

**BOARD OF ADJUSTMENT MEETING  
CITY OF FORT LAUDERDALE  
WEDNESDAY, AUGUST 10, 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	8-1
Don Larson	A	8-1
Fred Stresau	P	7-2
Scott Strawbridge	P	9-0
Binni Sweeney	P	7-2
E. Birch Willey	A	6-3
Patricia A. Rathburn, Chairman	P	7-2

**ALTERNATES**

Al Massey	P	7-2
Gerald Jordan	P	5-1

**STAFF**

Robert Dunckel, City Attorney  
Don Morris, Acting Zoning Administrator

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

**GUESTS**

Dick Coker	Magdiel Fernandez	Nectaria Chakas
Jim Brady	Charles Jordan	Diane Smart
Mark Nelson	Richard Mancuso	H. Moon
Frederick Yazbad	Angela Cohn	

**CALL TO ORDER**

Chair Patricia Rathburn 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**

Don Morris explained that the other recording secretary re-reviewed the old minutes and made appropriate changes. Therefore, the Board needed to go back and re-approve minutes from some of the previous meetings.

**Motion** made by Binni Sweeney and seconded by Gerry Jordan to approve the minutes of the December 1, 2004, January 12, 2005, February 9, 2005, and June 8, 2005 meetings of the Board of Adjustment. Board unanimously approved.

**Motion** made by Binni Sweeney and seconded by Gerry Jordan to approve the minutes of the July 13, 2005 meeting of the Board of Adjustment. Board unanimously approved.

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

### **4. APPEAL NO. 05-26**

**APPLICANT:** High Point LLC

**LEGAL:** "The Amended Plat of Lauderdale Isles," P.B. 16, P. 33 B, PT of Block 3  
Formerly known as Lots 7 and 8, Blk 3, "The Amended Plat of Lauderdale Isles," P.B. 16, P. 33 B, PT of Block 3 formerly known as Lots 5 and 6 Blk 3

**ZONING:** RMM25 (Residential Mid-Rise Multi-Family/Medium Density District)

**STREET:** 45 Hendricks Isle

**ADDRESS:** Fort Lauderdale, FL

### **APPEALING: Sec. 47-21.10.B.3 – Landscape Requirements**

Requesting a variance to allow a total of twenty-six percent (26%) of the gross lot sq. footage to be in landscaping where the ULDR requires thirty-five percent (35%) of the gross lot sq. footage shall be in landscaping.

**Motion** made by Binni Sweeney and seconded by Gerry Jordan to defer this matter until September 14, 2005 at 6:30 p.m. Roll call showed: YEAS: Fred Stresau, Binni Sweeney, Gus Carbonell, Scott Strawbridge, Al Massey, Gerry Jordan, and Patricia Rathburn. NAYS: None. Motion carried 7-0.

### **1. APPEAL NO. 05-27**

**APPLICANT:** New Riviera 816, LLC

**LEGAL:** "Riviera," P.B. 6, P. 17 B, Block 1, Lots 6 and 7

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

**STREET:** 816 Riviera Isle (SE 25 Avenue)

**ADDRESS:** Fort Lauderdale, FL

### **APPEALING: Sec. 47-5.31. Table of Dimensional Requirements for RS-8 District**

The Zoning Administrator's interpretation that a lot that exceeds 12,000 sq. ft. in area shall have a Floor Area Ratio that does not exceed 0.60.

Dick Coker, attorney for the applicant, stated that this item is an appeal of an interpretation of the Code. He stated that they also had another item on the agenda and that item was that, if the Board agreed with the Zoning Administrator's interpretation of the Code, then the applicant was requesting a variance in connection with such provision of the Code. He explained that the RS-8 District has four area ratio

requirements regarding the interpretation of the Table in the Code. He further stated that most single-family homes in the area were zoned either RS-4.4 or RS-8, each with their own requirements. He explained that in RS-8, the minimum lot size requirements were 6,000 sq. ft. with required setbacks, and a maximum lot coverage which goes down as the size of the lot goes up. He stated that it was the same with the maximum floor area ratio. He stated that the Code defined the floor area ratio as the total gross square footage of the house divided by the square footage of the lot. He stated that the issue in this case was how to interpret the Code. He continued stating that lots which were between 7,501 sq. ft. to 12,000 sq. ft., the floor area ratio is .75. He stated that one could construct a two-story, 9,000 sq. ft. house on a 12,000 sq. ft. lot. He said here is where the difference in the interpretation comes about. He stated that another line shows lots over 12,000 sq. ft. have a maximum floor area ratio of .60. He explained that in their opinion in order for the Code to make sense, the interpretation should be that lots from 7,501 sq. ft. to 12,000 sq. ft. have a maximum floor area ratio of .75, but then the area over 12,000 sq. ft. should have a maximum floor area ratio of .6.

