

# AGENDA

## BOARD OF ADJUSTMENT MEETING CITY OF FORT LAUDERDALE

WEDNESDAY, January 12, 2005 – 6:30 P.M.

CITY HALL  
CITY COMMISSION CHAMBERS – 1<sup>st</sup> Floor  
100 N. ANDREWS AVENUE  
FORT LAUDERDALE, FL

### BOARD MEMBERS

	<u>Present/Absent</u>	<u>Cumulative from January 2005</u>
Gus Carbonell	P	1-0
Fred Stresau	P	1-0
E. Birch Willey	P	1-0
Binni Sweeney	A	0-1
Don Larson	P	1-0
Patricia A. Rathburn, Chairman	P	1-0

### ALTERNATES

Scott Strawbridge	P	1-0
Al Massey	P	1-0
Jon Albee	P	1-0

### STAFF

Robert Dunkel, City Attorney  
Don Morris, Acting Zoning Administrator  
Peter Partington, City Engineer

Debra K. Giehtbrock, Recording Secretary

### GUESTS

Art Sites	Robert Lochrie
Tom Carter	Pete Ebersoll
Maria Glaston	Margarette McKeever
Paul Darelli	

## **CALL TO ORDER**

Chair Patricia Rathburn called the meeting to order at approximately 6:30 p.m., and asked the Board Members to introduce themselves. She then explained the procedures to be followed for tonight's meeting. She also stated there were minutes from September Item 04-48 Birch Willey reports were not accurate.

**Motion** made to defer approval of the September 2004 minutes until February 2005.

**Motion** made by Don Larson and seconded by Fred Stresau to approve the minutes of the November 10, 2004 meeting. Board unanimously approved.

**Motion** made by Don Larson and seconded by Jon Albee to approve the minutes of the December 8, 2004 meeting. Board unanimously approved.

## **ALL INDIVIDUALS WISHING TO SPEAK ON THE ITEMS LISTED IN TONIGHT'S AGENDA WERE SWORN IN.**

### **1. APPEAL NO. 04-55 - Deferred from December 1, 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. 47-25.3A.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 testimony had been heard regarding this matter at the October meeting, and the item had been deferred twice due to the applicant making representation that if they complied with the Code they would lose parking spaces. She stated that staff wanted to meet with the applicant to determine if that was an accurate statement. Mr. Morris confirmed. Chair Patricia Rathburn stated that staff had done their analysis, and she now wanted to hear their report.

Don Morris reiterated that this project was deferred twice because staff wanted to obtain a more detailed site plan from the applicant to note where the restrictions were located on the property. Staff met with the applicant on December 9, 2004. A revised site plan had been distributed to the Board. Terry Burgess and Don Morris met with Mr. Cherry, and determined that the wall could be erected and the parking that was currently provided for on site would be retained. The applicant cannot comply with all the landscaping requirements, but would place landscaping wherever possible without taking away from the required parking.

Chair Patricia Rathburn confirmed that according to the Code, the landscaping could be omitted if parking spaces would be lost.

Don Morris stated that if a wall was required and that wall caused a reduction in parking spaces required for the site, then such wall would not have to be constructed. Due to the revised site plan, it had been determined that the wall would be possible and parking would be retained at the site.

Chair Patricia Rathburn asked why the reduction in landscaping would be acceptable.

Don Morris said that first of all they were not requesting the landscaping as part of the variance request. The request was just for the wall. He explained that the landscaping was mentioned as part of the reasoning as to why the wall should not be required, due to the fact that the wall would reduce the parking spaces. He stated they met with the applicant and described the requirements. If by putting in additional landscaping one would take away from the required parking, then the applicant should put in whatever landscaping the site permits without taking away from the parking spaces.

Chair Patricia Rathburn clarified that the applicant would not have to come back and ask for a variance for a reduction in the landscaping. Don Morris confirmed.

It was stated that the violation that had been noted was for Section V of 4725.5 which stated that the applicant must come into compliance within 5 years of both Sections C and D. Section D lists the buffer yard requirements, including the landscape strip, the parking restriction setbacks, and the dumpster and wall requirements. In order to comply with Section D, all landscaping requirements, parking restriction setbacks, and the wall requirements would have to be met. It was further stated that through the site plan, the applicant had shown that by meeting all such requirements, parking would be impacted and one parking space would be lost. It was also stated that eventually the applicant would have to remove pavement and redesign the parking lot. It was explained that a parking study had been done calculating the parking, and it showed that the loss of one space would impact the required parking. It was also stated that they presently had a wood fence, which was permitted in 1994 as a physical barrier in lieu of the wall, and that letters were sent from the neighboring properties stating that the wood fence was sufficient. Copies of such letters could be provided to the Board.

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

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

Gus Carbonell stated that he did not understand how a parking space would be lost. He explained that there was an existing wood fence which normally took up about 5' 5" in width, with posts about 4," plus the siding which consists of another inch or so. He further explained that the concrete wall was also a couple of inches. He stated that the site plan showed the typical parking space to be 9' wide, but today the parking spaces had been reduced to 8' 8". He advised that by re-striping the lot, one could gain 2' from front to back to accommodate any loss. He reiterated that he was still not clear how replacing a wood fence with an 8" wall would cause a loss of a parking space. He asked if further clarification could be provided regarding this issue.

