

**BOARD OF ADJUSTMENT MEETING
CITY OF FORT LAUDERDALE
WEDNESDAY, OCTOBER 13, 2004 – 7:30 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		A
Binni Sweeney		A
Don Larson	P	

ALTERNATES

Scott Strawbridge	P
Al Massey	P
Jon Albee	A

STAFF

Robert Dunckel, City Attorney
Don Morris, Zoning Administrator
Charlie Wygant

Margaret A. D'Alessio, Recording Secretary

GUESTS

Geoffrey Robinson	Alan Gabriel
Daniel Taylor	Robert Lochrie
Raphael Daly	Sherry Maxine
Mike Lapointe	John Aurelius

CALL TO ORDER

Chair Patricia Rathburn called the meeting to order at approximately 7:34 p.m., and the Board Members proceeded to introduce themselves. She then began to explain the procedure to be followed for tonight's meeting.

2. 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 & 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.

Chair Patricia Rathburn stated that this item had been withdrawn from tonight's agenda.

8. APPEAL NO. 04-61

APPLICANT: Nicholls Investment Properties
LEGAL: Victoria Park Corrected Amended Plat, P.B. 10, P. 66, Block 5, Lots 1 and 2 less the East 30'
ZONING: RC-15 (Residential Single Family/Cluster Dwellings/Low Medium Density District)
STREET: 206 NE 16 Ave.
ADDRESS: Fort Lauderdale, FL

APPEALING: Sec.47-21.9.A.4.b - Requesting a variance to allow one (1) peninsular landscape area for every three (3) parking spaces, where Code requires one (1) peninsular landscape area for every two (2) parking spaces.

APPEALING: Sec. 47-21.11.A.6 – Requesting a variance to allow 1.1' landscape area in front of the back-out parking spaces, where Code requires a landscape area that is a minimum of 5' in width.

Chair Patricia Rathburn stated that the applicant had requested that this item be deferred until November 10, 2004 meeting.

Motion made by Don Larson and seconded by Al Massey to defer this item until November 10, 2004 meeting. Board unanimously approved.

Robert Dunckel advised that presently only 6 Board Members were present, and therefore, this Board had the custom of offering the applicants the opportunity to defer their matters because it was difficult to obtain 5 out of 6 votes, instead of 5 out of 7 votes.

Chair Patricia Rathburn asked if any of the applicants desired to defer their matters until the November 10, 2004 meeting.

Gus Carbonell entered the meeting at this time, and therefore, there were 7 Board Members present to hear the items on the evening's agenda.

1. 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 56' 9 1/8" where the Code requires a minimum overall dimension of 51' 2 1/8".

Fred Stresau disclosed that he had spoken with Rhett Roy regarding this matter.

Alan Gabriel, attorney for the applicant, stated that this item had been deferred from last month during which they had been requesting 3 variances. He announced that 2 of the variances had been approved and granted. He explained that after some discussion, the applicant had been asked to reconsider the proposal being submitted regarding the third variance. He further stated that they had reconsidered and redesigned that request. He stated that there had been a question regarding the parking lot area and the drive aisle. He explained they were asked to have it comply with the Code because it had been shown as 11', but they had restored it back to the original 13'.

Mr. Gabriel advised they were withdrawing the request in the present application in connection with a drive aisle width of 11' where the Code required a drive aisle width of 13'. He announced they were presently in compliance with the Code regarding that issue.

Mr. Gabriel explained that in redesigning the parking area, they had moved the parking by 2'. Therefore, the overall parking dimension would be 48' 9 1/8" where the Code required a minimum overall dimension of 51' 2 1/8".

Mr. Gabriel announced that Molly Hughes, Traffic Consultant, was present at tonight's meeting to answer questions, along with Rhett Roy, Landscape Architect. He further stated that they had added a wall along the southern boundary line. He stated they had done what was necessary to provide the 31 parking spaces required by Code. He stated further that they had volunteered putting a restriction on the use of the property, and he had a copy of such language.

Robert Dunckel stated that at the previous meeting, the copy on the sign was to be changed so as to reflect that only certification classes were to be provided at the site.

Mr. Gabriel further stated that it would be appropriate to place such a condition on the granting of this variance, and they had no objection to doing so. He explained they had agreed not to offer daily, weekly or monthly memberships similar to an open gym facility. He proceeded to show a sample of the sign to be used by the facility. He explained there might be some further modifications

required because it was his understanding that they had too many sale points in regard to the sign code.

Chair Patricia Rathburn announced that no one wanted to restrict the language they were to use or the type of sign they desired. She further clarified that they were representing that their signage would address the fact that the facility was to be used for certification purposes only. Mr. Gabriel confirmed.

Chair Patricia Rathburn proceeded to open the public hearing.

ALL INDIVIDUALS WISHING TO SPEAK ON THIS MATTER WERE SWORN IN.

Fred Williams stated that he was representing the business owners of Imperial Square Shopping Center, and explained that their main concern was the condition that was to be placed on the use of the site. In the past, he explained they had sold monthly memberships to the gym, and therefore, his group had been opposed to this facility. He stated that as a condition of the variance, the applicant was now willing to state that the use of the facility would be restricted. He reiterated they would not be opposed to this variance, if such a condition was included.

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

Fred Stresau stated that he was under the impression that tonight they were only to address the changes being made to the parking lot.

Robert Dunckel confirmed, but stated that everything was included in the same case number, but since the minutes had not been distributed to the Board and the Orders from the last meeting had not been finalized, the variances would be wrapped into one Final Order.

Fred Stresau further stated that he did not see what the sign had to do with the parking lot issue. Robert Dunckel explained that the change in the copy of the sign had been a condition of the variance. He further stated that these items would be incorporated into one Order which would address all the variances to be granted.

Scott Strawbridge stated that new dimensions had been provided this evening which were to be less intrusive than the ones previously stated, and he suggested they grant the variance needed but not for the maximum amount. Chair Patricia Rathburn explained that the request had been amended. Robert Dunckel suggested that a motion be made to grant the variance, but that it would be contingent upon the supplemental revised site plan and landscape plan which showed the difference in the dimensions.

Chair Patricia Rathburn stated that the parking stall depth was to be 17' 10 9/16", and the modification for the overall parking dimension was to be 48' 9 1/8".

Molly Hughes, Traffic Consultant, explained that it was a deletion of one-half of the original request. She clarified that nothing had been changed, and only a deletion had been done which made the sum different.

