach Club, LTD

LEGAL: **Lauder Del Mar, P.B. 7, P. 30, Block 1, Lots 1-7 together with Las Olas by The Sea, P.B. 1, P. 16, Block 4, Lots 1-6**

ZONING: **PRD (Planned Resort Development District)**

STREET: **101 South Atlantic Boulevard**

ADDRESS: **Fort Lauderdale, FL**

APPEALING: Sec. 47-12.5.A.1 – Requesting a variance to permit a reduction of the required yard setback along Cortez Street to 12' where the Code requires 20' unless otherwise approved as a development of significant impact (Site Plan Level IV).

APPEALING: Sec. 47-12.4.C – requesting a variance for the preservation of additional wall area of the Lauderdale Beach Hotel, which wall area does not comply with the following People Street design requirements; does not have a cornice as required by subsections b and c, does not have fenestration of 50% of the first floor of habitable space and as required by subsection e; and does not have canopies or arcades over ground floor windows, doors or other transparent features as required by subsection g.

APPEALING: Sec. 47-21.10.B.14 – Requesting a variance to reduce the required pervious area to 20.3%, where the Code requires a minimum of 25%.

Chair Patricia Rathburn disclosed that she had spoken with Barbara Hall regarding this matter.

Barbara Hall, attorney, stated that she wanted to provide some history regarding the Lauderdale Beach Hotel which was now known as the Las Olas Beach Club. She stated that in October, 2001 this property went before the Planning and Zoning Board for a plan which had been presented to the neighborhood associations and had received support. She stated that an application had been filed the day before the project was to go before the Planning and Zoning Board for historic designation. She stated that the Planning and Zoning Board did recommend approval, but the project had been

delayed while the historic process took place.

Ms. Hall explained that the hotel had been partially designated as historically significant. She proceeded to show that portion of the building. The result of the processes was that it had gone through a mediated settlement process, and a plan was preserved to prepare the front area of the hotel and allowed the development of the rear portion of the property. A Settlement Agreement had been entered into in November, 2002, which allowed the development of the property consisting of 148 units with approximately 20,000 sq. ft. of commercial, and the preservation of the front portion of the building. She continued stating that about 7-8 months after that approval, units were sold and final drawings were prepared, and the Broward Trust for Historic Preservation filed a lawsuit challenging the mediated Settlement Agreement. For about one year, meetings had been held to work out a settlement of the litigation and that was why they were before this Board today. She stated that the result of the litigation was that two additional wall areas of the original building were to be preserved. She proceeded to show the additional portions of the building which were to be preserved, and added that it was about 1,928 sq. ft.

Ms. Hall stated that the project which had been approved by the commission had recently received their building permit. She stated that all units but 6 in the project had been sold. She stated further that the variances being requested were the minimum amount necessary for the existing walls to be preserved. She stated that when the Commission had approved the mediated Settlement Agreement, they had approved a reduction in the pervious area from 25% to 23%. She explained that what they were requesting would reduce that to 20.3%. She proceeded to show photographs of the area to be preserved from the southern elevation, along with photographs of the northern portion.

Stephen Buckley stated that he felt they needed to specify the areas per the plans because the variance now read that it could run the entire width of the property. Ms. Hall explained the variance was only to preserve the historic walls.

Chair Patricia Rathburn proceeded to open the public hearing.

Charles Jordan, President of the Broward Trust for Historic Preservation, stated that they were in favor of this project.

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

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

Robert Dunckel stated that he had been involved in the mediated Settlement Agreement for this matter, and explained there was a provision pertaining to the first variance being requested that would require it to be made available to the City Commission on a request for review, and he asked that it be included as a condition. He stated it was somewhat redundant, but he wanted to make sure all parts of the Settlement Agreement were being covered.

Motion made by Binni Sweeney and seconded by Don Larson to approve the application as presented and that it be approved in accordance with the plans which had been submitted, and that this would be subject to Commission call up. Roll call showed: YEAS: Don Larson, Stephen Buckley,

Birch Willey, Binni Sweeney, Gus Carbonell, Fred Stresau and Patricia Rathburn. NAYS: None.
Motion carried 7-0.

“For the Good of the City”

Fred Stresau stated that a month ago the Planning and Zoning Board had voted 2-7 to deny this Board's application regarding their meeting time. He continued stating that last night Mr. Brewton appealed the item before the City Commission, and they approved the item 5-0. He explained that in the ordinance there was no time certain for the meeting, and 3 of the Planning and Zoning Board members had objected to a floating time. It had been read into the record that the meetings were to begin at 6:30 p.m., but that appeared not to have entered into the Planning and Zoning Board vote. He suggested that a time be set for the Board of Adjustment Meetings.

Robert Dunckel stated that the ordinance had not yet been passed because the second reading had not yet taken place. He stated there was a high probability that it will pass, but until that time the Board would still have to meet at 7:30 p.m. on Wednesday. He explained that the following month, they could then change the time to 6:30 p.m.

Motion made by Binni Sweeney and seconded by Don Larson to adjourn the meeting. All approved.

There being no further business to come before this Board, the meeting was adjourned at approximately 11:04 p.m.

Chairperson

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.