It was stated that in order to come into compliance with Section V, there would be a loss in parking.

Gus Carbonell stated that one could comply the best they could without impacting parking. He reiterated that he did not understand how a wall would impact parking. He said he did not see this lot ever being redeveloped unless the area behind it was rezoned differently.

Don Morris confirmed and explained that they should meet the requirement where possible, and where they could not due to physical barriers on the property or due to the building location, then they would not be forced to meet such requirements.

It was stated that in 1993 the applicants had been cited and requested to come into compliance. They worked with the City of Fort Lauderdale, and it was determined that a wood fence could be constructed to act as a physical barrier which fell within the five-year time frame given by Code to come into compliance. Now, the issue was again being raised and the applicant was being informed that the wood fence built to act as the barrier was no longer sufficient, and a wall had to be built. It was stated that the neighboring property owners felt the wooden fence was sufficient and had served as a barrier in the past, and would continue to be appropriate for the future.

Fred Stresau stated that he was not as concerned about the applicant meeting all the requirements of the development code, as long as they did not lose a parking space. He further stated that if staff felt the applicant could rebuild the lot, then that was what had to be done. He said the Board's duty was to enforce the Code, and not necessarily be concerned about what the property owners or neighbors wanted. He continued stating that he was troubled by the fact that in 1994 a permit was issued for the fence by the City, and now 10 years later the applicant was being told that the fence was not sufficient, and that a wall had to be built. He asked if staff could provide any further clarification on that issue.

It was stated that a copy of the building permit could be provided to the Board if they so desired.

Don Morris stated that the City had a copy of a fence permit that was issued in 1994 for this property, but he did not have a copy of the plan.

Don Larson stated that he also had a problem regarding the permit that had been issued in 1994. He asked if the septic tank was still on the site. It was stated that a septic tank was still at the site.

Barbara Glaston stated that there were septic tanks located at the back of the building. Previously there had been an incident where FPL had caused some notable damage which they did pay for, and they also stated that nothing should be at the rear of the property.

Gus Carbonell stated that he worked in this area, and was aware of septic tanks at the site. He further stated that it is very tight back there. He continued stating that he was concerned about the fact that a permit for a fence had been issued without seeking a variance. He added that he had not been to the site, but possibly some conditions should be placed on the variance regarding additional hedge landscaping that would enhance the removal of the fence from the north side.

It was stated that the applicant was willing to place additional landscaping where required to buffer the fence.

Scott Strawbridge stated that he had a different opinion regarding this matter. He stated that in looking at the photographs, it appears that the fence was in need of repair, and that a masonry wall would be more durable. He proceeded to ask why the property owner did not want to build the wall

and comply with the requirements of the Code. He added that he was not clear as to what hardship the applicant was encountering.

It was stated that the applicant felt there were conflicting sections of the Code addressing multiple issues that had to be dealt with in order to comply with the Code, but also felt that various requirements could not physically be met without impacting the parking lot. It was also stated that a permit had been issued for the fence which was to act as a physical barrier between the commercial and residential properties. Also, there does not need to be a wall in the back of the building because there is nothing behind it. There are no lights and nothing that would impact the neighbors. The fence can be repaired and maintained. The applicants have brought the landscaping up to code, and have done everything they were required by the City to do. The applicant believes they are in compliance with the Code and that the fence acts as the physical barrier.

Scott Strawbridge asked if all the improvements at the site had been requested by the City. It was stated that was not the case, but the property was old and had been sited at one time for landscaping within the parking area. It was also stated that the fence had been built at the time in order to come into compliance with the Code.

Birch Willey stated that in looking at tonight's agenda, it stated that they are "Requesting a variance to allow an existing wooden fence to remain...." He stated that a permit had been issued by the City for the wooden fence to act as a barrier between the commercial and residential properties. He stated that he did not understand how the City could now object to what they had approved originally. He believed the issue was that the applicant wanted to maintain the fence that was erected upon request by the City, and for which a permit had been issued.

Chair Patricia Rathburn stated that it should be clarified that the fence can remain, but in the event that it is destroyed in some way, then the applicant would have to come into compliance with the Code.

**Motion** made by Birch Willey and seconded by Don Larson that the variance be granted for the fence as it presently exists, but that the property owners provide landscaping to improve the appearance of the fence, and should the fence come into disrepair and not be properly maintained, then the wall would have to be constructed. Roll call showed: YEAS: Fred Stresau, Don Larson, Birch Willey, Gus Carbonell, Scott Strawbridge, Jon Albee, and Patricia Rathburn. NAYS: None. Motion carried 7-0.

## **2. APPEAL NO. 04-69 - Deferred from December 1, 2004 Meeting**

**APPLICANT:** Portside Yachting

**LEGAL:** Port Everglades Plat No. 2, A portion of Parcel "A" P.B. 108, P. 31

**ZONING:** PEDD (Port Everglades Development District)

**STREET:** 1850 SE 17 St

**ADDRESS:** Fort Lauderdale, FL

**APPEALING:** Sec. 47-15.23 Table 1, Occupancy Identification – Requesting a variance to allow:

1. Twenty (20) signs where the Code allows one (1) freestanding or flat wall or leaf on window or door and one (1) awning canopy.