Motion made by Gus Carbonell and seconded by Fred Stresau to grant the variance requested, along with the stipulated conditions regarding the use of the site and the dimensions provided by the

applicant which included a 13' driveway with a stall depth of 17' 10 9/16", and an overall parking dimension of 48' 9 1/8", and including the revised site and landscape plans. Roll call showed: YEAS: Fred Stresau, Don Larson, Stephen Buckley, Gus Carbonell, Scott Strawbridge, Al Massey, and Patricia Rathburn. NAYS: None. Motion carried 7-0.

3. 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.

ALL INDIVIDUALS WISHING TO SPEAK ON THIS MATTER WERE SWORN IN.

Chair Patricia Rathburn announced that this matter had been deferred from the September 22, 2004 meeting.

Brian Terry, Land Design South, stated that he was representing the applicant. He advised they were requesting a variance from a requirement to place a 5' concrete wall along their northern property line. He explained this was a commercial property along Davie Boulevard which abutted residential property to the north. He stated that the facility had existed at the site since 1968 and was a non-conforming use. Presently, along the north property line a wooden fence existed. He explained that a narrative had been provided listing the applicant's hardship in this matter. He stated that he wanted to address the requirements regarding the buffer yard, parking restrictions, and the wall requirement.

Mr. Terry called the Board's attention to the graphic which had been provided, and stated they had attempted to explain how the property functioned at this time. He stated there was an error in the survey which showed only 6 parking spaces on the west side, and in reality the property had utilized 7 spaces. He explained if they met the buffer yard requirements, they would impact the parking area. He stated that in Section 5 of the Code, it provided for a relief of existing uses which stated that if an impact occurred on the vehicular use area, a grandfather use could be approved. He further stated that the landscape requirement was 10' from the property line, along with a parking restriction that would be 2' from the northern property line. Therefore, all parking would have to be removed a minimum of 12' from the northern property line, and they would only end up with 60' of pavement which would not permit the existing 7 parking spaces at the 9' minimum width.

Fred Stresau stated that Mr. Terry had addressed the buffer yard and required parking, but the only item advertised had been the existing fence at the site.

Mr. Terry explained that under Section 5, it stated that the wall would not have to be installed if there was an impact upon the vehicular use area, and a physical barrier already existed. He stated that a 6' fence already existed and had been constructed in 1998, and had been identified in the Code as a physical barrier, and therefore, all requirements had been met. He reiterated that the parking area would be impacted and a physical barrier already existed, and therefore, the applicant should not be required to construct the wall in lieu of the existing fence.

Chair Patricia Rathburn asked if this matter should not be handled administratively, rather than before this Board.

Robert Dunckel stated that he believed more work needed to be done regarding this issue, and proceeded to read the following from the Code:

“In such cases the use shall otherwise comply with the requirements of this section to the maximum possible extent. However, the requirements of ... to install a landscape strip shall be met if an abutting residential property owner agrees in writing that the landscape strip may be replaced. An agreement in form provided by the department must be executed by the applicant and abutting property owner if the abutting property owner removes the landscape strip.”

Robert Dunckel explained that it appeared the applicant needed to work with staff to draw up a set of circumstances that would meet the Code to the maximum extent possible. If that was not possible, then the applicant could reappear before this Board.

Chair Patricia Rathburn suggested that this matter be deferred until November 10, 2004 so the applicant could have the opportunity to meet with staff.

Don Morris, Zoning Administrator, explained that the parking issue had not been clear to staff. He stated the parking lot did not appear to be striped, and a concern had been raised as to whether they were losing required parking or not. He stated further that the applicant had not been able to prove this, and that was why the matter had gone before this Board.

Chair Patricia Rathburn clarified that it appeared more work needed to be done by the applicant. She reiterated that if such work could not be accomplished, then the issue could be brought back before this Board.

Mr. Terry agreed that they would be willing to work further with staff in an attempt to arrive at a solution.

Gus Carbonell stated that the applicant had referred to a physical barrier, and he asked if a wooden fence was considered a physical barrier or was the intent of the Code for a building.

Robert Dunckel stated that in Subsection “a,” it referred to demolition of any load-bearing portion of a building and also referred to modification of a vehicular use area.

Mr. Terry further stated that in Subsection “f,” it stated: “Existing vehicular use area which would impair traffic...and a minimum 5’ hedge fence or physical barrier or other physical barrier is in place along the length of the non-residential property line which abutted the residential property.”

Chair Patricia Rathburn proceeded to open the public hearing. There being no speakers regarding this matter, the public hearing was closed and discussion was brought back to the Board.

Motion made by Al Massey and seconded by Don Larson to close the public hearing. Board unanimously approved.

Motion made by AL Massey and seconded by Fred Stresau to defer this matter until the November 10, 2004 meeting. Board unanimously approved.

4. APPEAL NO. 04-57

APPLICANT: Joseph Piccirilli
LEGAL: Idlewyld, P.B. 1, P. 19, Block 7, Portion of Lot 6 and all of Lot 7
ZONING: RS-8 (Residential Single Family/Low Medium Density District)
STREET: 833 Idlewyld Dr.
ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47-19.5(B) – To permit the reconstruction of an existing 6’ 6” wall/fence fronting along the entire length of SE 26 Street and Idlewyld Drive with a 0’ setback where the Code requires a minimum 3’ setback for a wall/fence when fronting on a street.

5. APPEAL NO. 04-58

APPLICANT: Joseph Piccirilli
LEGAL: Idlewyld, P.B. 1, P. 19, Block 7, Portion of Lot 6 and all of Lot 7
ZONING: RS-8 (Residential Single Family/Low Medium Density District)
STREET: 833 Idlewyld Dr.
ADDRESS: Fort Lauderdale, FL

APPEALING: The Zoning Administrator’s interpretation that replacing sections of a non-confirming fence does not constitute repair and maintenance as defined in Section 47-3.6.D.

Chair Patricia Rathburn advised that Item Nos. 4 and 5 were tied together, and announced that if the variance was granted, then the Board would not have to hear the appeal. She stated the appeal would have more of a far-reaching impact as to how that particular provision of the Code would be interpreted in every case. Therefore, she asked the Board how they wished to proceed in this matter, and whether they wanted to hear the variance request first or the appeal first.

Robert Dunckel stated that he did not see the report required by the ULDR from the department in the back-up material provided. He suggested that the interpretation issue be deferred.

Fred Stresau stated that if the zoning interpretation was heard and the applicant was successful in challenging staff, then the variance would not be necessary.

Chair Patricia Rathburn announced that Appeal No. 04-58 would not be heard this evening due to the fact that the necessary report from the department had not been submitted.

4. APPEAL NO. 04-57

APPLICANT: Joseph Piccirilli
LEGAL: Idlewyld, P.B. 1, P. 19, Block 7, Portion of Lot 6 and all of Lot 7
ZONING: RS-8 (Residential Single Family/Low Medium Density District)
STREET: 833 Idlewyld Dr.
ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47-19.5(B) – To permit the reconstruction of an existing 6’ 6” wall/fence fronting along the entire length of SE 26 Street and Idlewyld Drive with a 0’ setback where the Code requires a minimum 3’ setback for a wall/fence when fronting on a street.

