

**BOARD OF ADJUSTMENT MEETING
CITY OF FORT LAUDERDALE
WEDNESDAY, NOVEMBER 10, 2004 – 7:30 P.M.
CITY HALL
CITY COMMISSION CHAMBERS – 1st Floor
100 N. ANDREWS AVENUE
FORT LAUDERDALE, FL**

BOARD MEMBERS

Present/Absent

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	A
Jon Albee	P

STAFF

Robert Dunkel, City Attorney
Don Morris, Acting Zoning Administrator
Tim Welch, Engineering

Debra K. Giehtbrock, Recording Secretary

GUESTS

Charles McKirahan	Jim Boote
Carl Cascio	Gerald Moraris
John Nicholls	Alan Tinter
Bob Oelke	Art Bengochea
Rene L Pine	Cindy Brewer
Stacey A Giulian	David Fernan
Jay Link	Jeff DuBois
Sanule Landol	George Spatafor
Larry Martineru	Steve Tillbrook
Jim Kever	

CALL TO ORDER

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

APPROVAL OF MINUTES – SEPTEMBER 22, 2004

Motion made by Don Larson and seconded by Fred Stresau to approve the minutes of the September 22, 2004 meeting. Board unanimously approved.

APPROVAL OF MINUTES – OCTOBER 13, 2004

Motion made by Don Larson and seconded by Fred Stresau to approve the minutes of the October 13, 2004 meeting. Board unanimously approved.

Chair Patricia Rathburn asked Board members if there were any sign problems. Birch Willey stated that there was a noted improvement in regard to the posting of signs.

The Board made the following disclosures: Don Larson stated that he had spoken to Steve Tilbrook regarding Holy Cross Hospital. Chair Patricia Rathburn stated that she had also spoken to Steve Tilbrook regarding Item #5. Birch Willey stated that he also had spoken with Steve Tilbrook. It was announced that the other remaining Board Members had also spoken with Steve Tilbrook.

1. APPEAL NO. 04-55 - Deferred from October 13, 2004 Meeting

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 nonresidential property, where Code requires that a 5 ft. wall be constructed.

Chair Patricia Rathburn stated that Staff had requested a deferral of this item in order to work with the applicant.

MOTION made by Binni Sweeney and seconded by Don Larson to defer this item to December 1, 2004. Board unanimously approved.

Birch Willey announced that Chair Patricia Rathburn had been featured in the Sun-Sentinel at the Ft. Lauderdale library to ensure that early voters were following proper procedures.

4. APPEAL NO. 04-66

APPLICANT: Nautix Miami, LLC

LEGAL: Coral Ridge Addition B, P.B. 41, P. 47, Block 12, Lots 18, 19, & 20

ZONING: B-1 (Boulevard Business District)

STREET: 5401 N. Federal Hwy.

ADDRESS: Fort Lauderdale, FL

APPEALING: **Sec. 47-23.9.A.1** – Requesting a variance to allow a 4' yard where the Code requires a 20' yard for properties along the North Federal Highway Interdistrict Corridor between Sunrise Boulevard and the northern city limits.

APPEALING: **Sec. 47-23.3** – Requesting a variance to allow an existing building to maintain a 1' setback from the property line along the alley, where Code requires a 3' setback from the property line.

APPEALING: **Sec. 47-25.3.3.d.i.** – Requesting a variance to allow a 4' landscape strip where the Code requires a 10' landscape strip when contiguous to residential property.

APPEALING: **Sec. 47-25.3.3.d.iv** – Requesting a variance to allow a viburnum hedge to be planted along the property line contiguous to residential property where a minimum of a 5' wall is required with at least a 5' setback from the alley row line.

APPEALING: **Sec. 47-25.3.3.b.ii** – Requesting a variance from the requirement to screen loading and service facilities so that they are not visible from abutting residential uses. Applicant proposes to plant a viburnum hedge that will only partially screen the loading area from view of the abutting residential property.

Chair Patricia Rathburn stated that there had been a request by the applicant to defer Item 4.

MOTION made by Binni Sweeney and second by Fred Stresau to defer Item No. 4 to December 1, 2004. Board unanimously approved.

Birch Willey asked why the item was being deferred. Don Morris stated that he had spoken to Robert Lockrie who was supposed to be at the meeting this evening. He explained that the request for deferral was because the applicants believed that they had some issues to resolve regarding the property, and they were not ready to request the variances.

2. APPEAL NO. 04-61 - Deferred from October 13, 2004 Meeting

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 ft.

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 ft. landscape area in front of the back-out parking spaces, where Code requires a landscape area that is a minimum of 5 ft. in width.

Chair Patricia Rathburn stated that matters that came before this Board were quasi-judicial, and anyone wishing to speak had to be sworn in.

ALL INDIVIDUALS WISHING TO SPEAK ON ANY MATTER LISTED ON TONIGHT'S AGENDA WERE SWORN IN.