2. Each sign to have an aggregate area not to exceed 300 sq. ft. and a total aggregate sq. ft. of all occupant identification signs not to exceed 2090 sq. ft. where the Code allows up to 6 sq. ft. aggregate; 15 sq. ft. aggregate.
3. The height of the letters to be 30 inches where the Code allows 8 inches maximum height for letters of copy.
4. Such occupant identification signs to be installed up to 46 ft. above grade where the Code allows 5 ft.
5. Five (5) corner occupants to have two (2) flat occupant identification wall signs, 1 sign on the north wall and 1 sign on the east or west wall.

**APPEALING: Sec. 47-15.23 Table 1, Primary Advertising Sign** – Requesting the following variances:

1. To establish one (1) of the three (3) allowable flat wall signs to have a maximum of 300 sq. ft. where the Code only allows a maximum of 200 sq. ft.
2. Two (2) of the primary advertising signs to be freestanding type.

Chair Patricia Rathburn explained that testimony had been heard on this case in December, and the applicant had been requested to provide a clearer plan as to the location of the signs being requested in the variance.

Pete Ebersoll stated that an exhibit had been created to address the issues raised at the previous meeting regarding this matter. He explained that locations are shown for the various signs that would be placed on the building. He further explained that they had changed the size of the signs from 300 sq. ft. to 250 sq. ft., and limited the number to four signs at the four primary locations indicated on the front elevation. He explained that the styling of the letters would be changed to channel type letters, as opposed to boxed signs, where possible since some logos could not be reproduced with channel shapes. He further clarified that the main building identification sign would be 300 sq. ft. which was the round disc in the center.

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 Fred Stresau to close the public hearing. Board unanimously approved.

Fred Stresau stated that he had met with Chuck Wygant and the Building Department regarding this matter, but he also had requested that the applicant bring forth an exhibit showing what could be done under the current Code, but that appeared to not have been done.

Mr. Ebersoll stated that he attempted to address the issues verbally.

Birch Willey asked if the exhibit being presented reflected what the applicant had requested in December, or had there been changes in the request.

Mr. Ebersoll explained that there would only be four large signs at 250 sq. ft. instead of 300 sq. ft., and all the remaining signs would be limited to 125 square feet.

Chair Patricia Rathburn stated that she wanted to clarify what was being requested so that when the Board took action, it would be on what the applicant was actually requesting so the minutes would be clear.

Robert Dunckel stated that he had some difficulty taking the signage notes from the revised site plan and relating them back to the items in the agenda. He suggested that possibly one motion be made granting the variance subject to the following limitations, and then list the limitations in the signage notes. Otherwise, he felt there could be some difficulty in attempting to match the wording in the agenda along with how each sign was to be categorized. He further suggested that the site plan become part of the Order. He stated that if this variance was granted, then the applicant would be willing to abandon the prior variance that had been granted. Mr. Ebersoll confirmed.

Chair Patricia Rathburn stated she had driven past the site, and reiterated that she approved granting variances for signs that were unique. She further stated that this particular site was unique since it was a large site, and due to palm trees located in the front of it, there were signage issues. Therefore, she believed this situation was different than other circumstances where sign variances had been requested.

Gus Carbonell stated that he was concerned about the use of box signs, and he felt the placement of the signs on the building were well proportioned.

Mr. Ebersoll clarified that the last item dealing with freestanding primary signs had been an unnecessary request. Don Morris confirmed. Mr. Ebersoll further stated that the issue of the letter sizes, which were indicated on the original appeal, had not been indicated on tonight's exhibit, and he asked if that had to be discussed, as well.

Chair Patricia Rathburn stated that Section 47-15.23.3 indicates that the letters were to be 30" and she suggested this be put in the motion for the variance, and then modify it by the signage note. She explained that they would be granting a variance approving the use of 30" letters.

Robert Dunckel also suggested that a further condition be added to the motion stating that by stipulation of the applicant, the prior variance would be abandoned upon approval of tonight's request. Mr. Ebersoll confirmed. He further clarified that the exhibit addressed Item #2 on the variance request.

Chair Patricia Rathburn clarified that the applicant was requesting 20 signs where the code allowed one freestanding sign, and the aggregate amount was not to exceed 250 sq. ft. as shown on the sign notes. She further advised that the letters would be part of the variance, and that the height of 46' above grade would be allowed, and that the five corner parchments would have two flat identification signs. She also clarified that the applicant was deleting the request listed in Item #2 of Section 47-15.23 Table 1, Primary Advertising Sign. Mr. Ebersoll confirmed.

Chair Patricia Rathburn also clarified that in accordance with the request listed in Item #1, there would be one of three allowable flat wall signs with a maximum of 300 sq. ft. where the Code only allows a maximum of 200 square feet. Mr. Ebersoll confirmed and stated that the one sign would be an identification sign.