Fred Stresau stated that he believed the Code stated an average of 3' and not 3'.

Gus Carbonell disclosed that he had spoken with Peter Herman regarding this matter.

Dan Taylor, attorney, stated that the property was located at the corner of Idlewyld Drive and Poinciana Avenue. He proceeded to show photographs of the site. He pointed out that this was not a real intersection, but it fitted in with the neighborhood. He explained that the trees were close to the wall. He stated that the wall was a non-conforming use, and there had been a later change in the fencing code which now provided that a wall such as this one had to be set back 3'. He further stated that this was a wall with an aluminum fence structure, and it was the aluminum portion that they were referring to. He proceeded to explain that the neighbor had a similar structure on his property. He stated that the grass was right up to the fence and that it was a retaining wall. He stated further that the yard level was at the top of the wall.

Mr. Taylor further stated that the agenda read as if they were attempting to tear down the structure and replace it, but that was not the case. He explained that the property owner wanted to change the fencing, but various issues were involved. He stated that after meeting with staff, it was decided that the easiest way to install the new aluminum fencing would be to request a variance. He explained that they were requesting a setback of the 3' requirement. He stated that the only difference in the fencing would be that the new fencing would consist of small cross-hatches instead of spikes. The widths of the poles would remain the same. He stated that the Code provided that it could not exceed 30% of the property line, but in this case it would run the entire length of the property line. He further stated that regarding the intersection, evidently there was an argument as to whether this area was an intersection or not because it appeared to be a continuation of the road. In order to make sure they covered all the bases, they were requesting a variance from that provision.

Chair Patricia Rathburn clarified that only one item had been advertised for tonight's meeting, and she asked if the issue was incorporated or if it would have to be advertised separately.

Don Morris explained there had been an error in the advertisement because they had not listed the 25'.

Chair Patricia Rathburn clarified that the applicant would have to appear before the Board later on for the other variances needed. Mr. Morris confirmed.

Fred Stresau clarified that the road appeared to be a continuation and there was not even a STOP sign in the area, and he did not feel it was an intersection. He stated that he did not think the wall had a setback because it had not been recognized as an intersection. He reiterated that it was not any different than any other road in the City, except that it was sharper.

Chair Patricia Rathburn reiterated that there was still the issue regarding coverage. Mr. Taylor stated that if the road was not an intersection, it would go away. Fred Stresau clarified that tonight's advertisement appeared to be correct. Mr. Taylor agreed.

Mr. Morris stated that Chuck Wygant had reviewed the matter, and this had not been included because after extending out the curb from which the 25' was measured, the wall was outside of this requirement.

Mr. Taylor reiterated that they felt they met all the requirements for the variance.

Scott Strawbridge stated that he was attempting to understand this in the context of a variance and not regarding interpretation, as to the hardship. He further stated that there was a retaining wall, but nothing

appeared to restrain them from installing a fence 3' in from the retaining wall. He reiterated they were not being asked to alter the retaining wall which could remain, and a fence could be built that would meet Code while still securing the property. Mr. Taylor explained that a hardship would be involved because landscaping would have to be removed. Mr. Strawbridge reiterated that this Board did not consider economic hardships. He reminded Mr. Taylor they were to look at the criteria set up by the Board which did not deal with landscaping. Mr. Taylor explained that the hardship would be that due to the property being elevated above the sidewalk and separated by the retaining wall with the fence on top of that wall, it was part of it. He reiterated that this was one integrated structure as it presently existed which had been permitted, but was now a non-conforming use. He explained that part of the structure could not be maintained unless they received the variance due to other provisions listed in the Code. He reiterated that nothing was being changed and the structure was just being upgraded.

Scott Strawbridge asked if it was technically feasible to move the wall back 30".

Art Bengochea, architect, stated that the fence was on a piling and it would not be an easy undertaking.

Chair Patricia Rathburn stated the reason the applicant was before this Board was because they wanted to do the entire fence at one time, but if they wanted to do it section by section they would be permitted to do so. Don Morris confirmed that could be done over a period of time.

Mr. Taylor stated that issue had been addressed, and it was decided this was the right way to solve the problem.

Fred Stresau stated that he wanted this issue addressed because every fence in the City would have to be repaired or replaced, including the City's wall along the beach. Therefore, he felt the interpretation should have been addressed first.

Don Larson stated that a variance had been granted for a property in the Rio Vista area regarding a fence being replaced between two pilasters, and reiterated that the wall had remained the same.

Chair Patricia Rathburn proceeded to open the public hearing.

Al Massey stated that he was troubled by this matter and believed they were discussing a maintenance issue.

Motion made by Al Massey to reconsider the issue as to whether or not the interpretation should be discussed first before proceeding.

Al Massey continued stating that all comments made this evening appeared to address repair and maintenance issues.

Chair Patricia Rathburn stated that staff's concern was that this discussion was broader than what the Board needed to address.

Al Massey further stated that this matter had been addressed in the past, and until they knew what the proper interpretation was, it appeared that the Zoning Administrator's interpretation was assumed to be correct until proven wrong. He stated that he was concerned the Board would not reach a fair result if they were stuck on the issue of whether this was repair and maintenance or reconstruction.

Robert Dunckel stated that he felt the Board could make a determination as to whether this was driven by repair or reconstruction. He continued stating that the Code, with respect to the Appeals of Interpretation, required that the department submit a written report which was to be part of the record and serve as the basis for the entire appeal. He stated that the decision of this Board could be appealed to the Circuit Court, and he felt the City should have a proper record. He felt the record would be incomplete without the department's written report. He reiterated that it was also a requirement of the Code. Therefore, he felt the interpretation should not be considered by this Board this evening. He explained if the Board felt that an unfair result might be obtained, their option would be to continue this and bring both items back in November. He continued stating that if unfair result was interpreted as a denial of the variance, then the applicant could have another chance next month regarding the interpretation.

Gus Carbonell stated that there had been a similar case before this Board in the past regarding a pre-cast railing on a fence, and asked what was triggering this issue, footage or a percentage of cost.

Don Morris referred the Board to Section 47-3.6.B(3), it stated: "Damage, Destruction or Removal of Structure. If more than 50% of the total gross floor area of a building, or more than 50% of a structure or more than 50% of its replacement value is damaged, destroyed or removed for any reason, the entire building structure or use thereof shall be required to meet the ULDR."

