

**BOARD OF ADJUSTMENT MEETING  
CITY OF FORT LAUDERDALE  
WEDNESDAY, APRIL 13, 2005 – 6:30 P.M.  
CITY HALL  
CITY COMMISSION CHAMBERS – 1<sup>st</sup> Floor  
100 N. ANDREWS AVENUE  
FORT LAUDERDALE, FL**

**BOARD MEMBERS**

	<b><u>Present/Absent</u></b>	<b><u>Cumulative from January 2005</u></b>
Gus Carbonell	P	4-0
Don Larson	P	4-0
Scott Strawbridge	P	4-0
Fred Stresau	P	4-0
Binni Sweeney	P	3-1
E. Birch Willey	P	4-0
Patricia A. Rathburn, Chairman	A	2-2

**ALTERNATES**

Al Massey	P	4-0
Gerald Jordan	A	0-1

**STAFF**

Robert Dunckel, City Attorney  
Don Morris, Acting Zoning Administrator

Margaret A. D'Alessio, Recording Secretary  
Jamie Opperlee, Court Reporting Service

**GUESTS**

**CALL TO ORDER**

Acting Chair Birch Willey proceeded to call the meeting to order at approximately 6:37 p.m. and explained the procedure to be followed for tonight's meeting. The Board was then introduced.

**APPROVAL OF MINUTES**

Acting Chair Birch Willey stated that the minutes needed to be corrected to reflect that Chair Patricia Rathburn had not been present at the March meeting.

Acting Chair Birch Willey further stated that the Acting Chair would sign off on the minutes and the final decrees for that particular meeting.

**Motion** made by Don Larson and seconded by Binni Sweeney to approve the minutes of the March 9, 2005 meeting as corrected. Board unanimously approved.

Robert Dunckel stated that on page 2 of the minutes for the March 9, 2005 meeting had a typographical error. The word "scribner's" should be corrected and replaced with "scrivner's."

**Motion** made by Don Larson and seconded by Binni Sweeney to approve the minutes of the March 9, 2005 meeting as previously corrected, along with the correction of the typographical error on page 2. Board unanimously approved.

Gus Carbonell stated that he had a conflict of interest regarding Item No. 3.

Fred Stresau stated that he had a conflict of interest regarding Item No. 2 and No. 3.

Disclosure was made by Acting Chair Birch Willey that he had spoken with Robert Lochrie regarding Item No. 3. Also disclosure was made by Gus Carbonell that he had spoken with Michael Madfis, architect, regarding Item No. 2. Scott Strawbridge disclosed that he also had spoken with Michael Madfis and Jeff Hostra (property owner) regarding Item No. 2. He added that he had also spoken with Robert Lochrie regarding Item No. 3. Al Massey stated that he had spoken with the attorney for Item No. 2.

### **1. APPEAL NO. 05-07**

**APPLICANT:** Tony Ferrari

**LEGAL:** "Lauderdale Isles No. 2" P.B. 41, P. 10, Block 12, Lot 18

**ZONING:** RS-5 (One-Family Detached Dwelling District)

**STREET:** 2606 Whale Harbor Lane

**ADDRESS:** Fort Lauderdale, FL

**APPEALING: Sec. 39-275.3.C** – To allow a deck to setback 0' from the side and rear property lines where a 5' setback is required.

**APPEALING: Sec. 39-275(12) a** – To allow a dock to setback 10" from the side (south) property line and 7.5' from the side (north) property line where a 10' setback is required.

Acting Chair Birch Willey announced that the applicant has requested that this matter be deferred until May.

**Motion** made by Binni Sweeney and seconded by Al Massey that this matter be deferred until May 11, 2005 at 6:30 p.m. Board unanimously approved.

### **2. APPEAL NO. 05-14**

**APPLICANT:** Las Olas & Andrews LLC

**LEGAL:** Town of Fort Lauderdale, P.B. B, P. 40, (D) Block 26, Portion of Lot 19  
And Lot 20 together with a portion of Lot 21.