Scott Strawbridge asked for further clarification of the signs listed on part 1 of the elevation sheet, showing 4 signs at 250 sq. ft., and 16 signs at 125 sq. ft. totaling 3,000 sq. ft., but the applicant is

limiting the square footage to 2,090. Mr. Ebersoll confirmed and stated there would not be any design flexibility, and that total square footage would never exceed 2,090. He explained that they just wanted the ability to put the signs in any one of the listed locations represented, but added there would never be that many signs.

Robert Dunckel stated that the maximum of 2,090 sq. ft. was listed under Item #1 in the signage notes, but under Item #2, there was another 300 sq. ft. for the main building identification. He clarified that this was in addition to the 2,090 square feet. Mr. Ebersoll confirmed.

**Motion** made by Don Larson and seconded by Birch Willey to approve the variance as requested subject to the modifications shown in the signage notes on the Site Plan under Project #0363 dated December 22, 2004. Also, the variance would be subject to the applicant's acknowledgement that the granted variance would serve to terminate any previous sign variances granted for this property. Roll call showed: YEAS: Jon Albee, Scott Strawbridge, Birch Willey, Fred Stresau, Don Larson, Gus Carbonell, and Patricia Rathburn. NAYS: None. Motion carried 7-0.

### **3. APPEAL NO. 04-46**

**APPLICANT:** Richard Lamondin, President "The Vue" (Cornerstone Development)

**LEGAL:** "Lauderdale Beach," P.B. 4, P. 2, Block 1, Lots 8-16, lying west of the west right of way line as shown on State Road Department right of way map State Road A-1-A, Section 86050-2509, of the public records of Broward County, Florida; and "Lauderdale Beach Extension, P.B. 27, P. 48, Block 8, Lot 3; and Parcel "B" of "S-and-S Plat", P.B. 79, P.2.

**ZONING:** RMH-60 (Residential High Rise Multifamily/High Density District)

**STREET:** 2001/2011 N. Ocean Blvd.

**ADDRESS:** Fort Lauderdale, FL

**APPEALING:** Sec.47-21.10.A.3 – Requesting a variance to allow 31.6% of the gross lot square footage to be provided in landscaping, where Code requires that a minimum of 35% of the gross lot square footage to be provided in landscaping.

Paul Darelli, attorney representing the applicant Cornerstone Development, stated that they were requesting a variance for a reduction from 35% to 31.6% in the amount of gross lot square footage required to be maintained in landscaping. This request arose as a result of the City's request of the developer to provide additional on-site space for a pedestrian path that would connect across the southern portion of the property. This project had already been approved and was actually in the early stages of development when such request had been made. He explained that by providing such area for the pathway would reduce the amount of landscaped area on the southern boundary of the property, and place them below the 35% limitation.

Chair Patricia Rathburn proceeded to open the public hearing.

Peter Partington, City Engineer, stated that he wanted to confirm the applicant's comments regarding the chronology of events, and added that the City strongly supported this variance. He explained that the variance would enable the shaded path to be constructed through the south side of the site. He further explained that the pathway would replace the roadway that had been referred to as the 19<sup>th</sup> Street Alley that was the subject of litigation in the past. The right of the public to be able to make their way between 33<sup>rd</sup> Avenue to the west and A-1-A was resolved. This would

replace that pathway that the public regarded as essential, and it would also be a shade use path meaning that cyclists would be able to use it. It would be envisioned as a part of the development of a network of cycle paths for that part of the City. Therefore, staff strongly supports this variance and believes it would be integral to the City's plans for the neighborhood.

Fred Stresau asked what materials would be used for the pathway. Mr. Partington stated he would have to review the plans, but reminded the Board that the variance was in regard to the landscaping. Fred Stresau stated that he believed the Landscape Department was considering using pavers for this area. Mr. Partington further stated that the surface had to be suitable for cyclists which normally would be asphalt and concrete.

Art Sites, 1905 North Atlantic Boulevard, stated he lived immediately south of the subject passageway, which would be a vital connector between A-1-A, and the A-1-A Greenway. He added that the consultants have designated Northeast 33<sup>rd</sup> Avenue to be part of this. He advised that this was extremely important for safety reasons because the residents living west of A-1-A needed to stay off of Northeast 33<sup>rd</sup> Avenue which presently had bumps, no streetlights, flooding, and no sidewalks. It was a "third world piece of crap." He further stated that he had recently reviewed some photographs of the area, and he had found a picture of a grandfather standing in front of a pile of furniture and trash. The neighbors had barricaded the street because his 3-year old granddaughter had gotten out on New Year's Eve, wandered out into traffic and gotten hit by a vehicle. Both her legs had been broken. He reiterated that this was an extremely dangerous street. He felt it was extremely unfortunate that the residents had lost the passageway located at the south end of the Shore Club, which would be just North of Birch State Park. He stated that some people had lived there for over 50 years, and the reason they enjoyed living there was that they wanted access to the beach. He felt it was nonsense for them to have to go blocks out of their way in order to access the beach. He hoped that this would be zoned in a manner which would be attractive and pedestrian and bicycle friendly. He stated further that it should be compatible with the greenway for Northeast 33<sup>rd</sup> Avenue and A-1-A. He urged the Board to approve this request.