Gus Carbonell stated that he felt the in-filled metal was less than 50% because this was a substantial fence. He further stated that probably 2/3 of the fence consisted of metal, and 1/3 was masonry, along with the piers, pilings and grade beams. He stated that was why he had mentioned the cost because the cost of the superstructure would exceed replacing the metal railing. In area, he added they appeared to be about 50/50.

Don Morris explained they had looked at it from an area standpoint. He further stated that in looking at those sections of the fence compared to the other parts of the fence that portion had constituted more than 50%, and that was why they were before this Board tonight.

Stephen Buckley clarified that the grade behind the wall was located at the top level of the wall. Mr. Taylor confirmed. Stephen Buckley continued stating that he believed the intent of this rule was to provide additional landscaping by raising the level of the ground behind the wall. Therefore, someone on the other side would receive the same benefit as if there was a 3' setback. He reiterated that this was a unique situation.

Fred Stresau said that it stated "or" and in talking in that fashion, it referred to the cost of the structure. He stated that in considering the cost of the piling, beams, the 24" high knee wall, and the columns, the section of the fence was about 1/10 of the cost of the overall structure.

Chair Patricia Rathburn reiterated that this was a unique situation. She stated this might be on the edge of the 50% requirement, and therefore, she was not sure they had to appear before this Board.

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

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

Fred Stresau asked if this was continued until next month could the applicant return with a cost analysis regarding the fence. He explained further that he was asking for an analysis regarding the cost for

replacing the fence in comparison with replacing the entire wall. Mr. Bengochea stated that such information could be provided, and if they could show that it did not meet the 50% requirement, would they have to return before this Board.

Chair Patricia Rathburn felt they would not have to reappear before this Board.

Don Larson commended the applicant for appearing before this Board because they could have done the work in sections.

Fred Stresau suggested that this matter be continued until the November 10, 2004 meeting, and staff could then be prepared to discuss the interpretation issue.

Motion made by Fred Stresau and seconded by Al Massey to defer this matter until November 10, 2004. Roll call showed: YEAS: Don Larson, Al Massey, and Fred Stresau. NAYS: Stephen Buckley, Gus Carbonell, Scott Strawbridge, and Patricia Rathburn. Motion failed 3-4.

Motion made by Fred Stresau and seconded by Don Larson to grant the variance as requested. Roll call showed: YEAS: Stephen Buckley, Gus Carbonell, Scott Strawbridge, Al Massey, Fred Stresau, Don Larson and Patricia Rathburn. Motion carried 7-0.

6. APPEAL NO. 04-59

APPLICANT: The Harbor Shops, LLC

LEGAL: Parcel P.B.C., P.B. 170, P. 42 and 43, and Parcel "A" of 1301 Plat, P.B. 171, P. 60 and 61 and Parcel "A" Dolphin Plat, P.B. 172, P. 138-140

ZONING: PEDD (Port Everglades Development District)

STREET: 1800 SE Cordova Rd.

ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47.21.9.C – Requesting a variance to reduce the required number of 3" minimum diameter shade tree from 125 to 92. Said reductions represents 18% 3" diameter trees, where Code requires that 25% of the required shade trees be a minimum of 3" in diameter.

The following disclosures were made by the Board: Al Massey stated that he had spoken with Don Hall. Patricia Rathburn stated that she also had spoken with Don Hall. Stephen Buckley stated that he had spoken with another attorney from the same firm as Don Hall's. Don Larson stated that he had spoken with Heidi Davis. Fred Stresau stated that he had spoken with Heidi Davis. Gus Carbonell stated that he had spoken with Don Hall.

ALL INDIVIDUALS WISHING TO SPEAK ON THIS MATTER WERE SWORN IN.

Heidi Davis, attorney for the applicant, proceeded to show an aerial of the site. She explained that the Harbor Shops were presently under construction as a multi-tenant shopping center anchored by a Publix grocery store. She stated the property was located south of 17th Street Causeway on Cordova Road behind the Carlos and Pepe Shopping Center within the Port Everglades Development Zoning District. She announced that Jack Loos, principal of Harbor Shops, LLC; Steve Kelton, Project Manager; Brian Yule, Landscape Architect; and Courtney Callahan, attorney, were present this evening to answer any questions the Board might have regarding this matter.

Ms. Davis further stated that tonight they were requesting to reduce the number of 3" caliber shade trees in vehicle use areas on the property from 125 trees to 92 trees. She explained that this site was adjacent to Port Everglades which shared an eastern perimeter wall with the Port. She stated that area was shown on the map in yellow. She continued stating that due to Federal and State mandated security standards set up since 9/11 certain measures were imposed on properties within and adjacent to the Port. She explained that Harbor Shops had been informed by the Port that they could not plant shade trees adjacent to the perimeter wall on the eastern side. She stated that such shops had received a memorandum on June 16, 2004 by the Port Security Administrator stating that they had to refrain from such plantings within 5' of the wall. She stated that such memorandum had been included in the Board's back-up material. She explained they wanted clear zones available in case of security breaches.

Ms. Davis continued stating that the narrative submitted with this application had provided a detailed analysis of how the applicant satisfied the City's variance criteria. She explained this was a true hardship which was not self-created by The Harbor Shops. She explained further that they met or exceeded all other code requirements for landscaping and had the intention of planting such trees along the eastern perimeter wall, but for the security issues. In lieu of the shade trees, she advised the applicant was proposing to plant 82 palm trees with multiple trunks along the eastern perimeter wall, and would install shade trees within the additional parking islands. She proceeded to show a rendering of the site.

Al Massey asked if the present plan had been reviewed by the Port and was satisfactory. Ms. Davis confirmed. She remarked that the shade trees and how they grew in regard to the top of the canopy was the issue in terms of security. She added that as long as the palm trees were within 5' of the clear zone, the Port approved the landscape plan.

Stephen Buckley clarified that the only reduction of trees would be along the eastern wall. Ms. Davis confirmed.

Chair Patricia Rathburn clarified that the overall site required 125 trees, but they were reducing it to 92. Ms. Davis replied that the overall site required for 3" caliber shade trees, along with 2" caliber shade trees, but they were not supplying any 2" due to the developer deciding to plant mature trees. Therefore, all the trees would consist of 3" to 5" caliber. Chair Patricia Rathburn further clarified that the applicant was adding 82 extra trees into the mix which were not required. Ms. Davis confirmed and reiterated that they were replacing over 30 trees with more than 80 trees.

Fred Stresau asked why if the Port had bearing on this project the issue had not been raised during the DRC review. Don Morris explained that he was not present at the DRC review.