Charles McKirahan, Architect, stated that he was representing John Nicholls and Carl Cassio. He stated that a 2-story 8 unit apartment building existed on the site, and rather than demolish the building and replace it with townhouses, the applicant wanted to restore the building. He explained that the building had been built in 1949 at a cost of \$30,000. He stated that this project was unique and would require variances. He continued stating that they had met with Greg Brewton and Terry Burgess, and discovered that due to the ULDR, there was a hardship being incurred in attempting to save such a building. He explained that the building had been erected on a site that had been too small, and other criteria had changed over the years. He explained that two problems had been identified regarding this project. One problem was that originally 3 parking spaces were required before there could be a green island, and now the Code required two parking spaces, and then a green island. He explained that this occurred on the west side of the building. He further stated that four of the parking spaces were too close to the west face of the building. Therefore, instead of 5' from the front end of the parking, there was only 1.1'.

Mr. McKirahan advised that they were going to install an additional \$50,000 of landscaping on site, as well as 7 street trees. He stated that they had met with the Victoria Park Homeowners Association Planning Committee and their Aesthetics Committee. He indicated that the Planning Committee supported the project, but the Aesthetics Committee had some problems regarding the project. He explained that they had met with that Committee several times in an attempt to resolve the issues.

Mr. McKirahan further stated that the area was now zoned RC-15, and the 8 existing units were legal and that number of units would remain. No additional square footage was going to be being added. Everything would stay the same, only restored. There would be new paint and windows, and the same mid-century architecture with squares in the entryway would remain. He explained that these units would be uniquely affordable in Victoria Park, and the price range would be \$230,000 to \$250,000. He continued stating that they would have large one-bedroom units. He stated that this type of architecture was becoming historic. In order to save the building, variances would be needed.

Carl Cassio stated that he wanted to provide some background regarding the purchase of the property. He stated that he would explain what work was going to be done to rehabilitate the property. He stated they had purchased the property in July, 2004, and had been one of three parcels that had been sold by a Mr. Carl Welsh. He explained that the parcels to the south and to the east had been sold to other potential investors. He explained further that they had only purchased the apartment building. He believed that had caused some confusion previously.

Mr. Cassio stated that part of the current parking was on the swale on broken asphalt and cement, which was parallel parking that was unsightly and unsafe. He stated that their proposal would make

the parking safer, more attractive, and more modern. He proceeded to show the west side and north side of the parking area consisting of 6-7 parking spots for the 8 units. He explained that the proposal was to reduce the impact of individuals from this building parking in other areas of the neighborhood, and therefore, there would be 6 designated spots on the west side of the building, one designated spot on the northeast corner, and two non-designated parallel parking spots on City property for a total of 9 parking spots. In addition, they would be eliminating the side-angle problem in parking. He stated that they had met with Tim Welch, and were advised that the back-out parking being proposing was safer than parallel parking. He explained that they were going to eliminate the side-angle parking on the corners, elimination of parking near a fire hydrant, and improve the visual appeal with designated parking spaces.

Mr. Cassio further indicated that they planned to take a non-conforming use and lessen it by changing the parking. He stated if the variance was granted, they would make improvements on the site. They would spend an additional \$50,000 on landscaping, and spend a total of \$400,000 for improvements on the interior and exterior of the building. He added that they would be preserving an old historic building and making it more appealing than what existed today.

Carl Cassio stated that this should be viewed as a win-win situation for the neighborhood and the City because they would be converting rental units to ownership apartments, creating an additional tax base with lower-income housing two blocks from Las Olas. The neighbors had suggested that a balance needed to be reached, and the majority supported maintaining some of the historic value of the neighborhood. He added that some residents had opposed the project because they did not feel the building could be changed, and should be torn down and replaced with townhouses. He further indicated that they were trying to be very pro-active with the neighbors and staff in addressing everyone's concerns.

Chair Patricia Rathburn proceeded to open the public hearing.

Rene Lepine, resident, stated that he supported the project because it was one of the few buildings in the area that was worth preserving. Mr. Lepine stated that this would probably create the least expensive new units in Victoria Park, and after attending a meeting last week on affordable housing, he felt these units were definitely needed. He stated that demolishing the structure would create higher priced housing in the area. Mr. Lepine further stated the benefits of removing the cars parked in the swales were removing unsightly cars that posed a hazard on 16th Street which was a relatively high-speed street in Victoria Park, as well as improving the drainage on the street which was a problem in the area due to lack of proper swales. He stated that removing the cars parked in the swales would also serve to increase the value of the neighborhood.

Marjorie Head stated that she was a resident on the north side of 2nd Court. She continued stating that she had the only house in the area because the remaining structures were either apartments or newly constructed townhouses. She further stated that the building was viewed as decrepit, difficult to look at, and in need of rehabilitation. She further stated that the sidewalks were a danger because they were broken and crumbling with weeds growing through the cracks. She added that nothing grew on the embankments, and there had been unkempt shrubs and trees that have been neglected. She stated that she was in favor of this project because there were a number of ways the building could be made more attractive. She stated they preferred a two-story building to a three-story one or higher that appeared to be going up in the area.