Margaret McKeever, 1923 NE 33<sup>rd</sup> Avenue, stated that this was directly across the street from the proposed passageway. She stated that she supported this and felt the park was important for the neighborhood.

Tom Carter, President of the Dolphin House Homeowners Association, stated they were located west of the subject pathway. He stated they were in support of this plan, and felt it was a very generous gift for the neighborhood. He stated that by providing access to the ocean and A-1-A from the neighborhood, it would help to spread goodwill between the developer and the community.

Chair Patricia Rathburn asked if anyone was opposed to the plan. There being no further individuals who wished to speak on this matter, the public hearing was closed and discussion was brought back to the Board.

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

**Motion** to approve by Jon Albee and seconded by Fred Stresau to approve the request as presented. Roll call showed: YEAS: Fred Stresau, Gus Carbonell, Birch Willey, Don Larson, Scott Strawbridge, Jon Albee, and Patricia Rathburn. NAYS: None. Motion carried 7-0.

#### **4. APPEAL NO. 05-01**

**APPLICANT:** W&W, LLC "Camp Canine of Fort Lauderdale, Inc."

**LEGAL:** "Kelly-Oliver Subdivision" P. B. 3, P. 15 (D) a portion of Lot 1 and Lots 3, 5 and a portion of Lot 7, all in Block 3, of the subdivision of Lots 3 and 4, in Block 20, of Fort Lauderdale and a portion of Lot 9, less the north 15 ft. for street right of way, and Lot 10, together with the north ½ of the vacated 10 ft. wide alley lying adjacent to the south line of Lots 1,3,5, & 7 and together with the vacated 10 Ft. wide alley lying adjacent to Lot 9

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

**STREET:** 808 & 816 West Broward Blvd.

**ADDRESS:** Fort Lauderdale, FL

**APPEALING: Sec.47-6.20** – Requesting a variance to allow a 14.75 ft. rear yard setback for the existing building, where Code requires a minimum rear yard setback of 15 ft. when contiguous to residential property.

**APPEALING: Sec.47-6.20** – Requesting a variance to allow a zero (0) front yard setback for the existing building, where Code requires a minimum of a 5 ft. front yard setback.

Robert Lochrie, attorney on behalf of W & W, LLC, stated that Ed Ploski, Engineer, and Steve Hudson and Brad Fitzgerald the owners of the property, were present to answer any questions the Board might present.

Mr. Lochrie continued stating that tonight's request was the result of a series of events. He explained that this property was located at 808 W. Broward Boulevard, and was currently occupied by Camp Canine. He stated that for a number of years, the site had been used as the Carpenters Union Facility. Prior to the time Camp Canine moved in, the site had been utilized as a motorcycle repair and sales operation. He advised that the City's records showed the building to have been built in 1954. At that time Broward Boulevard was a 70' right-of-way, and the building was setback approximately 15' from the curb or 5' from the sidewalk. Two additional acquisitions took place through takings in the '70's due to the widening of Broward Boulevard. He advised that presently Broward Boulevard was 106' in width.

Mr. Lochrie stated that the building itself was originally permitted in 1954, and plans showed the building at its current configuration with the mansard roof, pillars, and overhang. He explained that additions were first made to the building in 1962, and again in the '80's. He stated that when W & W, LLC, purchased the property, it was being utilized as a facility for motorcycle sales and repair. He stated that use had been discontinued and Camp Canine had moved in.

Mr. Lochrie further stated that in going through the process, one difficulty arose. He proceeded to show a colored rendering of the site plan. He continued stating that there was actually another building located at the site. It was a separate building, but the City had determined that it was part of the overall site. He explained that since they were changing the use, the City considered that a change of use required the owner to go back through the site plan process as if they were starting from scratch. One of the things determined immediately was that there was not enough parking on the site to provide for the buildings. Therefore, they came before this Board seeking a temporary use to allow them time to move forward and to seek a solution to that problem.

Mr. Lochrie explained that the first step the property owners took was to attempt to acquire additional properties adjacent to the site in order to expand the parking facilities. He advised that took time and it involved negotiations. It became evident that was not going to be a viable option. He stated that another option would be to go for a parking reduction or parking variance. Eventually, it was decided to abandon such attempts, and simply demolish 12,000 sq. ft. at the west side of the building. Unfortunately or fortunately, depending on one's perspective, in this area of the City one simply could not obtain a demolition permit, nor could one show the building as being removed from the site plan. Instead, the owner had to go before the Historic Preservation Board since the property was located within the Sailboat Bend neighborhood. The owner did so, and also met with the Sailboat Bend Civic Association, and received their support for the demolition of the building. Approval was granted by the Historic Preservation Board for demolition last week.