Jack Loos, developer, stated that the determination had not been made during the DRC review. He explained that all the infrastructure and buildings had already been done, and added that the site did not percolate well, and therefore, there were massive drainage structures underneath to catch all the run off. By the time the Port had been noticed and then noticed them, the project was well under way. He added that being in the PEDD district they were not required to go through DRC, but they had done so anyway and had been working with the City during the entire time of this project. He explained that the trees throughout the project were larger than required by Code, and he felt it was good business to do that. He stated they did not want to remove the trees because they had used them to help screen the Port area, and had added the islands at great additional expense. He further stated that in addition, they had to remove the palm trees off the wall 5'. He reiterated that this was not a self-imposed hardship. He stated they felt they were adding something positive for the City, and it was unfortunate they were caught within this "Catch 22."

Chair Patricia Rathburn clarified that they were asking to replace 33 of the required shade trees with 82 palm trees. Ms. Davis confirmed and added that the palm trees were not required by Code.

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 Don Larson and seconded by Al Massey to close the public hearing. Board unanimously approved.

Fred Stresau stated that he went from SR 84 along the west perimeter of the Port and to the Eisenhower Boulevard entry, and he felt what the developer was asked to do was the dumbest thing he ever heard. He asked if he could be supplied with a copy of the State Statute concerning this matter. He stated that along a good portion of Miami Road, the State had placed signs along a fence that was sometimes 5' high with and without barbed wire, and when reaching Mediterranean Village, there was a double fence complete with landscaping reaching to 10' and overhanging on both sides of the fence. He explained that he had also visited the Lohmeyer Plant and had entered it through two different gates and had not been challenged at all. He explained that he had complete access to a wall 24" in height, along with a rusted chain link fence, which could be climbed over. He felt this was a "joke," and had debated if he should attempt to defeat the request for this variance, and make Port Security appear before this Board and explain why this applicant had such stringent requirements to follow. He reiterated there was no security along the west and north sides.

Mr. Loos explained that his wall was going to be 10' in height, and stressed that it was difficult to fight the Federal government. Fred Stresau stated that he wanted the Board to understand the great lengths Mr. Loos had gone to in order to comply with all the requirements placed on the development by the Port. He added that in fairness to the Port, he felt they received changes in their directives as situations occurred.

Motion made by Don Larson and seconded by Scott Strawbridge to approve the application as requested. Roll call showed: YEAS: Gus Carbonell, Scott Strawbridge, Al Massey, Fred Stresau, Don Larson, Stephen Buckley and Patricia Rathburn. NAYS: None. Motion carried 7-0.

7. APPEAL NO. 04-60

APPLICANT: All Saints Episcopal Church

LEGAL: Tract "A", P.B. 60, P. 24, and Himmarshee Park subdivision of an unnumbered block in Colee Hammock, P.B. 1, P. 20

ZONING: CF-H Community Facility (House of Worship District)

STREET: 333 Tarpon Drive

ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47-8.30 – Requesting a variance from the maximum building area requirement of 10,000 sq. ft. of gross floor area in the CF-H district to allow a building area that is 31,871 sq. ft. in gross floor area.

APPEALING: Sec 47-5.11 – Requesting a variance to allow an accessory parking use for a CF-H (House of Worship) use where such use is not listed as a permitted use in the RS-8 district.

ALL INDIVIDUALS WISHING TO SPEAK ON THIS MATTER WERE SWORN IN.

Robert Lochrie, attorney for the applicant, stated that this church was located off Las Olas Boulevard in the Colee Hammock area on Tarpon Drive. He explained that the Reverend from the Church and members of the Board were present at tonight's meeting, along with their planning committee, together with Don Wilken, the architect.

Mr. Lochrie continued stating that this church had been a congregation in Fort Lauderdale since 1912 and had been at their current location since 1951. He explained the total building area for the church consisted of about 27,471 sq. ft. of buildable area. He proceeded to show a graphic of the area and explained where the various buildings were located. He stated that the majority of the parking was located in the rear of the property at the intersection of the New River and the Himmarshee Canal. He continued stating that the existing facilities were outdated and there were Code issues regarding the property, including concerns raised by the Fire Marshall. He stated that the difficulty they had in reconstituting the project and rebuilding it was a Code section created since the original buildings had been constructed that limited church uses in the area to 10,000 sq. ft. of buildable area. He explained that two zoning districts applied in this case. One was the CF-H district which applied to a majority of the site, and one lot zoned residential. He stated that this was the only property between the two districts involved. The other district was a mixed use which applied to the area to the north.

Mr. Lochrie explained that the concept behind the renovations was to consolidate the facilities at the site in a new manner providing a more aesthetic appearance for the properties. He remarked that it would not significantly increase the actual or useable area itself. He reiterated that the building area before construction was 27,000 sq. ft., and the sanctuary was to be retained. He explained that the new facilities would surround the facility and consolidate the buildings. When completed, the total building area of the new construction would consist of 31,000 sq. ft. which was a net gain of 4,000 sq. ft. of buildable area. He further stated that over 5,000 sq. ft. would be accommodated by additional circulation, mechanical and ADA restroom space, all of which was required by Code.

Mr. Lochrie stated that the facility had a prominent part in the overall project, and it was time for the congregation to redevelop their site with new facilities. He further stated that the planning committee had spent about 3 years working with various plans for the site, and had met with the neighborhood. He explained they were taking existing surface parking and moving it from the corner and replacing it with landscaping keeping the parking in a more secured and centralized location against the mixed-use project which fronted Las Olas, and continued the parking along the New River. He advised they were reducing the number of spaces so that all traffic would not go down Tarpon Drive. He added they were also going to supplement the landscaping along Tarpon Drive, along with installing new curbs, gutters, sidewalks and drainage.

Mr. Lochrie stated that one of the most important things for this Board to consider was that the facility was located at this site before new restrictions had been placed on the property. He explained that without the variance, the Church would not be able to renovate and redevelop the site in the manner consistent with the proposed plan or even with any other plan. He stated that based on the location of this property, there were certain conditions particular to this site, and they believed were exceptions from other types of church developments. He added that it was important to note that the property itself was unique and they attempted to retain the same amount of square footage, such as the size of the church sanctuary. He stated that a literal interpretation of the provisions of the Code would deprive their use of the property, and reiterated that this was not a self-created hardship.