**ZONING:** RAC-CC (City Center District)  
**STREET:** 1 West Las Olas Blvd.  
**ADDRESS:** Fort Lauderdale, FL

**APPEALING: Sec. 47-13.20.H.1.a Pedestrian priority streets** – Requesting a variance to allow a 0’ setback along 100% of the linear frontage of a parcel, where 75% of the linear frontage of a parcel along a pedestrian priority street shall be occupied by a ground floor building wall located 10’ from the front property line, and where the remaining portions of the building shall be located a minimum of 5’ from the property line.

**APPEALING: Sec. 47-13.20.I Image Streets** – Requesting a variance to allow a 8’-6” setback and a 8’-1” setback along 75% of the linear frontage of a parcel, where 75% of the linear frontage of a parcel along an image priority street shall be occupied by a ground floor building wall located 10’ from the front property line.

**APPEALING: Sec. 47-24.5.D.1.p.vi.b Street intersections** – Requesting a variance to allow a right-of-way line cord of a 16’ radius for the intersection of West Las Olas Blvd. (minor street) and Andrews Avenue (major street), where code requires a cord of a 25% radius for the intersection of a minor and a major street.

Fred Stresau had a conflict regarding this item.

Robert Dunckel explained that the requirement for the granting of this variance was that a majority plus 1 of the Board had to vote in favor of the variance.

Jeff Ostrow, owner, stated that Michael Madfis, architect, was also present at tonight’s meeting regarding this item. He stated he was seeking a variance tonight, and he felt it was a “textbook case” for seeking a variance. He advised that the property was unique and there was a legitimate hardship.

Mr. Ostrow stated that the subject property is located on the NW corner of Las Olas Boulevard and Andrews Avenue. He proceeded to show a photograph of the previous building at the site. He referred the Board to the building line with the adjacent property to the north, which was the historic McCrory’s Building. He advised that the other adjacent properties were the Singer Building to the west, and immediately to the South was the Sweet Building, which also was historical. He further stated that all the buildings on Andrews Avenue were in line with one another. He proceeded to show a map, along with various views, of the site.

Mr. Ostrow further stated that the proposed building was subject to change depending on how things turned out. He advised that the building would not be as overbearing as it may look because it consisted only of 7 stories with retail on the bottom floor, and commercial space upstairs. He stated that he intended to move his law firm to the site. He advised that the Sweet Building to the south was taller. He explained that the “dash line” on the map indicated the proposed 14-story Stiles Tower.

Mr. Ostrow proceeded to show the existing site plan. He explained that the true purpose of a setback was so that the City, as well as the County, could accomplish various goals. He stated the goals of the City’s Master Plan was that they wanted four lanes of travel on Andrews Avenue which had to be 11’, and they also wanted to accommodate a pedestrian walkway, as well as a mass transit drop-off. The current 2003 Master Plan version as approved by the City Commission called

for a 70' right-of-way. The existing condition has a 70' right-of-way. He stated that to comply with setback requirements on Andrews Avenue would not accomplish anything because it would set forth the precedent of an odd building setback not in line with the neighboring buildings. He stated that it was important to note that the City's Master Plan had two provisions whereby they intended to do-away with the setback requirements regarding buildings that would not be in line with neighboring properties. He stated further that in conjunction with the variance he was seeking for setbacks on Las Olas and Andrews, the Code required a 30' corner cord. He explained that the corner cord was where the "V" hit between Las Olas and Andrews Avenue. He stated they were also seeking such a variance. He explained further that the Master Plan wanted to do-away with corner cords because there was no real function in cutting off the corner. It would be dead space, and electrical boxes could be placed under ground.

Mr. Ostrow further proceeded to show slides of what would happen to the subject property if all setback requirements were complied with on Andrews and Las Olas. He added that Las Olas and Andrews were image streets and pedestrian priority streets. He advised that the Code required a 10' setback on each side for 75% of the property, and a 5' setback for the remaining 25% of the property with a 30' corner cord. He stated if they complied with the Code, they would have a tremendous hardship because the property was unique and only consisted of 5,000 sq. ft., and 20% of the property would be lost. He stated if the various variances were not granted, it would not be economically feasible to develop the property.