Mr. Lochrie further stated that they would now go through the site plan process that was necessary to get the remainder of the building approved. He advised that they now met the parking requirements. However, as they went through the DRC process, which they were simultaneously doing, two issues arose. The first issue involved a .25' encroachment at the rear of the property, and the second issued involved a 5' setback at the front of the property, which the building did not need. He proceeded to remind the Board that this building had been permitted, but the original permit did not show a rear yard dimension. He advised that originally there had been an alley at the site that separated the commercial use from the residential use. He further advised that at that time the commercial use was closer by about 10' to the residential dwellings, but when the alley had been vacated, 5' had been added, and therefore, the building was actually setback further from the residential building than it had been originally. Now, they could put in the wall and buffer which would be done as a condition of the variance, and in accordance with the site plan process. In addition, there were portions of the wall that would continue, and improvements would be made, including landscaping. A buffer would now exist between the residential and commercial properties, and there would be more distance between the building and the property line.

Mr. Lochrie further stated that generally buildings only needed to be setback 3' from the property line unless there was a rear yard, and then the requirement of 15' would apply. He stated that it was his opinion that by gaining the extra 5', the .25' came into effect. He added that it was only a small portion of the building. He explained that on the front of the building there was a variance that was clearly outside of the intent, and outside of any action taken whatsoever by the property owner, and appeared to be a clear sense of government interaction.

Mr. Lochrie advised that the original plans showed the existing original building had met the setback requirement. The temporary use that was granted had expired in August, and they were attempting to bring the property into conformity so that the use would meet all the requirements. The use was permitted in the zoning district. Obviously, it is a unique situation and we believe the use is more compatible than the previous use which could have been done without any improvements.

Mr. Lochrie further stated that he wanted to emphasize that significant improvements would be made to the parking area, including paving and bringing it into compliance with the City's engineering standards. He added that landscaping would be provided, including sodding where the building would be removed.

Fred Stresau stated that he was curious about the rear yard, and asked if that was considered a buffer yard. Mr. Lochrie confirmed.

Chair Patricia Rathburn proceeded to open the public hearing.

Frank Bushell stated that he owned property directly behind Camp Canine. He asked for some further clarification regarding the wall because it was about 20' from his bedroom.

Fred Stresau explained that Code required that there be a buffer yard consisting of a 5' masonry wall, along with landscaping. He explained there was to be one tree for every 3,000 sq. ft., and possibly three more trees would be added. Mr. Bushell asked if the existing wall was to be removed. Chair Patricia Rathburn stated that the owner had to maintain a 5' masonry wall. Fred Stresau stated that the wall had to be in place before a permit would be issued. Mr. Bushell asked if the wall would be closer to his property. Fred Stresau stated that there would be a difference of about 4".

Don Morris explained that the existing wall would remain and be added along the entire perimeter line, which was not presently the case.

Since there were 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 Jon Albee and seconded by Fred Stresau to close the public hearing. Board unanimously approved.

Gus Carbonell stated that according to the survey the alley had been vacated and was now a utility easement, and he proceeded to ask if they could build a wall on a utility easement or did there have to be a fence. Robert Dunckel stated that he believed there was a provision in the Code that precludes the wall when there was a utility easement. Gus Carbonell stated that he wanted to prevent them from having to come back for a variance. He stated that when the alley was vacated, it stated according to the ordinance "utility easement per ordinance 27529."

Chair Patricia Rathburn asked if they had to come back because the condition of the site plan was that a wall was to be there, and it had not been advertised.

Scott Strawbridge stated that he did not have a problem with the variance, but he wanted to point out for the future that they kept getting faced with these temporary non-conforming uses, and everyone saying that they had been operating illegally for months. He reiterated that there had been a case previously involving a car place, and everyone realizes they are not going to be done within the year, but yet the variance was granted. He felt they needed to change the time frame to possibly two years because he did not feel it was right that individuals were placed in a position where they were operating illegally. He suggested that the issue be discussed at a future date.

Robert Dunckel stated that with respect to the public utilities easement and the wall requirements for the buffer yard, Code provides "When a utility or other public purpose easement on a non-residential property precludes the construction of a wall, then an opaque fence constructed in accordance with the standards described in such and such section may be erected in lieu of the wall." In other words, they would not need to return before the Board for a variance since the Code already allows a fence to be erected in lieu of a wall. He further stated that another thing he noted was the necessity for the variance with respect to the front yard setback. He continued stated that Mr. Lochrie had indicated that it resulted from the widening of Broward Boulevard. He asked if the building or its use had been discontinued for a period of 180 days or more since the widening of Broward Boulevard.

Mr. Lochrie stated that had not been the case, and explained that about 30 days had lapsed between the use for motorcycle repair and the new use. He added that it had continued as a legal non-conforming use. He reiterated that the applicant was seeking a change of use at this time.

Robert Dunckel asked if the applicant was aware that there was a provision in the Code under non-conforming uses that the Governmental taking made it all right, but it could be lost if it was discontinued. Since they were changing the use, they could not take advantage of that and a variance was needed. Mr. Lochrie confirmed.

Don Morris stated that the request was for the rear yard variance, and asked the Board to review the Code as it applied to neighborhood compatibility with the wall requirement versus the fence. He added that the issue would be addressed during the site plan process.

Chair Patricia Rathburn clarified that the wall had not bearing on tonight's request.