Mr. Lochrie further stated that they were asking for a variance from the 10,000 sq. ft. requirement, and was additionally requesting a variance to allow the portion of the residential area, which was currently used as a rectory, to be utilized for surface parking. He stated that the church had met with the

neighborhood over the years, and several issues had been raised and the church was willing to make those conditions upon approval of the variance. He stated the first was that the variance for surface parking was only for church use. He stated they would not use it for any type of commercial purpose, and was not intended to supplement such purpose. He reiterated that it would bring them up to Code which was necessary in order to build the rest of the facility. He stated they did not object to such a condition. He further stated that the second issue was in regard to the existing layout of the site and parking being located in various areas which made it difficult to secure the site. He stated that an issue raised by the neighborhood was for the church to secure the site when it was not being used by them. He stated they agreed to include gates at the entrances and to lock them when the church would not be utilizing such spaces. He added that in addition concerns had been raised regarding headlights from vehicles entering the property. He explained they had a 20' buffer adjoining the property, and they did not object to a wall or berm whatever staff would approve in order to block such headlights.

Mr. Lochrie explained that new lights would be installed at the facility which would meet Code requirements regarding shielding and the foot candle elements. He stated they agreed not to light the facilities when not in use. He stated that another concern had been about a dumpster enclosure which they agreed to enclose within the mechanical area. He added they were also adding landscaping along Tarpon Drive and Tarpon Terrace. He further stated that they believed the end result would be an appealing project. He explained the variances being requested were the minimum ones necessary to redevelop the site, and without such variances they would not even be able to rebuild what existed today.

Fred Stresau disclosed that he had spoken with Robert Lochrie and Don Wilken regarding this project.

Chair Patricia Rathburn proceeded to open the public hearing.

Ray Dubey stated that he had purchased the house directly behind the church, and he was concerned about the lighting overflowing into his yard. He added that he was also concerned about the parking lot and the site where the rectory would be erected. He felt there should be some sort of solid wall to separate the two properties. He added that he had a large pool and backyard, and he felt that his privacy was going to be invaded with the windows on the second floor of the proposed building. He stated that the parking they were presently using was on a grassy area during church services. He reiterated that the paved area was going to be demolished for new construction. He stated that his house was built in 1919 and was almost on the water and surrounded by the church property.

Mr. Lochrie stated that the pastor of the church had met with Mr. Dubey, and they were willing to continue working with the residents in the area regarding any concerns they had. He proceeded to show on the map where Mr. Dubey's properties were located. He stated that the area was presently open where the parking was located and not gated at night. He stated the new proposal was to add a 20' landscaped strip along those portions of the property, and they did not object to a wall being installed to block the area. He reiterated that the grassy area would remain, and explained that daily parking would be closer to the actual facility. He stated they did not see any significant increase in the use of the site, and this was just a reconfiguration of the facility. He stated they were going to gate the area, retain the grassy parking, and install a wall with a landscape buffer.

Tom Welch, President of the Colee Hammock Homeowners Association, stated that he wanted to thank the Church regarding their efforts in being a good neighbor and working with the neighborhood. He added that about 10 of their group had met with the church, and everyone was in favor of the plan as a low density transition between the development fronting Las Olas, and the single-family homes that were located in the neighborhood. He stated they preferred little change as possible, but if there had to be development at the site, they preferred that it be low density. He stated that Mr. Lochrie had addressed

most of the concerns that had been raised at their meetings, which involved security, lighting, landscaping along the east and south sides of the church, dumpster, and the length of time for the completion of the project. He explained that discussion had taken place about the work being done in phases. He stated they wanted more definite time frames given for the project. He added they did not want any zoning changes to take place, and they wanted the variance request to be specific to the parking for the church. He suggested that possibly an escrow could be arranged for the landscaping and lighting, along with the other improvements. He stated they wanted to protect the quality of life for the residents in the nearby neighborhood.

Tom Moss stated that they had lived in the area for over 35 years, and during that time the Colee Hammock area had been slowly eroded. He continued stating that the residential character of the area had changed drastically. He stated that the two churches, along with the Las Olas Hospital, had bought some residential properties in the area with good intentions, but they were never used in a way that was beneficial to the neighborhood. He added that the hospital had expanded about 5 years ago due to an agreement that was created between the facility and one of the churches. He continued stating that they used the church parking area. He reiterated that he did not see any unique hardship in this matter, and he did not feel there were any special conditions involved, only the desire to expand the facility. He believed their hardship was self-created, and he urged the Board to deny the request and preserve the residential character of the Colee Hammock area.

Ann Schompert stated that the church had involved the community from the beginning of the project and had listened to their concerns. She felt that Tom Welch had reviewed the project, but she wanted the phasing aspect to be addressed. She stated that the end result of the building, along with the functionality of the site, would be a tremendous asset to the community, but they wanted to be assured that if the project moved forward it would be completed according to the approved plans. She stressed that they did not want the plans to be changed, and they wanted to be assured that the final project would be the same as proposed on the plans.

Geraldine Rasmissin stated that she had lived in the area for the last 49 years and explained that during that time both churches had existed, but the hospital had not been in existence. She stated that there was a tremendous amount of traffic in the area due to the hospital. She stated the hospital had changed their name and ownership many times in the area. She remarked that the facility resembled a nursing home. She reiterated that it was difficult to live in the area, and they felt they existed in a buffer zone.

Mr. Lochrie stated that he wanted to point out that he was familiar with the area and agreed that a parking problem existed. He further stated that the City had been reviewing the situation for quite some time. He reiterated that this project would provide more parking than what existed at the site. He stressed that they were going to exceed the Code requirement. He explained that they were not providing parking for the hospital or anyone else, and were restricting the parking to their residential use. In laying out the project, traffic had been a major concern, and one of their suggestions was to keep additional traffic off Tarpon Terrace. He explained further that they spent a lot of time investigating what uses could be applied to the single-family lot. He stated that rezoning was an option, but the neighborhood had stressed that they did not want any rezoning and wanted it to retain its residential character and nature so that if in the future the church did not exist, then it could once again be a residential lot. He reiterated that the variance was for surface parking to serve the church. He stressed that they were in a difficult situation in this matter, and stated they could not rebuild the existing buildings because they exceeded the 10,000 sq. ft. maximum rule. He stated that the buildings in question existed long before the Code had been changed. He explained they were not asking for an increase for the actual structures. He stated that the building code had imposed various hardships on the facility, such as additional bathrooms being required. He felt the project would better serve the neighborhood and be more aesthetically pleasing.

Stephen Buckley asked when they calculated the before and after parking had they counted spaces along Tarpon Drive on the east side of the church. Robert Lochrie stated they had not counted those spaces, but there were 136 existing spaces, and they were proposing 150. He explained they were splitting the parking between the rear and side of the property. Stephen Buckley asked for further clarification regarding the curved portion at the site.

Don Wilken, architect, stated that the gathering court was a cloistered courtyard, and people could walk under the second story portion and up stairs to access that portion of the property. He pointed out that some of the circulation space were the outside loges, and was not air conditioning square footage.