Bob Oelke, resident at 211 NE 16th Avenue, stated that he was directly west of the project. He stated that this building would be the view from his front window. He stated that he was opposed to

the variances for various of reasons. The first was the criteria for the variance stated on the agenda. He stated that 5 points were required in order to obtain a variance. He stated that one of the criteria to be considered in obtaining a variance was that a denial would prevent reasonable use of the property. He continued stating that this property had been used as an 8-unit rental apartment, and therefore, there was a reasonable use for the building. He stated that the building could remain and provide affordable housing in Victoria Park. He further stated that the second point listed was that there had to be a specific condition peculiar to the property. He explained that there was nothing peculiar about this property, except for the fact that the building was too large. Current zoning would allow slightly more than 3 units on the property, and currently there were 8 units. Therefore, the hardship was that the owners had 5 more units than what current zoning would allow.

Mr. Oelke further stated that the third item was that the current zoning would deprive the applicant of a substantial property right. He reiterated there were more units than what current zoning would permit. He stated that he did not see a hardship regarding this property. He stated that the hardship that existed was because previous owners had not maintained the property or the landscaping. He stated that his concern was that less green space existed around the building than what was currently required by zoning. The front, side and back yard areas surrounding the building were much smaller than what was currently required by Code. He stated that the largest part of the yard was on the west which faced his home, and he did not want to see it paved because it would use up the 1,900 square feet of green space in the area, and reduce it to 800 square feet which he felt would be detrimental to that particular block. He added that the swale parking was unsightly, and reduced the size of the street and slowed down traffic. He further stated that this was an odd corner because there was one lot south of the parcel where 2nd Street and 16th Avenue made a jog and came together in an odd 3-way STOP causing a blind corner if cars were backing out.

Mr. Oelke further stated that the variances would reduce the green space, and the buffer would be pushed back to 1.1', which was 13.25" from the building. One of the parking spots was required to be a handicap space which required a slope of no more than a 1' rise over a 50' run on an 18' parking spot. He explained that meant there could be a 4" rise. He stated that the building sat 18" above the sidewalk, and therefore, 14" of topsoil would be needed to be removed in order to create a flat parking space to meet the ADA requirements. This would then expose the foundation and the footer for the building. In effect, parking spaces would be right next to the building. He felt that such proposals would reduce the green space and make the building more non-conforming.

Jim Kevrin, resident of 211 NE 16th Avenue, stated that according to the property assessor's office, the same corporation owned this building along with the adjacent property. He reiterated that if the land was lowered 18", the foundation and footers of the building would be exposed, and they would then only have 7" of green space for planting. He further stated that according to the property appraiser's information, the building had cost \$150,000, and the architect had stated they planned to spend \$500,000 in renovations, which would exceed the 50% rule.

Mr. McKirahan stated that Carl Cassio would provide the Board with a copy of the Warranty Deed showing the current ownership. He further stated that in regard to the 1.1', the plan was to excavate on that end and block under the foundation if it was exposed, stucco it, and still have the 1.1". He explained that another plan was to place trellises up the side with Bougainvilleas. They realized that it was a tight space, and they would mitigate some of the factors that they had been done at other sites. He further stated that \$50,000 of additional landscaping on such a small piece of land would create more of an area of green than what currently existed.

Mr. McKirahan further stated that regarding traffic, they had met with Tim Welch of the City Engineering Department, who had visited the site and felt this would be a safer situation than having parking on the swales. He proceeded to elaborate on the hardship that these historic buildings were built 50 to 60 years ago, and now existed in a different than what they had been originally designed for with very different code requirements. He stated that the only way to save such a building now was to adjust them.

Birch Willey asked how many spaces would exist, if the variances were granted. Mr. McKirahan replied that there would be 7 on-site parking spots, and 2 regulation size spaces in the swale.

Chair Patricia Rathburn asked who held title to this property. Mr. Cassio stated that the title was held by Nicholls Investment Properties LLC. He advised that he also had a copy of the Warranty Deed for the adjacent properties that had been mentioned. Mr. Cassio advised that the properties had closed on July 19, 2004. He explained they had been assigned this parcel from a master contract that included all 3 properties that closed simultaneously. He proceeded to distribute copies to the Board of the closing documents, along with the legal description of the subject property that had been purchased for \$850,000.

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 Binni Sweeney to close the public hearing. . Board unanimously approved.

Fred Stresau asked when the building was originally constructed had there been any other parking spaces other than those in the swale. Mr. McKirahan explained that there had been 4 spaces to the west and one space located in the northeast section when they permitted in 1949. Robert Dunckel asked if the 5 spaces had been required in 1949. Mr. McKirahan assumed they had been required. Robert Dunckel stated that he thought they might not have been required.