**Motion** made by Scott Strawbridge and seconded by Jon Albee to approve the request as presented. Roll call showed: YEAS: Don Larson, Scott Strawbridge, Birch Willey, Fred Stresau, Jon Albee, Gus Carbonell, and Patricia Rathburn. NAYS: None. Motion carried 7-0.

#### **Minutes of November, 2004.**

Chair Patricia Rathburn stated she wanted address the minutes of November, 2004. She stated there was a clerical error which showed Charles McKirahan in Item #04-61 referring to an architect, and the name should be corrected to Charles McKirahan.

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

##### **Needham House**

Birch Willey stated that he wanted to review the tape regarding the issue of the Needham House, and the matter of John McDonald and Dawn Doyle. He stated that the house had been declared historic, and he wanted to know how the variance would run. He continued stating that it was his understanding that the variance had been tied first to Dawn Doyle who owned the property the night the variances had been discussed and granted, and since there was an option to buy the property by Mr. John McDonald after the Saint Regis Hotel received its CO, then that would trigger the option for Mr. McDonald. He stated the Board felt that the variances were to be tied to the people, and not the land. He said there had been discussion that the property would be run in a manner that was fitting for the neighborhood.

Birch Willey stated that the question in his mind at this point was that they needed further clarification as to the status of the variances since Mr. McDonald had now passed away. He assumed that Dawn Doyle would receive the variances that had been granted because she was the owner of the property. He reiterated that he was concerned about having this issue clarified before it became more involved, and no one would have a clear title to the property or be entitled to the variances.

Robert Dunckel stated that a review of the tape of that meeting would be in order. He continued stating that he had a different recollection of the matter. He stated that he did recall the variance being tied to John McDonald, but he believed it was in connection with his capacity as a manager of

the property, and not necessarily as the owner. Therefore, he suggested that there be a review of the tape of that meeting. He further stated that it was his recollection that since he would no longer be the manager of the property, the variances would go away.

#### Parking Corporation of America

Fred Stresau stated that he wrote a letter to the City Attorney on November 22<sup>nd</sup> regarding temporary uses. He continued stating that he had requested that the City Attorney or staff further explain why the Parking Corporation of America was still functioning five years after the Board had granted a one-year use variance. He stated that it appeared that the owner could drag things out forever. He asked if any type of conclusion would be provided regarding this situation.

Robert Dunckel stated that he would attempt to bring the Board up to date regarding this matter. He stated that on December 23, 2004, current charges were pending against Parking Company of America, but were not in the nature of a repeat violation. He stated they had been before the Board previously and had paid a sizeable fine. He stated that he had discussed the matter with Lori Milano and John Simmons, and was informed that they would go back and regenerate that Code Enforcement Board case as a repeat violation, which would then cause the property owner to be fined as much as \$500.00 per day for each day that the violation continued going back to whenever they first started the breach after bringing the property into compliance.

Robert Dunckel further stated that the second phase of the issue was that the property owner filed for a Dispute Resolution as a result of the Board denying the variance. The Dispute Resolution was something forced upon the City by the State Legislature, which gave them another bite of the apple. He apologized to the Board because he had not been able to address this issue due to staffing problems, and the shifting of priorities within the office. He advised that a hearing would be set before the Special Magistrate, but he was not sure when the Code Enforcement Board would hear this matter as a repeat violation. He assumed it would probably be within the month.

Gus Carbonell stated that although he tried not to bring any of his Firm's jobs before the Board of Adjustment, he advised that probably one or two of his jobs would be presented, and he wanted to clarify that no improper procedures would be followed. He explained that his goal was to prepare all documents submitted, and have an attorney make all presentations.

Robert Dunckel stated that Mr. Carbonell might be faced with the possibility of having to resign from this Board if he moved forward on that basis. He further stated that he believed he had written a memo a couple of years ago addressing such an issue, and he would attempt to bring that forward. He stated that it was his recollection that if a Board member had cases appearing before the Board, particularly where his name was on them, then that would cause a degradation of the integrity of the process, and the Code of Ethics stated that a choice would have to be made.

Gus Carbonell thanked Robert Dunckel for the information.

Fred Stresau asked for his microphone to be fixed.

Birch Willey stated that it was his understanding that the City was going to rehear the Parking Company of America case.

Robert Dunckel stated that Code Enforcement was proceeding and amending the matter. Normally, if someone is in violation, they would have 30 days to come into compliance. He stated that he asked them to take advantage of what we call the "repeat violation provisions" which allows them to go all the way back to when they first started their violation. He stated the other process is known as dispute resolution which then goes before the Special Magistrate, not the Code Enforcement Magistrate. In this particular case, the Magistrate would be Sam Gorren. He said that this process would demonstrate that the property owner had been unreasonably burdened or unfairly burdened, which is a very "loosey-goosey standard," and not a science.

Birch Willey stated that would permit them to go around the Code portion of the issue.

Robert Dunckel explained that this was something the State forced upon the City, and not something where an option was provided. The property owner was the one that had the option to invoke this. The Special Magistrate would then render a recommended Order, and if he finds that the property has been unduly burdened, then he could recommend a solution. The matter would then go before the City Commission. He explained that the Special Magistrate did not have the ability to provide a final cure because that would come from the City Commission. He further stated that the Special Magistrate's first responsibility was to mediate a solution, and if that fails, then a hearing process would take place. Ultimately, the City Commission would approve any recommendations.