Mr. Ostrow advised that his purpose tonight in appearing before the Board was not to maximize profit because there was no profit at the site, and that was why it had been vacant for a long time. He stated that his purpose in being here tonight was due to functionality. He stated that he wanted the building to be functionable for commercial users and retail shoppers.

Mr. Ostrow proceeded to show photographs of what the Master Plan encouraged and discouraged regarding development. He explained that on the Las Olas portion of the site, they were not asking for a large variance. He further stated that they could live with a small corner cord of 16'. The portion of the site along Andrews Avenue needed the 10' variance so they could build to the property line and be in alignment with the neighboring properties.

Acting Chair Willey clarified that the reference made to Andrews Avenue was in accordance with the request for the Pedestrian Priority Street variance. Mr. Ostrow confirmed. He reiterated that they were seeking a 0' setback along Andrews Avenue, thereby giving a 14' 2" sidewalk.

Mr. Ostrow reiterated that five elements had to be satisfied in order to obtain the variance. He stated that he had a unique piece of property with a unique hardship. He stated that to lose 20% of the property would make this project impossible to develop. He reiterated once more that this was not about profitability, but about functionality. He stated they were requesting minimum variances.

Robert Dunckel clarified they were looking for the entire Andrews Avenue segment to have a 0' setback, except where the cord was located. Mr. Ostrow confirmed. Robert Dunckel asked what they were dealing with on the Las Olas side. Mr. Ostrow stated it was his understanding that instead of 10', they were going to setback 8' 6", but Michael Madfis would explain further.

Michael Madfis, architect, explained that on the Las Olas side, the property line is on top of the curb line, and therefore, the sidewalk is located on the applicant's property.

Robert Dunckel explained that was not an unusual occurrence in that area. He stated that reference had been made to a 30' cord, but a 25' cord had been advertised. He continued stating that in reading the Code, a 25' cord was required for the intersection of a minor and major street. Andrews is a major street, but he asked if that portion of Las Olas was not considered a minor street.

Mr. Madfis stated that he was not sure what that section was considered, but the City's Code did require a 25' corner cord. He remarked they were a little confused because they had been referring to the County's 30' corner cord which was required at this time. He hoped that this variance would support their effort before the County Commission in having the plat ratified so they could obtain a reduced corner cord.

Robert Dunckel stated that he was hearing the argument about the Master Plan for the first time, and he wanted some further clarification of such argument during tonight's discussion.

Don Morris, Acting Zoning Administrator, stated that the Master Plan had been approved in 2003, and in cases of the new residential units being allocated for the Downtown; the Master Plan would take precedent over the ULDR. If this project was a residential project, the applicant would not be making these requests if they met all of the Master Plan requirements. He believed this was the major issue to be reviewed. He further stated that when the Master Plan was approved, they could not apply the Plan to commercial projects. Therefore, it was only being applied to residential developments.

Robert Dunckel asked what components of the Master Plan would be applicable if the project was deemed residential. He asked if the 10' would not be required. Don Morris confirmed and stated that a number of projects have gone through that did not meet every aspect of the ULDR. He explained that setbacks were typically an aspect the Master Plan would rule over, along with treatment of facades and site design. He further stated that since they were looking for a more urban environment, the Master Plan had other requirements.

Robert Dunckel confirmed that since this project was commercial, therefore, there was no conflict between the Master Plan and the ULDR. Don Morris stated that staff encouraged applicants with commercial developments to attempt to meet the Master Plan as best as possible because at some point the Plan will apply to all projects in the Downtown area.

Robert Dunckel asked if the Master Plan advocated the elimination of cords or sight triangles, and would that only pertain to residential developments. Don Morris confirmed.

Robert Dunckel stated that he was concerned about the total elimination of sight triangles at intersections.

Don Larson stated that parking had not been addressed, and asked for some further clarification.

Mr. Madfis stated that the ULDR could be overridden by the Master Plan in connection with residential projects, but it did not mean that a commercial project could not be in conflict with the principles and design guidelines of the Master Plan. He stated this project was in conflict with the principles and design guidelines of the Master Plan. There was no provision at this time to allow the zoning in progress to override that for commercial use. He further stated that this project was required to meet the setbacks according to Code, but meantime it would be in conflict with the Master Plan. At the same time, he explained the corner cord being discussed was not a sight triangle, but was more for utility uses and access. He explained that sight triangles would be

required in addition to the corner cord. He stated further that they would have to reckon with sight triangles, whether the corner cord was eliminated or not.