Fred Stresau asked if the 8 units were preserved, how many spaces would be required by the current code. Mr. McKirahan explained that if the building was new, 14 spaces would be required. Fred Stresau asked why 14 spaces could not be provided. Mr. McKirahan stated that there was no land available, and reminded the Board that they were not seeking a change of use and were doing less than 50% remodeling.

Stephen Buckley asked if the master contract involved Nicholls Investment Properties LLC. Mr. Cassio stated that the master contract belonged to V.P. Sherwood who had assigned Nicholls Investment Properties LLC their parcel. Stephen Buckley asked if the prior owner had used parking at the other 3 sites. Mr. Cassio stated that he believed they had inter-mixed. Stephen Buckley asked if the variance was granted would they retain the building on the site. Mr. Cassio stated they did not object if the Board wanted to condition the variance on the fact that the building would not be demolished. He stated that if the building was demolished, he believed the criteria for the variance would be moot.

Birch Willey stated the problem was that the area was already crowded, and the units were sold to occupants with two cars, the situation would worsen. Mr. McKirahan stated that the units were existing.

Chair Patricia Rathburn clarified that there were 8-one bedroom apartments now, and they were going to sell 8-one bedroom 800 sq. foot apartments so the only difference in the use of the property was that the people would own the properties. Mr. McKirahan confirmed.

Gus Carbonell commented that a problem existed today, but there would be an improvement in the situation with the proposed use. He questioned whether consideration had been made to reduce the number of units because in Victoria Park most units were sold per square foot of conditioned space, rather than number of units. He stated the parking was managed at this time due to the fact that spaces were being used in adjacent areas to the building. Mr. McKirahan indicated that they had looked at other options, but the envelope had to stay the same. If they made two units into one, it would become more competitive in pricing, and possibly less attractive to potential buyers. Gus Carbonell stated that in granting the variance, they would be doing the lesser of the two evils.

Fred Stresau asked what would the parking requirements be if the 8 one-bedroom units were converted to 4 two-bedroom units. Mr. McKirahan indicated that the requirement would be nine parking spaces. Fred Stresau reiterated that this would still be more than what could be provided on site. Mr. McKirahan confirmed. Fred Stresau suggested that perhaps Tim Welch could provide staff's recommendations regarding this request.

Binni Sweeney stated that when a bad condition existed which would only be slightly improved, she felt it would only compound the existing problem in the future.

Fred Stresau pointed out that this Board could not require the owners to demolish the building. He stated the building could stay just as it presently existed with parking on the swale. He reiterated that he wanted to have staff comment on swale parking versus back-out parking.

Chair Patricia Rathburn stated that if the units were changed from 800 square feet to 1,600 square feet, than there would probably be two occupants with two cars. She continued stating that this was an existing situation that was being somewhat improved. She stated that the alternative solution was to continue renting it as it presently existed. She felt that the neighbors would not be any happier leaving the units as they were, as opposed to having improvements made with \$50,000 of additional landscaping for the site.

Don Larson stated that he was involved with a building with 23 units and 23 parking spaces, and there was a waiting list of buyers. There was no street parking available there, and the occupants had one car, and that was the way it was. It is not the best situation, but there had been no problems, and the building had been there for quite some time.

Gus Carbonell asked if the units had been exempt from the Fair Housing Act in the past and not required to have handicap parking. Mr. McKirahan explained that the building had been constructed before the Fair Housing Act, and therefore, as far as the Federal Government and the State was concerned such parking was not needed. He stated that because they were re-striping the parking, the handicap requirement was triggered in accordance with the City's ULDR. Mr. McKirahan reiterated that the units consisted of two stories. Gus Carbonell advised that they check the Fair Housing Act regarding the parking.

MOTION made by Binni Sweeney and seconded by Don Larson to approve the request as submitted. Roll call showed: YEAS: Fred Stresau, Don Larson, Stephen Buckley, Gus Carbonell, and Patricia Rathburn. NAYS: Binni Sweeney and Birch Willey. Motion carried 5-2.

Chair Patricia Rathburn asked if the Board understood that the motion to approve was based on the requirement that the variance was for this building's footprint only. Robert Dunckel stated that if that was the understanding of the Board, then they would include that as a condition when the Order was drafted.

3. APPEAL NO. 04-65

APPLICANT: Inlet Liquors

LEGAL: First Addition to Lauderdale, P.B. 2, P. 15, (D) Block 15, Lots 6 thru 13 plus
Lots 24 thru 29

ZONING: B-1 (Boulevard Business District)

STREET: 759 SE 17 Street

ADDRESS: Fort Lauderdale, FL

APPEALING: Sec.5-26.a – Requesting a special exception to allow a liquor store to sell liquor at a distance of 129 ft. from a restaurant (Bistro Mescaline) that serves alcohol where Code requires a 300 ft. separation.