Mr. Coker stated that staff's interpretation of the Code is that a 12,001 sq. ft. lot could have a 7,201.6 sq. ft. house on it. He further explained that staff states that one applies the .60 floor area ratio to the entire lot for those over 12,001 square feet. He stated that if one did that, they would render the Code provision meaningless. He further stated that as the lots go up in size, the proportionate size should increase. He continued stating that if one went from 4,000 sq. ft. to 12,001 sq. ft., the Code cannot mean that one should drop 2,000 sq. ft. in available building area.

Mr. Coker further stated that the lot in question consists of 12,400 sq. ft., and some lots in Riviera Isles are this size, but most are 100' wide and 125' in depth. Therefore, all lots in the area would be over 12,000 square feet. According to staff's interpretation, .60 would be applied towards the entire square footage. He explained that the subject lot size actually measures 12,400 sq. ft., which if the applicant's interpretation is applied, .75 would be applied to lots under 12,000 sq. ft., and everything over 12,00 sq. ft. the .60 measurement would be applied. Then, one could construct a 9,240 sq. ft. house. He stated this is what the applicant believes would be appropriate, and that is their interpretation of the Code.

Mr. Coker continued stating that staff's argument is that one can only construct a 7,440 sq. ft. house on a 12,400 sq. ft. lot. He explained that such square footage would be permitted on a 9,920 sq. ft. lot if one applied the .75 figure because it would be under 12,000 square feet. He further stated that one needed to apply the general rules of construction, and that words cannot be inserted that aren't there. He added that one had to interpret the Code to make sense.

Chair Patricia Rathburn reiterated that Mr. Coker was asking the Board to put words into the meaning. Mr. Coker stated that he was asking the Board to look at the table. Chair Patricia Rathburn stated that Mr. Coker was asking the Board to insert the words "and over" versus "greater than" which did not presently exist in the Code. She continued stating that the Board was asked to legislate and not interpret. She added that the Code made sense to the individuals who drafted this language, along with the legislature who adopted it. She stated that she could not state what their original intent was, but for the applicant to state that it made no sense whatsoever was not the case.

Chair Patricia Rathburn clarified that the applicant was asking for an interpretation to see if staff was interpreting this section of the Code correctly, or whether the applicant had the correct interpretation. She stated that the applicant might have a good argument that perhaps this section could have been drafted in a different manner. She stated that in her opinion staff is interpreting this section of the Code as it is written.

Binni Sweeney stated that the applicant is putting forth a very clever argument, but it is clear in looking at the table that if the lot is over 12,000 sq. ft. the .60 figure is to be applied. She stated that in her opinion the Code was extremely clear.

Scott Strawbridge asked for staff to supply some further explanation and clarification of the FAR, and how an increase could be permitted subject to a Site Plan Level III review. He stated that he thought a Level III review was for a residential area.

Don Morris explained that such a review is not normally done for residences, but a neighborhood compatibility review was done by the Planning and Zoning Board.

Scott Strawbridge stated that another option might be to go before the Planning and Zoning Board and explore the neighborhood compatibility aspect. He stated that possibly this language was included as a mechanism for greater scrutiny and review.

Mr. Coker further stated that he believed an error in judgment was made as to how the language was drafted.

Don Morris, Planning and Zoning, stated that the Code was clear, along with the Table of Dimensional criteria. He stated that lots over 12,000 sq. ft. were required to have a maximum floor area of .60. He further stated that if the applicant was requesting an increase in the FAR, there were processes to go through for that purpose. One of the steps was to go before the Planning and Zoning Board for a Site Plan Level III. He reiterated that the Code was very clear. He stated that this application was clearly erroneous because the Code was misinterpreted.