Robert Dunckel stated that legally he did not necessarily agree with that explanation to the extent that the Master Plan eliminated the provisions for residential, and the Master Plan prevails over any conflicting provisions of the ULDR. He stated further that since they had some design guidelines in the Master Plan, he felt that did not override the text of the ULDR. Mr. Madfis agreed. Robert Dunckel stated that under master planning, a legislative body is given a period of time to implement that in small increments. He stated that the plan might be good to look at and for this Board to consider in making their decision.

Scott Strawbridge asked why commercial properties were not included, and asked was it due to resistance from commercial property owners. He asked if it was a better planning practice to abide by the Master Plan Design Guidelines overall, or were commercial properties segregated for a good planning practice reason.

Don Morris explained that he believed it was a question of implementation. He stated that additional units had been allocated for the Downtown, and one of the things the Commission wanted was to be sure that when projects were approved using the additional units, that they considered design guidelines approved through the Master Plan. He explained that the majority of development in the Downtown area was residential or had some residential components to it. He further stated that he believed the implementation was through the additional units with additional standards placed on them for development.

Scott Strawbridge stated that he was attempting to find out the intent behind all this. Therefore, he asked if this had any parallel to the individuals in Riverland who were in the process of transition.

Don Morris stated that he did not believe so because there was a plan in place explaining how the Downtown should be developed, and specifics were explained in detail. He remarked that was not presently in place in the newly annexed areas. He stated there was an agreement that the City would implement some type of zoning or other regulations that would allow them to keep the unique character of their neighborhood, but that has not yet been drafted. He stated that he did not feel they could state that it was the same situation because there were no specifics in the other area.

Gus Carbonell stated that he had served on the Steering Committee for the Master Plan, and it was something that had to be rushed through the City due to all the development taking place, otherwise the old type of development would occur which was not conducive with the goals of the Master Plan. He further stated that he was also confused about the separation of commercial and residential because he believed it made sense to apply all the suggestions to both. He felt the applicant was attempting to meet the goals of the Master Plan. He added that he was currently involved in a project and it was hard to distinguish between all the requirements.

Don Morris stated that he did not believe the Master Plan singled-out residential over commercial, he felt it applied to development in general. He stated they had been applying it to residential because that was the mechanism to apply to the additional units.

Acting Chair Birch Willey stated that the Master Plan did use the word residential. Don Morris reiterated that it applied to all development. He explained the design guidelines were for all development in the Downtown.

Binni Sweeney asked for further clarification of the sight triangle. Don Morris stated that in the Code it was defined as a corner cord. He stated further there were two definitions. One definition was in regard to a corner cord, and the other definition was in regard to the sight triangle. Binni Sweeney asked what was the purpose of the corner cord. Don Morris explained it was an engineering question that he was not qualified to answer. He felt there were many purposes for a corner cord.

Mr. Madfis clarified that the corner cord was in the public area and along the outer edge and measured on the radius. He remarked that the sight triangle went further in and was measured from the property line.

Mr. Ostrow further stated that this was a peculiar area, and Las Olas was one-way in this area, and therefore, sighting was not an issue. He stated that it would defeat the purpose to have a true cord or a sight triangle at this location.

Acting Chair Birch Willey asked of the three variances being requested were all three involved with the City's Master Plan.

Mr. Ostrow stated that it was their position that all three were encompassed in an interpretation of the Master Plan as they refer to the setbacks, as well as the cord being directly discussed in the Plan itself.

Don Morris stated further that he had not compared this project to the Master Plan because that was not his function in the department, but from what had been presented this evening, excerpts from the Master Plan showed design elements that were encouraged and showed setbacks to be consistent with existing setbacks on streets, along with the corner cord being reduced or eliminated where appropriate.

Acting Chair Birch Willey stated that he was asking if the Board would be reviewing the Master Plan against the ULDR regarding this project.