Robert Dunkel stated that there was a discrepancy in the notice that incorrectly stated that the text read: "Requesting a special exception," and in fact this was a request for a variance and all necessary criteria would have to be met. He reiterated that this was not a special exception, and that it was not a restaurant, but a liquor store. He stated that it could be suggested that since it had been written as a special exception that this Board did not have the jurisdiction to go forward. He suggested that the Board question if any member of the public had been confused by the text reading as a special exception. If the Board determined that some confusion may have resulted, then the item could be deferred at the Board's discretion, and the item could then be advertised properly. He stated that the bottom line was that they were not seeking any further relief, but would be assuming a heavier burden.

Chair Patricia Rathburn stated that in discussing the issue with staff, she felt that there had been adequate notice provided to the public, and that this was to allow a liquor store in the shopping center, whether it was by a variance or a special exception. Chair Rathburn thought the advertisement met the intent of the code and that the public was aware of what was being proposed for the site.

Binni Sweeney stated she did not have a problem with the advertisement, but wanted to make sure that the applicant would be able to speak regarding the hardship.

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

Stacey Gilante, Attorney, stated that they were requesting the variance as if it were a hardship. Letters and notices had been sent out and they had not received any written notification objecting to the request. Mr. Gilante stated that the property was located on SE 17th Street Causeway. He explained that were requesting the same use for the site that had been used previously this year. He stated that the previous store had been owned by Walgreen's. He explained that the site still retained some original racking, as well as some products. He advised that originally Bistro Mezzaluna had requested a special exception to allow them to come into the shopping center because they were 129' from the liquor store. The Board approved the exception at that time. He explained that they were two different uses, and one was a restaurant, and the other was a liquor store.

Mr. Gilante stated the company requesting the variance was Inlet Liquors, a company who had been in business for over 40 years selling fine wines and liquors, mostly based in Palm Beach County. He explained that the hardship was that they had signed a 5-year lease for the property. He reiterated that the design, layout, and racking was still in the store and this was the best use for the building.

Birch Willey asked if the tenant was only going to use the space occupied by the previous liquor store. Mr. Gilante confirmed.

Jay Pender, Inlet Liquors, stated that they had signed a lease to sublet the liquor store portion of the building.

Chair Patricia Rathburn proceeded to open the public hearing.

Sam Land stated that he lived directly behind the building, and he felt there were too many liquor stores within a one square mile area, and he felt they were attracting homeless individuals. He stated that he was opposed to the variance.

Chair Patricia Rathburn explained that the stores had two different types of uses.

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. Board unanimously approved.

MOTION made by Binni Sweeney and seconded by Birch Willey to approve the request as submitted.

Fred Stresau stated that he never heard anything in the discussion about the existing hardship, other than the fact that it had previously been a liquor store, and that they had signed a lease thinking it was a liquor store.

Mr. Gilante stated that the hardship was that the property already had equipment valued at thousands of dollars, and Mr. Pender had already ordered inventory for the store. He further stated that the season was now beginning for the City, and Thanksgiving was the second largest holiday for the purchase of fine wines and spirits.

Chair Patricia Rathburn reiterated that the Board discussed this aspect every time a liquor licensing issue came up because it was difficult to show hardship for such stores. In fact, she suggested that the City Commission review this particular section of the Code.

Fred Stresau stated that if that was the case, then perhaps Robert Dunkel needed to explain in more detail as to why this was a hardship, rather than a special exception.

Robert Dunkel stated that several months ago, there had been a case in the southwest section of town and the Board denied the relief based on distance separation. He explained that a Writ of Cert had been filed in District Court and such arguments had been raised, but the Court rejected all such arguments stating that the law was sound in the State of Florida, and that these regulations were appropriate. The Court also stated that it was appropriate to treat a restaurant different than a liquor

store. He advised that he had found several cases where the Courts approved a more onerous burden on the liquor store than on the restaurant.

Chair Patricia Rathburn stated that the hardship in this case was that the use was at the site before the restaurant who had to obtain a special exception.

Stephen Buckley asked if there was some provision regarding the length of time the business had been vacant, and possibly another owner would have been grandfathered in. Mr. Gilante stated it had been vacant for about 4 months, but he stated that he was not aware if that could be done, which was why this avenue for approval had been selected.

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

5. APPEAL NO. 04-67

APPLICANT: Holy Cross Hospital

LEGAL: Parcel "A", Holy Cross Hospital Plat, P.B. 139, P.19, together with Tract "A", Coral Hills, P.B. 37, P. 20, also together with Coral Hills, P.B. 37, P. 20, Block 5, Lots 1 thru 4, Block 6, Lots 1 thru 17 and 19 thru 23, also together with a portion of Section 13, Township 49 South, Range 42 East

ZONING: CF (Community Facility District)

STREET: 4725 North Federal Hwy.

ADDRESS: Fort Lauderdale, FL

APPEALING: Sec.47-20.9 (A) – Requesting a variance to allow a previously approved 2nd floor expansion of an existing parking garage with 90 degree parking on ramps that have a 5.5% sloping grade, where the maximum sloping floor grade for a 90 degree parking is 5%.