Fred Stresau stated that this is slightly weird and did not know why staff had written this language as it exists, but there was a legitimate point that with 12,000 sq. ft., one could build a 9,000 sq. ft., but yet on a 12,001 sq. ft. lot, they could only construct a 7,250 sq. ft. house. He stated that this is clearly how the Code was written and how it was to be enforced, but it was not an equitable position regarding the calculation of the lot square footage and the size of the house. He further stated that no one has brought up the issue of lot coverage, and there was a difference in the percentage of lot coverage. He stated that he did not necessarily want to get into such a discussion because it would bring in the applicant's second request.

Don Morris reiterated that there might not be a logical flow, but the language was written as it exists.

Binni Sweeney stated that there should be a cut-off on this table. She further stated that in RS-8 the majority of the lots were not over 12,400 sq. ft. because they were less, and this was two lots put together.

Gus Carbonell stated that the Code does not necessarily make sense and there should be a gradual increase, and maybe 4' of the land could be sold to the neighbor. He believed that staff interpreted the Code correctly.

Scott Strawbridge stated that at a Site Plan Level III review, one could ask for just about anything. He continued stating that possibly the intent of the individuals drafting this language was not to over saturate the neighborhoods with building facades and lot coverages, and he had a hard time deciding what was enough in this case.

Al Massey stated that if the standard is clearly erroneous, he did not know how they could do anything else but support it. He felt the applicant is arguing a wisdom argument on an erroneous interpretation.

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

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

**Motion** made by Binni Sweeney and seconded by Gerry Jordan to uphold the Zoning Administrator's interpretation of the Code.. Roll call showed: YEAS: Binni Sweeney, Gus Carbonell, Scott Strawbridge, Fred Stresau, Al Massey, Gerry Jordan and Patricia Rathburn. NAYS: None. Motion carried 7-0.

## **2. APPEAL NO. 05-23**

**APPLICANT:** New Riviera 816, LLC

**LEGAL:** "Riviera," P.B. 6, P. 17 B, Block 1, Lots 6 and 7

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

**STREET:** 816 Riviera Isle (SE 25 Avenue)

**ADDRESS:** Fort Lauderdale, FL

### **APPEALING: Sec. 47-5.31. Table of Dimensional Requirements for RS-8 District**

Requesting a variance to allow a maximum floor area ratio of 0.74 or 9,240 sq. ft. on a 12,400 sq. ft. lot where the Code allows a maximum floor area for such lot of 0.60 or 7,400 sq. ft.

Dick Coker, attorney for the applicant, stated that he wanted to make a few points in regard to his previous argument. He stated that the argument raised by Gus Carbonell in regard to giving the neighbor 4' made sense, but he was informed by staff that the lots could not be diminished. He further stated that the mechanism of the Code for a Site Plan Level III review did not apply in this case. He stated that this was a unique situation because it was a large lot, and by applying the .60 figure, it caused an unreasonable and unfair result, and singled out such size lots for building. He stated this is a special circumstance not created by the property owner, and therefore, met the requirements of the criteria.

Mr. Coker further stated that the Site Plan Level III review would be for someone wanting to exceed the lot coverage as implied in the Code. He explained that the strict interpretation allowed the FAR of 7,440 sq. ft., and a graduated application of the code would allow 9,240 square feet. He stated the appropriate way to analyze the matter was to allow an FAR of .75 for the first 12,000 sq. ft., and .60 for the 400 sq. ft. over the 12,000 square feet.

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

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

Binni Sweeney clarified that the minimum lot size in RS-8 was 6,000 sq. ft., and therefore, these lots had been put together. She asked what size house could be placed on a 6,200 sq. ft. lot.

Don Morris replied that he believed the lots could be combined as long as the requirements of the Code were met. Fred Stresau stated that a house of 4,300 sq. ft. to 4,500 sq. ft. could be built on that size lot.

Gus Carbonell stated that in his opinion the Code should have had a graduation, and it did not make sense how it was written.