Robert Dunckel stated that the whole issue of the Master Plan did not appear on his radar screen while reviewing the materials for this project. He felt that at one point he believed he understood that the Master Plan was applicable to residential, but later on he heard that the Plan did not specifically state residential. He continued stating that it was his understanding that the LPA was the Board within the City of Fort Lauderdale responsible for interpreting the Land Use Plan, not this Board. He explained that the LPA was the Planning and Zoning Board. He suggested that this Board consider this matter in light of the text of the ULDR, and not consider that a conflict existed until the LPA made their decision, or the Board could defer the matter so he could review the issue further.

Acting Chair Willey suggested that they move forward with this hearing. He stated that he was not looking for a deferment of this item unless the Board chose to make that decision.

Scott Strawbridge suggested that they move forward because he wanted to see what further information could be given to the Board. He stated that in looking at this in light of the ULDR, he felt it appeared that hardships were involved and the land was unique and needed some assistance to become a viable part of the Downtown. He felt they were getting "hung up" on this issue regarding the attorney's concern about opening the door to and having people hanging their hats on something that might or might not be accurate. He stated that it was important to have this conversation, but it might not be necessary to have the background information regarding the Master Plan in order to decide if a hardship was involved in this matter.

Don Larson reminded everyone that this was a commercial site and not a residential one. Scott Strawbridge stated that he heard that the Master Plan did not discriminate between commercial and residential buildings, but the City chose to implement it on only one of those aspects. Don Larson reiterated that he did not state that the Plan discriminated against anything, but he was looking at it from what he was hearing regarding the incorporation of two different plans.

Mr. Madfis reiterated that there was only one Master Plan, but it did refer to certain requirements for commercial buildings regarding floor plates and shoulder height, but it also referred to a number of items regarding residential which were completely different. He stated the City Commission had the opportunity when allocating the additional units to do a zoning in progress with the Master Plan, but due to only allocating residential units, they could only impose it on the residential portion of the Master Plan. In the future, they may find a way to incorporate the Master Plan into the ULDR in connection with commercial developments. He stated they all applied, but only one was presently being enforced.

Binni Sweeney asked if the Commission when allocating the residential units could have stated that the Master Plan was to be enforced for commercial development also.

Robert Dunckel stated that they could have done a zoning in progress at that point in time.

Gus Carbonell stated that he did not see a differentiation in the Master Plan other than the specifics listed regarding commercial and residential developments in connection with floor plates, setbacks, or heights.

Don Morris stated that the document, which overrides the ULDR, was a specific ordinance, which was only for the newly allocated units.

Robert Dunckel stated it was his impression that whatever the Master Plan said would undo the 10' setback requirement along a pedestrian priority street.

Mr. Ostrow stated that was correct, but it was important to note that he was using that as a reference, and stated further that there was no difference between residential and commercial. It applied to all urban development. He felt tonight's discussion was going off course. He reiterated that this was a hardship situation, and the Master Plan was for residential units, but as drafted it pertained to urban development and was a reference point. If it overrode the ULDR, then it would undo the setback requirement and the corner cord. He stated that the Master Plan was a guide to where the City wanted to go in the future, but how it was applied was a different story.

Robert Dunckel stated that possibly they did not need to consider the Master Plan, but since it was mentioned it sounded like they were in the process of eliminating image streets and pedestrian priority streets.

Acting Chair Birch Willey stated that the Board reached the point where this item had been massaged to death, and they should now have an understanding that the Master Plan existed, but there were other issues to look at so they could move forward with this project.

Al Massey asked if Mr. Dunckel was suggesting that this Board should not get bogged down with the Master Plan and just weigh tonight's request solely against the ULDR. He felt that was a good suggestion and the Board should follow it.



Robert Dunckel stated that he did not think this Board was in the position to rule on this matter on the basis that the Master Plan conflicted with the ULDR. He felt the LPA would make such a determination. He felt this item should fall under the traditional hardship analysis.

Acting Chair Birch Willey stated that he felt it was proper that the issue was mentioned. He remarked that it was a broader issue that had been looked at specifically by the City at this time, but it did lend something to tonight's issue. He remarked that in the past this Board had been charged with changing zoning with the granting of variances, and he felt they did not want to be put back in such a situation. He stated the discussion was valid because it was an issue. He remarked that changes will probably be made in the future.