Stephen Buckley asked what was the difference between the under air space now, and what would be available after the renovations. Mr. Wilken stated that they still had the 4,400 net square footage. He stated that 1300 sq. ft. of that area would be non-air conditioning. He proceeded to show the main entrance for the church on the map. Stephen Buckley asked what portion of the building was two-story versus one-story. Mr. Wilken explained that about 25% was two-story of the total square footage. He added that none of the buildings exceeded the 35' maximum building height for the area.

Scott Strawbridge asked if the membership was planned for significant growth for the church. Mr. Lochrie stated that the plan was not to add additional square footage for growth, and they wanted to maintain what existed.

Gus Carbonell stated that the rear of the sanctuary was lacking in detailing, and was the area for some of the service area. He stated that a neighbor had sent a letter regarding the burm, and he stated that he was comfortable with the 20' buffer yard. He suggested that some additional landscaping or detailing on the building facing the neighbors should be added. Mr. Lochrie clarified that concern was in regard to the façade of the older structure. Gus Carbonell added that the older structure was being added to on both sides. Mr. Lochrie added that during the site plan process, there would be a review by the Planning and Zoning Board.

Don Wilken added that the southeast elevations were not as illustrative, and explained that the renderings had focused on the other two sides of the building. He explained further that it would be consistent with the appearance and detailing that existed on the other 3 sides. He stated they looked at the site and building as being 360 degrees. He stated further that the back side of the sanctuary was representative of about 50% of the length of the building on Tarpon Terrace, and the other 50% consisted of new construction, including kitchen area and the parish hall.

Fred Stresau asked if the applicant was going to phase the construction. Mr. Lochrie reiterated that variances were only valid for 6 months, and they intended to have permits in place to continue with the construction as quickly as possible. He stated there would be considerable fund raising as part of this project, but like any developer, they wanted the funds in place so the project could be completed. He reiterated it was their intent to get everything completed in as quick a manner as possible. He added that the project was due to be completed at the end of 2006, and construction was to commence in February or March, 2005.

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. Board unanimously approved.

Don Morris stated that staff had met with the applicant about 3-4 months ago, and options had been discussed regarding the increase of the size of the buildings. He explained that one option was to rezone the site, but the problem was that it would then permit a number of uses at the property which would not be compatible. Therefore, the applicant had decided to come before this Board so the use would be limited.

Stephen Buckley asked if the applicant could address the limitation of 10,000 sq. ft. and he felt that was a small area for a church. Don Morris stated that he agreed, but he had not been present at the time to understand their rationale regarding the issue. He explained that the CF district did not have a square footage requirement, but it also would allow different uses outside of it just being a church.

Gus Carbonell explained that the intent was that there were a number of small neighborhood churches in single-family zoned districts, and therefore the bulk of the church and the amount of traffic was limited to a more manageable size. He explained that most of the large churches in the area were zoned CF. He explained if they were rezoned to CF, they would have more freedom regarding its use.

Scott Strawbridge clarified that 10,000 sq. ft. was the maximum amount. Don Morris confirmed.

Motion made by Fred Stresau to approve the application as submitted regarding Section 47-8.30, including that there be no commercial use in the parking lot, the parking lots in the area were to be secured with gates when the church was not in use, a wall, burm, or additional landscaping was to be erected to screen the headlights from the parking lot, a limitation regarding the lighting in accordance with Code requirements, and that the dumpster was to be screened. Also, that no further variances were to be granted to the applicant.

Fred Stresau stated that he did not feel that all of the mentioned conditions applied to the original variance.

Chair Patricia Rathburn stated that she believed the conditions did apply because she felt the only reason the neighbors were not objecting to the variance was due to the representations being made by the applicant.

Stephen Buckley stated that he believed the lot to the north might warrant some special consideration, but he also felt the conditions mentioned would apply to the variance. He asked if the burm or wall was represented in the plans.

Fred Stresau stated that the applicant was being requested to control the glare of the headlights onto adjacent properties. He felt that was left to the discretion of staff and the Planning and Zoning Board.

Robert Dunckel stated that it was up to the Board to decide the specifics for the burm or wall, or they could leave it to staff's discretion. Chair Patricia Rathburn reiterated that she believed the applicant was going to follow Code.

Fred Stresau reiterated that he felt the conditions being requested pertained to the parking lot, other than the condition that no further variances be granted to the applicant. Chair Patricia Rathburn emphasized that she believed the conditions went with both variance requests.

Chair Patricia Rathburn stated that she was uncomfortable with the language stating that no further variances were to be granted to the applicant. Mr. Lochrie stated they had no intent to return before this Board and the site plan was attached to the variance application.

Stephen Buckley reiterated that he wanted to make sure that everything proposed in the new structures was already existing in the current structures. Mr. Wilken replied that would be true from a use standpoint and nothing was to be added.

Don Larson seconded the motion.

Stephen Buckley stated that he was not comfortable that the conditions iterated by the applicant and homeowners in the area had been included, and asked if anything was being omitted.

Tom Welch added that landscaping was to be placed along the southern and eastern back sides facing Tarpon Terrace. Fred Stresau stated that he had not included such a condition in the motion because Code required such things, but he was willing to add that to the motion.

The motion was restated as follows:

Motion made by Fred Stresau to approve the application as submitted regarding Section 47-8.30, including that there be no commercial use in the parking lot, the parking lots in the area were to be secured with gates when the church was not in use, a wall, berm, or additional landscaping was to be erected to screen the headlights from the parking lot, a limitation regarding the lighting in accordance with Code requirements, that the dumpster was to be screened, and that additional landscaping was to be placed along both street edges above and beyond the required street trees. Also, that no further variances were to be granted to the applicant.

Stephen Buckley stated that he was puzzled about the condition regarding the securing of the parking lot. He asked for some further clarification as to which entrances would be opened daily. He believed this would be a critical issue for the neighborhood. Mr. Lochrie stated that he believed the primary concern was for during the evenings.

Fred Stresau stated that had been addressed in Mr. Jordan's letter which stated: "We do not want any Riverwalk or any walkway along the water for the homeless to hang out." Fred Stresau explained that it appeared the entrances would be blocked during the evenings if the site was not in use.

Stephen Buckley stated that according to the site plan, there did not appear to be any parking that was accessible without going through the gate. Mr. Wilken proceeded to show the entrance that would be used daily.

Ray Dubey stated the parking lot that they indicated to be used the most was the length of his pool and along his backyard. He asked for some further detail regarding the buffer that would be installed.

Fred Stresau stated that if the variance was granted, they would be required to go before the DRC and a public hearing would be held at the Planning and Zoning Board, and therefore, the residents could state their concerns.

Roll call showed: YEAS: Scott Strawbridge, Al Massey, Fred Stresau, Don Larson, Stephen Buckley, Gus Carbonell, and Patricia Rathburn. NAYS: None. Motion carried 7-0.