Chair Patricia Rathburn stated that she had a problem finding a variance criteria for this situation because "special conditions or circumstances affect a property which prevents a reasonable use of the property." She stated that restricting someone to living space consisting of 7,500 sq. ft. prevents a reasonable use of their lot. She stated it prevented them from having a 9,400 sq. ft. house, but the question is whether that was an unreasonable restriction or prevention of use of the property. She further stated that the criteria regarding special circumstances preventing the reasonable use of this property applied. She also felt that special circumstances were not peculiar to this property because there were a number of properties in this zoning district that had also been combined to create larger lots. She stated that if the Code was interpreted by staff in such zoning district, then the application of the ULDR would not deny them anything that other property owners enjoyed in the area. She stated the hurdle she always has to come over was the minimum variance that made a probable and reasonable use of a property. She felt a 7,500 sq. ft. house was a reasonable use of the property.

Don Morris reiterated that in the RS-8 district, the size of the lots could not be diminished.

Scott Strawbridge stated that the owner is not being deprived in this case, and he could go before the Planning and Zoning Board for further relief.

Binni Sweeney stated that the applicant could seek further relief with the Planning and Zoning Board.

Fred Stresau stated that he believed that the Code was not written as it should have been, and there should have been a graduated scale. In his opinion, the applicant would have to go before the Planning and Zoning Board in regard to the neighborhood compatibility issue, and he did not think the applicant would win. He felt that something should be done with how this section of the Code had been written because it did not make sense.

Motion made by Binni Sweeney and seconded by Fred Stresau to approve the application for the variance as presented. Roll call showed: YEAS: Gus Carbonell. NAYS: Scott Strawbridge, Al Massey, Gerry Jordan, Fred Stresau, Binni Sweeney and Patricia Rathburn. Motion denied 1-6.

### **3. APPEAL NO. 05-24**

**APPLICANT:** CAL Associates

**LEGAL:** Parcel "A", Titone Properties Plat, P.B. 149, P. 4

**ZONING:** I (General Industrial District)

**STREET:** 2920 SW 4 Avenue

**ADDRESS:** Fort Lauderdale, FL

**APPEALING:** Sec. 47-7.10 – Permitted and conditional uses in the General Industrial (I) District

Requesting a variance to allow a vocational commercial vehicle driving school, where such use is not permitted in the General Industrial (I) District.

The following disclosures were made by the Board: Fred Stresau stated that he had spoken with Robert Lochrie. Gus Carbonell stated that he spoke with Nectaria Chakas, attorney for the applicant, stated that this variance was to permit a vocational trade school in an industrial zoning district. She stated that this was a little unusual because it was not a typical vocational school which is why they were seeking to have it located in an industrial area. She stated that industrial zoning districts did not permit vocational/technical schools. She explained that this property was located south of SR84 and north of I-95 across from Snyder

Park. She stated that this school would be used primarily to train truck drivers. She explained that the Metropolitan Truck Technical Institute trains individuals to drive buses, trucks, dump trucks, and tractor-trailers. She stated that this property was currently being used as a semi-truck rental establishment. She proceeded to show an aerial photograph of the site. She stated that this was a two-acre parcel, with one small building existing on the site. She stated that there would be approximately 24 students at the site at any one time with 6-7 trucks on the premises. She stated that they were licensed by the Department of Education as a non-public educational facility, and were also a third-party tester of the Department of Highway Safety and Motor Vehicles. She reiterated that they had other locations and were an established entity with regulations to be followed, such as having training and testing routes approved by the Department of Highway Safety and Motor Vehicles. She stated that such routes had not yet been submitted due to the applicant waiting on tonight's results. She felt this would be a unique use of the property.

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.

Robert Dunckel asked where vocational schools were permitted. Don Morris stated they were permitted in the AIP zoning district.

Scott Strawbridge stated that he was concerned about the close proximity of this entity to the schools in the area, and the training routes going through residential areas.

Ms. Chakas stated that the property was presently being used for semi-tractor-trailer rentals. She stated the school would be to train individuals to drive such vehicles. She stated the site was surrounded by industrial uses, and she did not believe the nearby residential areas would be negatively impacted by such an institution.

Scott Strawbridge asked if the training and testing would take place on the subject site. Ms. Chakas stated that it would not be restricted to the site. She reiterated that the training and testing routes would have to be approved by the Department of Highway Safety and Motor Vehicles. Therefore, there would be another entity looking to the placement of this property relative to its surroundings in determining whether it would be safe to conduct such use on the subject site. Scott Strawbridge asked if the routes to be used were available at this time. Ms. Chakas stated that Mr. Fernandez was with Metropolitan Trucking, and would be available to answer the Board's questions regarding the proposed routes.