Don Larson asked about the parking requirements and asked for some further clarification.

Mr. Madfis stated there would be no parking on site, but they would be utilizing adjacent parking lots. He added that the subject site was only 5,000 sq. ft. with no room for ingress or egress or for parking spaces.

Don Larson asked if the parking spaces were public or private. Mr. Madfis replied they were private parking spaces, and they were attempting to establish a long-range parking situation with a private facility. Don Larson asked how many spaces would be taken away from the public. Mr. Madfis stated they were located in the RAC-CC which did not require any parking spaces for commercial buildings no closer than 300' to residential dwellings. He further stated that all parking would be leased in an adjacent parking garage. He explained that a Cross Parking Agreement would be entered into with the property located to the south.

Acting Chair Birch Willey asked if anyone from the public wished to speak on this matter.

Tom Vogel, Swede Building, stated that when they built their garage they considered the adjacent buildings in the area. He stated they were in favor of this project and felt it would help the corner. He stated if it was step backed it would lose the urban feel along Andrews Avenue.

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

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

Robert Dunckel stated that he had a comment to make before the public hearing was to be closed. He stated that a building existed on the subject site that had been demolished, and relative to the building footprint he asked where the building had been located and if it had run to the property line. Mr. Ostrow stated that it had been out to the property line along Andrews Avenue, and the building was not at the property line along Las Olas. He stated they wanted to mirror what had been there before on Andrews, and similar to what had been in existence on Las Olas.

Mr. Ostrow stated they were surrounded by historic buildings and in order to comply with the setback requirements it would take away the functionality of the property.

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

Binni Sweeney stated that she believed the building was too large for the site and the owner knew the requirements when purchasing the property. She stated that she had a problem regarding hardships and the uniqueness of the land when the land was a certain size and the owner wanted to construct a building that was too large.

Scott Strawbridge stated that this project had less of an impact on the site than the previous building had. Binni Sweeney reiterated that rules stated certain things and were changed regarding residential development, but none had been changed regarding commercial buildings. She stated the rules were in place for the future of this City. She stated that variances granted in the past caused projects to overwhelm the street.

Don Larson asked how many stories were in the old building. Mr. Ostrow stated that the building consisted of two stories and the actual footprint was bigger than the one being proposed.

Gus Carbonell stated that he was happy when the City came up with the RAC and the Downtown Master Plan because they were long overdue. He stated further that this building was attempting to create an urban fabric and continuity. He added that it would also slow down traffic. He felt the corner was very important.

Mr. Ostrow remarked that it was stated their building was too large for the site, but every piece of property in the entire block went to the curb line, which is what they wanted to do and what existed with the previous building. He stated that because they wanted to go slightly higher did not make the building too big. He stated they wanted to use what they had and what had existed previously. He felt this was a textbook case for a hardship.

**Motion** made by Binni Sweeney and seconded by Don Larson to approve the request in connection with Sec. 47-13.20.H.1.a. Roll call showed: YEAS: Don Larson, Gus Carbonell, Scott Strawbridge, Al Massey and Birch Willey. NAYS: Binni Sweeney. Motion carried 5-1.

**Motion** made by Scott Strawbridge and seconded by Al Massey to approve the request in connection with Sec.47-13-20.I.

Robert Dunckel stated this was referring to West Las Olas, and asked that the words "as shown on the site plan presented to the Board of Adjustment" be added to the motion.

The new motion read as follows:

**Motion** made by Scott Strawbridge and seconded by Al Massey to approve the request in connection with Sec. 47-13.20.I, and that the words be added "as shown on the site plan presented to the Board of Adjustment."

Roll call showed: YEAS: Don Larson, Gus Carbonell, Scott Strawbridge, Al Massey and Birch Willey. NAYS: Binni Sweeney. Motion carried 5-1.

Don Larson asked if the first motion should be amended to include the additional verbiage added to the second motion. Robert Dunckel stated that the site plan was sufficient.