Chair Patricia Rathburn stated that earlier in the meeting disclosures had been made that most of the Board Members had spoken to either Steve Tillbrook or George Spadafora regarding this item.

Steve Tilbrook, attorney, proceeded to introduce the individuals that would speak on this matter tonight. He stated that Jim Boote, Chief Operating Officer and Senior Vice President of Holy Cross Hospital; Gerald Morris, General Counsel for Holy Cross Hospital; George Spadafora, Director of Engineering for Holy Cross Hospital; Larry Martineau, Project Architect; and Alan Tinter of Tinter Associates. He stated they wanted to provide some background regarding this variance, and about the Master Plan for the Hospital which would demonstrate justification for the requested variance.

Mr. Tillbrook explained that the applicant was here to request a variance to permit 90 degree parking on the internal ramps to the parking garage which currently exist, and for a two-floor expansion of the existing parking garage with a 5.5% sloping grade where the Code requires a maximum sloping grade of 5% for new parking garages. He proceed to show the current site plan, along with a rendering of the current site.

Mr. Tilbrook stated that the parking garage had been approved through the DRC process with the contemplation of the two-floor expansion. He explained the garage had been constructed in 1989 and had consisted of 4 floors with 672 parking spaces. It is a permitted use in the area. He further

stated that at the time of the DRC approval, there were no maximum slope requirements for parking on ramps inside the parking garage.

Mr. Tilbrook indicated that the reason for the request was necessitated because of changes in the code after the DRC process and Planning and Zoning approvals had been obtained. The change of the slope requirements came about in 1997 which created the hardship. He stated that in 1998 the Hospital decided to upgrade the facilities at the hospital in order to meet the growing needs of the community. He stated that the Master Plan had approved several components for the site, including a new Cancer Center, an Out-Patient addition, a new Cardiac Care Center, and a new Chapel. He further stated that the garage had also been approved once again for a two-floor expansion of the existing garage.

Mr. Tilbrook stated that it was nearly impossible to rebuild this facility to incorporate the new slopes. In order to change the slope requirements for the two new floors, it would require the two floors to stick out from the existing floors, and since building was bound by roads in that area, it was almost impossible to expand the footprint of the building for the additional two floors. He further stated that based on those conditions, the unique orientation of the building, and the unique dimensions of the building, a unique hardship existed which was not self-imposed, but rather imposed by the change in the Code after the project had been approved.

Mr. Tilbrook stated that he also wanted to address the industry standards and public safety. He explained that the slope of the expansion floors would not meet the requirements of the existing Code, but it was consistent with current engineering standards, along with industry standards, which would not present a threat to public health, safety or welfare. He proceeded to distribute a report that had been prepared by Alan Tinter that incorporated the most current standards from the Traffic and Engineering handbook. He explained that it also referenced other sources regarding the industry standards for a safe and efficient operation of a parking garage. In all of the manuals, the standard for parking at 90 degrees on a ramp was that the slope should not exceed 6%. He stated that they were not arguing that the Codes had changed, and if they were building a new structure they would comply to the 5% slope requirement, but they were not building a new garage and were only expanding the existing one. Therefore, they felt the information adequately demonstrated that the expansion would be safe and implemented in the public's interest. He explained the garage had been operating for the last 15 years, and there had been no incidents regarding the slope of the ramps where parking presently existed.

In an effort to demonstrate the safety of the proposed expansion, he explained that they had assessed two public parking garages, and both garages had 90 degree parking on ramps that exceeded 5.5% sloping on the ramps. He stated that they complied with standards that were already set in the industry.

Mr. Tilbrook further stated that they had hosted a community association meeting on July 28, 2004. Notices were sent to all the neighboring associations regarding the meeting, and a letter had also been sent on November 4, 2004 asking for public input. He stated that the expansion of the parking garage would improve parking conditions and traffic circulation within the community. He stated it was located as far as possible from residences in the area, and in addition relieved some of the parking congestion at other parts of the hospital campus.

Mr. Tilbrook summarized that this was a special unique situation that affected only this property because it was the expansion of an existing garage that had been approved twice, but due to the change in the Code a variance would be needed. The hardship was not self-imposed and was due

to a change in the Code. He stated that this was a minimal variance, keeping the standards the same within the parking garage. In fact, industry standards stated that for safe and efficient operation of garages, the slope of the ramps should be consistent throughout the building. He remarked that the use was compatible with the adjoining properties. He believed there would be fewer impacts to the surrounding neighborhood.

Chair Patricia Rathburn proceeded to open the public hearing.

Robert Carey, Attorney, stated that he understood that the expansion had been approved in the past, but he felt the facility should comply with current standards rather than request a variance. He stated that the comment made that the garage was not near a neighborhood was incorrect. He added that he did not live in the area, but traveled through it frequently. He further stated that expansion of the parking garage would create an eyesore for the area. He added that there was a neighborhood located across the street at 19th Avenue, and he felt there would be an increase in traffic for the community.