Birch Willey stated that in essence, this was a way to drag out the time, while eliminating the Code Board from the process. Robert Dunckel stated that the Code Board could answer the Order finding that there was a repeat violation and impose a fine. Theoretically, the property owner could take the Order to a dispute resolution.

Chair Patricia Rathburn stated that in the beginning they had requested a temporary non-conforming use permit for one year, and the Board had denied the request.

Robert Dunckel confirmed. He stated that the case heard in 2004 had been the 4<sup>th</sup> in this series, and the variance had been denied with a 4-3 vote.

Chair Patricia Rathburn stated that essentially they are appealing the denial of the variance. She further stated that she had always read the statute differently, and felt the recommendation to the Magistrate would go back before the Board that made the determination in the beginning. Others interpret the statute that it would go back to the governing body, meaning the City Commission. She felt the manner in which it was drafted, it would come back to the Board to see if they wanted any changes made in the Order they issued that initiated everything. Then, at that point, they would be able to appeal the matter to the Circuit Court if the request was again denied. She explained that it would limit their ability to file another action until the City made a determination.

Robert Dunckel explained that the act provided time for review of this Board's denial. He explained that some attorneys felt the time for filing an appeal was procedural, and only the Supreme Court could promulgate the procedure, and therefore, the State Legislature could not do so.

Fred Stresau referred the Board to the last sentence and asked whether this Board should continue to consider granting temporary non-conforming uses.

Chair Patricia Rathburn stated that such discussion had been held in the past, and she believed there were minute differences. She reiterated that once in a while, an issue came along that deserved such a temporary permit, but 99% of them did not.

Fred Stresau emphasized when the applicant got through at the City Commission level, they could appeal the matter to the Circuit Court. The matter could be dragged out for years, and meantime the company continued operating and monies were collected daily.

Chair Patricia Rathburn stated that this issue clearly needed to be addressed any time one of these cases come before the Board, and they should be shown other avenues before reaching this part of the process. She reiterated that she was not suggesting that the issue be addressed in the Code, but the matter needed to be reviewed further.

Robert Dunckel agreed the matter should be explored further, and stated there had been some discussion regarding extending the time frame for two years. The problem was that they now had a burden regarding temporary non-conforming use permits that was contrary to the public interest or not compliance with the neighborhoods. He suggested that possibly a condition for the posting of a bond could be imposed.

Scott Strawbridge stated that this type of situation made a mockery of the system. He further stated that he would not support such requests without good reason.

Fred Stresau stated that he recalled a situation where a construction company wanted a temporary parking lot for their employees, and that he could agree with.

Scott Strawbridge asked if the Board had the authority to adjust the amount of time that was granted.

Fred Stresau stated that adjusting the time did not accomplish anything because the owner would show the Judge that he spent \$100,000 improving a vacant lot, and that would be the argument as to why he should be allowed to continue to use it.

Robert Dunckel stated that the response they are filing was an attempt to track each and every one of those instances so the Special Magistrate would have a better awareness of what had taken place, along with the history of the situation.

Chair Patricia Rathburn stated that the Board clearly informed the applicant that spending money on improvements would not make a difference in the long run.

Scott Strawbridge reiterated that if the Board had the authority to set the time for the temporary use in relation to the circumstances and have a stronger closure mechanism, they could have a stronger position.

Scott Strawbridge said that instead of using two years as the cut-off, possibly use 6-9 months and then fines would be imposed.

Chair Patricia Rathburn stated they always had the ability to set less time, but did not have the ability to extend the time frame.

Scott Strawbridge reiterated that it is not possible to go through a process in one year. He was looking for more flexibility.

Gus Carbonell stated that a typical case was when they granted a one-year temporary use to North Side Elementary while construction was taking place. They had zero parking at the school, and spent a fortune building a state-of-the-art parking lot on 4<sup>th</sup> Avenue with lighting, drainage, curbing, and landscaping and no one ever used it. He stated it was in violation for two years, and they were to legalize it through rezoning, give it up, or go somewhere else. The Church parking lot was still being used because it was more convenient, and the School Board paid the Church a substantial amount of money to redo the lot and make it Code compliant. He reiterated that there was no follow up, which encouraged an illegal use of the system. He emphasized that there was no check and balance system involved. It was not like a code enforcement case, and he doubted if a Code Officer drove by and cited a parking lot that was well maintained, even though it was only granted a one-year temporary use permit.

Birch Willey asked if the Parking Company of America was paying bonds.

Fred Stresau stated that they owed the City fines totaling about \$173,000, but they only paid half the amount. Commissioner Trantalis brought the matter back before the City Commission, and they were in the process of trying to collect the fines and then settled for half the amount. He explained that it was a joke because they were being fined \$150.00 per day, and they collected more than that in fees.

**Motion** made by Birch Willey and seconded by Don Larson to adjourn the meeting. There being no further business to come before the Board the meeting was adjourned.

Chair

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Patricia Rathburn

ATTEST:

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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.

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