**Motion** made by Binni Sweeney and seconded by Don Larson to approve the request in connection with Sec. 47-24.5.D.1.p.vi.b. Roll call showed: YEAS: Don Larson, Gus Carbonell, Scott Strawbridge, Al Massey and Birch Willey. NAYS: Binni Sweeney. Motion carried 5-1.

**MEETING RECESSED AT 8:00 P.M.  
MEETING RECONVENED AT 8:05 P.M.**

**3. APPEAL NO. 05-15**

**APPLICANT:** Bank Atlantic

**LEGAL:** Progresso, P.B. 2, P. 18(D), Block 231, Lots 4, 5, & 6,  
Block 232, Lots 1-24, inclusive, less the north 15 ft. of  
Lots 1 and 24, Block 233, Lots 23 & 24 less the north 15 ft. of Lot 24

**ZONING:** CB (Community Business District)

**STREET:** 1750 E. Sunrise Blvd.

**ADDRESS:** Fort Lauderdale, FL

**APPEALING:** *Sec. 47-20.2 Parking and loading zoning requirements* – A temporary, non-conforming use permit to allow for the reduction of the required parking for a financial institution.

Gus Carbonell had a conflict regarding this item. Fred Stresau also had a conflict regarding this item.

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

Robert Dunckel reminded the applicants that since there were only 5 members of the Board presiding over this item, the applicant would need to obtain four out of 5 votes.

Hope Calhoun, attorney for the applicant, stated that the City Commission had approved the site plan and a bank branch existed at this site, which would be demolished and replaced with another branch, along with townhouse units. He stated that this project was before this Board previously in connection with temporary use of a modular unit at the site. She advised that the neighborhood was in favor of this project.

Ms. Calhoun advised that they were seeking a temporary non-conforming use permit in connection with parking. She announced that the building would be vacated in stages and employees were being relocated to the Cypress Creek site. She stated that in regard to Lots #12, #13, and #14, a Parking Agreement existed which stated that as long as the existing building was used as a bank, the lots would be used by the bank for parking. She stated that the residential portion of the project was to be constructed on those three lots, and in order to move forward the Agreement had to be dealt with, and the City would meet with the applicant to see how all requirements would be met. Sufficient parking would be provided on site, but at a different location. She stated that the Bank also owned four lots to the west and parking could be provided for employees at that site.

Ms. Calhoun stated that the criteria for a temporary non-conforming use was that it should not be incompatible with adjoining properties, the surrounding neighborhood, or otherwise contrary to the public interest. She stated that the granting of this use would permit the progress for redevelopment of this site,

and benefit the community. She announced that Seth Wise, principal with Bank Atlantic, was also present this evening.

Robert Dunckel stated the notice did not state the number of spaces for the parking reduction. He asked if they were seeking a proportionate reduction for the parking requirements. Ms. Calhoun confirmed.

Binni Sweeney asked what the time line was for the construction of the building. Ms. Calhoun stated that demolition would occur within the next few months, but would be done by the end of the year. Binni Sweeney asked if once the building was demolished would they need the temporary non-conforming use permit. She stated that she was concerned if it went past one year, then they would have a problem. Ms. Calhoun stated that would not occur. She stated that a sale center was to open soon, and they were moving forward quickly.

Robert Dunckel stated that if the demolition took more than one year, there was a safety valve and they could appear before the Planning and Zoning Board for a parking reduction order.

Scott Strawbridge stated that temporary non-conforming use permits were an on-going problem and he wanted to remind the Board and the Commission of that fact.

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.

**Motion** made by Binni Sweeney and seconded by Scott Strawbridge to approve the item as presented.

Robert Dunckel suggested that the following verbage be included in the motion: that when the proportionate portion of the square footage of the building is demolished, the proportionate number of parking spaces would similarly be reduced.

Don Morris stated that the building is to be vacated. Ms. Calhoun confirmed and stated that it would eventually be demolished. Don Morris stated that they had to account for the parking even though the building is vacated. Robert Dunckel stated that they were getting relief. Don Morris confirmed. Robert Dunckel stated that before zoning signed off on a proportionate reduction, they had to certify to zoning that a certain number of square feet were being vacated. Ms. Calhoun stated they were willing to submit an affidavit to that effect.