Motion made by Gus Carbonell and seconded by Don Larson to approve the application as submitted in connection with Section 47-5.11, along with the same conditions mentioned in the previous motion. Roll call showed: YEAS: Al Massey, Fred Stresau, Don Larson, Stephen Buckley, Gus Carbonell, Scott Strawbridge, and Patricia Rathburn. NAYS: None. Motion carried 7-0.

9. APPEAL NO. 04-62

APPLICANT: Marc Lapointe (Landlord for The Gypsy's Tambourine)

LEGAL: Tracts "A" and "B" of a Resubdivision of Lot 27, Coral Shopping Center, P.B. 41, Page 34 together with Parcel "A" Coral Shopping Center, P.B. 29, P. 30

ZONING: B-1 (Boulevard Business District)

STREET: 3045 N. Federal Hwy., Ste. 60B

ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 5-26B – Requesting a special exception to allow a restaurant to serve alcoholic beverages at distances of 133' (Culture Room) and 236" (Briny) from existing establishments that serve alcohol where Code requires minimum 300'.

Robert Dunckel explained that this was a request for a special exception, and the burden was to demonstrate that there was a restaurant or dining room where the sale of food predominated over the sale of liquor. He further stated that as long the record demonstrated that it was not contrary to the public interest, then the applicant would have met the burden. He explained that a hardship would not have to be demonstrated as in a variance request.

Sherry Maxine, representing the applicant, stated that this was a new restaurant which had been opened for the last 2 months. She stated that she had not been successful in making it a restaurant due to the fact that she was unable to sell beer or wine. She explained there had been a license for beer and wine when she had purchased the property, but when she had reapplied for it, she had been informed that it had expired. Therefore, she had to start from the beginning. She further stated that more than 50% of the business entailed food service. She explained that her clientele was different from other establishments in the area. She stated that two other businesses in the shopping center sold alcoholic beverages. She stated that her restaurant was closed by 11:00 p.m. and she served mostly senior citizens. She added that she also had a guitarist.

Marc Lapointe, landlord, stated that he was the owner of the property for the last 5 years, and reiterated that the previous tenant had sold beer and wine.

Ms. Maxine further stated that she had a letter from Vordermeier Management Agency which stated that they approved this establishment to have a beer and wine license.

Chair Patricia Rathburn proceeded to open the public hearing.

Jeff Robinson, attorney, stated that he wanted some further clarification because it had been his understanding that the applicant was seeking a 4COP full liquor license. Chair Patricia Rathburn reiterated that the applicant was seeking a beer and wine license. Ms. Maxine clarified that she was requesting a beer and wine license only. Mr. Robinson further stated that he believed a special exception had been granted to the previous tenant in conjunction with full service meals. He stated that the applicant was providing live music and he believed they were attempting to attract an entertainment crowd. He stated that he represented the Operator of the Culture Room and Greg Alaferis Holdings. He stated that they had operated for 2 years without a beverage license due to the distance requirement. He stated

further that the premises north had revoked their license for non-use, and then he had been able to acquire a license in April, 1998.

Robert Dunckel explained that the issue of 4COP was not relevant, but what was relevant was whether this was a restaurant where the sale and service of food predominated over the sale of alcoholic beverages. If at a later point in time when the business moved forward and the sale of alcoholic beverages was not incidental to the sale of food, then the applicant would have to request a variance. He advised that the matter could be taken before the Code Enforcement Board and a fine could be assessed for each day they operated in violation of the Code.

Chair Patricia Rathburn confirmed that the application was for a beer and wine license only incidental to the sale and service of food. Ms. Maxine confirmed, and provided photographs to the Board in their back-up material regarding the establishment.

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

Motion made by Scott Strawbridge and seconded by Fred Stresau to approve the application as presented. Roll call showed: YEAS: Fred Stresau, Don Larson, Stephen Buckley, Gus Carbonell, Scott Strawbridge, Al Massey and Patricia Rathburn. NAYS: None. Motion carried 7-0.

10. APPEAL NO. 04-63

APPLICANT: London Associates, LTD

LEGAL: Progresso, P.B. 2, P. 18, Block 313, Lots 15 and 16

ZONING: CB (Community Business District)

STREET: 664 North Federal Hwy

ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 5-26B – Requesting a special exception to allow a restaurant to serve alcoholic beverages at distances of 101 feet (liquor store) and 157 feet (restaurant) from existing restaurant and liquor store where Code requires minimum 300 feet.

ALL INDIVIDUALS WISHING TO SPEAK ON THIS MATTER WERE SWORN IN.

John Aurelius, attorney, stated that this was a request for a special exception for a liquor license. He proceeded to show a sample of the luncheon menu and explained that there was another restaurant in Hollywood, Florida. He explained that over \$300,000 was to be spent on the interior of the site. He further stated that the provision in the Code was archaic and was burdensome on what should be done automatically in the City. He felt the taxpayers should not be burdened with such issues.

Chair Patricia Rathburn proceeded to open the public hearing.

Fred Fetas stated that he was representing condominium residents located across the street from the Victoria Shops where this restaurant was to be located. He stated that they were concerned about this issue because the neighborhood was redeveloping. He further stated they were not objecting to the restaurant and believed it was important for the public hearings to be held regarding these matters.

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

Motion made by Fred Stresau and seconded by Al Massey to close the public hearing. Board unanimously agreed.

Motion made by Fred Stresau and seconded by Al Massey to approve the application as presented. Roll call showed: YEAS: Don Larson, Stephen Buckley, Gus Carbonell, Scott Strawbridge, Al Massey, Fred Stresau and Patricia Rathburn. NAYS: None. Motion carried 7-0.

“For the Good of the City”

Chair Patricia Rathburn stated that the Board had to decide about the December meeting. She explained that the date had to be changed due to it being a holiday. She explained that the alternative dates available were December 1, 22 and 29. She stated that she preferred that the meeting be held on December 1, 2004.

Motion made by Fred Stresau and seconded by Al Massey that the December meeting for the Board of Adjustment be held on December 1, 2004 at 6:30 p.m.

Motion made by Fred Stresau and seconded by Don Larson to adjourn the meeting. Board unanimously approved.

The Recording Secretary announced that she was relocating and would no longer be working with this Board. The Board thanked her for her service over the years.

Al Massey moved that Margaret D'Alessio be commended for her service and Scott Strawbridge seconded.

There being no further business to come before this Board, the meeting was adjourned at approximately 10:06 p.m.

Chairperson

Patricia Rathburn

ATTEST:

Margaret A. D'Alessio
Recording Secretary

ATTEST:

Debra K. Giehtbrock
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.