Chair Patricia Rathburn asked if Mr. Carey had any comments regarding the slope, which was the subject of the variance. Mr. Carey stated that he thought they should comply with the Code.

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 Binni Sweeney to close the public hearing. Board unanimously approved.

Birch Willey stated that he did not want to move forward with this matter without advising Holy Cross Hospital representatives that this was a questionable matter. He continued stating that if one read the appeal to Section 47-20.9 (A) it stated the following: "We are requesting a variance to allow a previously approved 2nd floor expansion." He stated that there was some thought there that this was a one-floor building, and they were asking to go up one more floor. He felt it should read that they were asking for a variance to add two floors to the existing building. He stated that he wanted the minutes to reflect that the Board had mentioned this discrepancy.

Chair Patricia Rathburn stated that this had been discussed with staff and instead of saying "a second floor expansion," it should say a "two-floor expansion."

Fred Stresau stated that he had written a letter to Peter Pardington, Acting City Engineer, requesting that Tim Welch provide information regarding whether the slope and transition between the top and bottom of the building would meet the safety criteria.

Tim Welch, Engineering, stated that he had discussed the issue with Peter Pardington and Bob Dunkel. He explained that they typically looked at ramp slopes when reviewing buildings at DRC level and during the building permit process, and limited the slope on the ramps to 5%. He explained that was done due to some people having limited mobility moving into and out of cars, and also in the event that a car was left in neutral, one did not want it to back out of a space. He stated that the standards from the Traffic Engineers Handbook limited the slopes where there was parking on the slope to 5%, and later that had been revised to allow the slope up to 6%. The slopes were not regulated prior to 1997, and the 5% limitation had been taken from the 2nd or 3rd edition of the IT Manual. He advised that the current 5th edition of the Manual listed slopes up to 6%. He further stated that the City was sensitive to the safety issues, and reminded the Board that the City had a

problem with one of their garages which was unrelated to the sloping issue. He stated that they did not want to establish any type of precedent. However, when analyzing the design and reviewing the various references available, staff felt the request was reasonable in considering the hardship. He explained they had also analyzed the site plan and had verified the existence of roads around the building. He explained that one of the sides that appeared to be more advantageous to cantilever or support for the expansion on the upper two floors would create a substantial hardship because ambulances transporting patients to the hospital would be utilizing the road in that area. The addition of a .5% slope, when there were known garages that were at or above this percentage, and where this slope existed on the floors below the expansion, the variance was a minor request when one considered the financial and feasibility hardships that would exist in building the garage without the variance.

Tim Welch stated that they were not establishing a precedent, but were merely evaluating where an existing garage existed, as to what would be an acceptable slope which could be supported by professional documentation outside the realm of the City's Code, and could be evaluated and supported by staff within reason. He stated they believed the application was within the realm of reason and that it made sense to support. He urged that the Code not be changed, but that the variance be considered.

Stephen Buckley stated it was his understanding that this would be employee parking, and therefore, the same individuals would be using the parking spaces every day and not the general public. Steve Tillbrook stated that currently the garage was being used by physicians and hospital employees. He stated that there were no plans to change the use of the garage, but they would like to have the flexibility in the future to perhaps use the garage for out-patient parking.

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

6. APPEAL NO. 04-70

APPLICANT: Cindy Bulk

LEGAL: Progresso, P.B. 2, P.18, (D) Block 183, Portion of Lot 24 and all of Lots 21, 22, 23

ZONING: B-2 (General Business District)

STREET: 317 E Sunrise Blvd

ADDRESS: Fort Lauderdale, FL

APPEALING: Sec.47-24.12A. 6 (Temporary nonconforming use permit) – Requesting a one (1) year temporary use to permit a change of use to occur prior to the Development Review Committee (DRC) approval.

Birch Willey disclosed that he had spoken to Deborah Kerr regarding this matter. Chair Patricia Rathburn disclosed that she also had spoken with Deborah Kerr.

Art Bengochea, Architect, stated that he was representing Cindy Bulk. He advised that the tenants of the property were also present. He explained that they were requesting a temporary non-conforming use permit for one year to permit them to go through the DRC permitting process. He stated that the tenants had a lease for almost a year on this property, but due to some site issues, engineering criteria could not be met. An agreement was worked out with DOT, and approximately

4 weeks prior a meeting had been held with Terry Burgess, Tim Welch and Peter Partington where a site plan was developed that appeared to satisfy the engineering criteria. He stated that at that point Terry Burgess suggested that the applicant come before this Board requesting a temporary non-conforming use permit. He stated they wanted to open for the Christmas season, but such time schedule could not be met due to the fact that they had to go through the DRC and permitting process.