Binni Sweeney stated that she would amend her motion to read as follows:

**Motion** made by Binni Sweeney and seconded by Scott Strawbridge to approve the item as presented, and that as the floors were vacated, the applicant would provide an affidavit to the City so that the reduction in parking will be commensurate with the vacation of the building. Roll call showed: YEAS: Don Larson, Binni Sweeney, Scott Strawbridge, Al Massey and Birch Willey. NAYS: None. Motion carried 5-0.

Gus Carbonell and Fred Stresau returned to participate in the meeting.

**“For the Good of the City”**

**Case No. 04-48, The John Needham House**

Robert Dunckel stated that the property was under contract for sale from Dawn Doyle to a third party. He advised that the seller is being represented by attorney Don Medalie, who informed the City that the buyer intended to use the property for residential purposes. He stated that Ron Mastriana is representing the buyer, and had informed the City that St. Regis had no plans on using the subject property as an accessory to the hotel on the beach. He also stated that the closing is scheduled for April 21, 2005. Robert Dunckel stated that after the property closed, the issue would be moot. Therefore, he suggested that this item be deferred until the Board's May meeting.

**Motion** made by Al Massey and seconded by Binni Sweeney to defer this matter until May 11, 2005 at 6:30 p.m. Motion carried unanimously.

**Parking Corporation of America**

Fred Stresau stated that he wanted to bring to everyone's attention the matter of the Final Hearing regarding the Parking Corporation of America. He continued stating that the Petitioner's request for relief was denied. He added that the Parking Corporation of America was using the lot on a daily basis and collecting money at this point in time. He added that Code Enforcement gave the owners 120 days to become Code compliant, which they cannot do.

Robert Dunckel stated that they could be compliant by ceasing their operations. He further stated that he discussed the matter with the City Attorney, who advised him that the proposed course of action was not to do anything further until it went before the Special Magistrate under Code Enforcement. Then, all fines would be imposed, and hopefully that would get the owners to stop operations. If that does not occur, then the City Attorney will evaluate if they should proceed to Circuit Court to seek injunctive relief.

Acting Chair Birch Willey asked when this matter would go before the Special Master. Robert Dunckel stated he believed it would be June 3, 2005.

Scott Strawbridge asked how many violations were against the property. Robert Dunckel stated that he did not have that information available tonight.

Fred Stresau stated that it was imperative that someone from the City Attorney's Office should attend the June 3<sup>rd</sup> meeting besides the Code Enforcement attorney.

Don Larson stated that he was concerned the matter could drag on in Court for another year. He added that he did not think that would be fair to the other boards who had worked on this matter. He asked if this could be taken before the Special Master and have it rescinded.

Robert Dunckel stated that the City Attorney decided not to pursue that course of action.

Fred Stresau added that this was a great learning experience for everyone on the Board.

Binni Sweeney asked if the police could take action regarding the operations. Robert Dunckel stated that the instructions he received was that they would go back and pursue the matter with the Special Magistrate and Code Enforcement on June 3<sup>rd</sup>. Hopefully, they would then be shut down. If not, then the City Attorney will evaluate as to the next course of action to be taken. He explained that police action has not been precluded, nor has it precluded going to Circuit Court and seeking injunctive

relief. Binni Sweeney asked if police action would be legal. Robert Dunckel stated that it is among the remedies, but the question is do they typically use police enforcement for a violation of this nature. He explained that he was not involved with Code Enforcement, and therefore, could not supply a definitive answer.

Acting Chair Birch Willey stated that the City needed to cycle itself through on this matter. He added that he did not think there was anything further that this Board could do regarding this matter, but suggested that individuals seek what could be done on a personal basis.

**Motion** made by Don Larson and seconded by Al Massey to adjourn the meeting.

They're being no further business to come before this Board, the meeting was adjourned at approximately 8:30 p.m.

Acting Chairperson

\_\_\_\_\_  
Birch Willey

ATTEST:

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Margaret A. D'Alessio  
Recording Secretary

A mechanical recording is made of the foregoing proceedings, of which these minutes are a part, and is on file in the Planning & Zoning Offices for a period of two (2) years.

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