Mr. Bengochea proceeded to read the requirements for granting a temporary non-conforming use permit. He then proceeded to show a picture of the existing building which had been an old Cole Muffler shop which had been vacant for a number of years. He explained that when Sunrise Boulevard was widened, approximately 20' on the front of the property was lost creating parking issues. He stated that his client wanted to open a furniture consignment shop that would also sell home decorative pieces, and with that use, they would be able to provide the number of parking spaces for the size of the building. He explained that the property to the west was an old farm stores building which was vacant and boarded up. He stated further that the property to the north was vacant and a portion of it was owned by DOT. He stated that to the east was the new Home Depot Store which improved the corner of the property. He explained that to the southeast was the Checkers Restaurant, and immediately to the south was a new McDonald's. He stated that the neighborhood would benefit from the conversion of this building.

Chair Patricia Rathburn stated that the Board did not know whether the temporary non-conforming use would be compatible with the adjoining properties until the request had gone through the DRC process. It was not known if they would meet the criteria to ultimately develop the site the way they were proposing until they had gone through the DRC process. She stated that she was not personally inclined to grant temporary non-conforming uses that permitted people to establish their businesses, and then later on when they did not receive the necessary approvals, they came before this Board requesting a variance, after investing their time, money and energy in establishing their business. She stated the Board also did not know what other design criteria might be imposed on this property by DRC.

Binni Sweeney stated there were at least two instances where the Board had approved temporary non-conforming uses before the fact. She stated that one was for Candi Colby who operated for 3 years before obtaining approval, and the other was the parking garage on Broward Boulevard. She stated that they did not know what criteria would be imposed, and she was vehemently opposed to approving a temporary non-conforming use permit.

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

Chair Patricia Rathburn proceeded to open the public hearing.

Cindy Brewer-Bulk stated that the site plan was approved. It was stated that the plan had been approved in concept. Chair Patricia Rathburn stated that was a little different, and she had not received the necessary approval. Ms. Bulk asked if the process could be pushed forward because the building had been leased for one year. Chair Patricia Rathburn stated that with the hiring of the architect, the process would be expedited to some point.

Birch Willey asked if the building had been empty the entire year. Ms. Bulk replied that the tenants had moved some of their things into the building, but had not been conducting any business.

David Fernan, lessee, stated that the property was leased, and he had obtained an attorney. He continued stating that it was their understanding that they would be able to take the property over without a DRC review due to the lease having been written within a certain period of time, and that they would have been grandfathered in. He stated there had been numerous problems with the property, such as the City cutting the water line, and permits to restore such line had been delayed over and over again. He further stated that he had spent a considerable amount of money and urged the Board to approve the variance.

Birch Willey asked if the building was being used as is. Mr. Fernan stated that the building had been used partially for storage, but no business had been conducted.

Ms. Bulk stated that the area had considerable problems with vagrants sleeping in the area, and a bus stop in front. She stated that they felt if the City granted the variance, it would help clean up the neighborhood until the DRC process was completed.

Gus Carbonell stated that he was familiar with the area, and he suggested that this was the type of site where if the building was demolished, nothing would get approved for the site. He added that there were serious problems in the area, and if the temporary use permit was granted a business could be started, but they would have to return for variances if DRC requirements were not met.

Ms. Bulk stated that her grandmother had conveyed the property for Sunrise Boulevard and 4th, but had not received the money. She stated they had been the only property owners who had conveyed the property to the City.

Fred Stresau provided the background on the garage on Broward Boulevard where a one-year temporary non-conforming permit had been issued. He stated that 5 years later, there were still problems to be resolved.

Chair Patricia Rathburn stated that although it sounded cruel not to let a business open, it would be even worse to allow someone to open a business, incur costs, and then be told the business had to close.

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. Board unanimously approved.

MOTION made by Binni Sweeney and seconded by Fred Streasau to approve the request as submitted. Roll call showed: YEAS: Stephen Buckley and Gus Carbonell. NAYS: Fred Stresau, Don Larson, Birch Willey, Binni Sweeney and Patricia Rathburn. Motion failed 2-5.

“FOR THE GOOD OF THE CITY”

Binni Sweeney thanked Don Morris for providing the map to the Board, and she hoped to see it included from now on because it was a big help.

Don Morris reminded the Board the Board's next meeting would be at 6:30 p.m., and that a vote had been taken to move the next meeting to December 1, 2004.

Fred Stresau reported that the City Commission had approved that this Board's meetings would be held at 6:30 p.m. from now on.

Gus Carbonell reported that another non-conforming temporary use permit had been granted for Northside School to use an area 200' south of the store discussed earlier, and that the school had never used it. A considerable amount of money had been spent for repaving, striping, lighting and drainage. The school was overcrowded at the time, but then experienced a 20% reduction in enrollment. He suggested that this be followed up on as to whether rezoning was needed to legalize the parking lot.

There being no further business to come before this Board, the meeting was adjourned at approximately 9:15 p.m.

Chairperson

Patricia Rathburn

ATTEST:

Jamie Opperlee for 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.