Chair Patricia Rathburn reminded the Board that this was a request for a use variance, and therefore, different criteria applied. Robert Dunckel corrected the Chair and explained there were not different criteria in regard to a use variance.

Scott Strawbridge asked about the applicable criteria for this type of variance. Robert Dunckel stated that the normal criteria applied.

Scott Strawbridge asked for further clarification of the special conditions and circumstances that prevent reasonable use of the property.

Ms. Chakas stated that they believed their proposed use of the site was a reasonable use. She added that what was problematic for this site was that it was situated to hold semi-tractor-trailer trucks, and there was little other use for the site. She stated the existing building was very small, and there was a lot of pavement at the site. She stated there really is no other use for the site. She stated that arguments could be presented showing that the site was presently being used reasonably.

Scott Strawbridge asked for some further clarification of the special circumstances peculiar to the site. Ms. Chakas further stated that again this referred to the design of the site. She stated there was a large amount of pavement probably so the trucks would be able to maneuver in and out of the site, and there was a very small building so as not to intrude into the parking and maneuverable areas of the property. Scott Strawbridge asked if the variance was denied, would the applicant be deprived of his property rights. Ms. Chakas stated that was in regard to the use of the property. She reiterated there could be some argument that this property was already being used reasonably. She stated they believed this would be a reasonable use of the property and it would be compatible with the area. She further stated that the use might not have been contemplated in the Code because it only classified such use as a vocational/technical school, and did not necessarily differentiate the type of school.

Scott Strawbridge asked for some further clarification regarding the statement that this was not a self-created hardship. Ms. Chakas stated the site was being used for truck rentals, and perhaps it was being used in a reasonable manner.

Binni Sweeney stated that the only place such facilities were listed in the Code was around the Airport. If such use was not listed for a specific area, then it was prohibited. Mr. Dunckel confirmed. He stated that in looking at the zoning code lists for an industrial area, they presumably were all considered reasonable uses.

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

**Motion** made by Binni Sweeney and seconded by Fred Stresau to approve the variance as requested. Roll call showed: YEAS: Gerry Jordan, Fred Stresau, Gus Carbonell and Patricia Rathburn. NAYS: Scott Strawbridge, Al Massey, and Binni Sweeney. Motion failed 4-3.

#### **5. APPEAL NO. 05-28**

**APPLICANT:** Towers Retirement Home Inc.

**LEGAL:** "Beverly Heights," P.B. 1, P. 30, Block 8, Lots 1 thru 4

**ZONING:** RMM-25 (Residential Mid-Rise Multi-Family/Medium High Density District)

**STREET:** 824 SE 2 Street

**ADDRESS:** Fort Lauderdale, FL

#### **APPEALING: Sec. 47-3.1, Non-Conforming, and Sec. 47-3.5 – Change in Use**

This is an appeal of the determination of the Zoning Administrator with regard to the legal use of the Towers Apartments as a 35-unit apartment building with a separate 4-unit apartment building, as it relates to Section 47-3.1, Non-Conforming Use, and Section 47-3.5, Change in use.

Jim Brady, attorney for the contract purchaser, stated that the purchaser had the authority of the owner to represent him. He stated that this was an appeal regarding staff's interpretation and application of the terms of the ULDR regarding this site.

Mr. Brady continued stating that this property was Old Fort Lauderdale uniquely located and separated from the neighbors across the street by a corridor consisting of two double-lane roads, swales and the Himmarshee Canal. He stated that the building has been there since 1926. He stated it was important to note that some properties in the area had been renovated, such as Himmarshee Courts which reflects the necessity of retaining historic structures. He stated the architecture was unique both to the Towers and



the neighboring properties and had been designed by Francis Abreu. He stated that the property is located in the RMM-25 zoning district. Originally, this property was used as an apartment hotel, and modifications had been slightly made in the 1940's. He stated that such modifications had not destroyed the fabric of the structure. He added that in the '60's the property had been converted to retirement homes, along with some other properties in the area. He believed that in 1990 such use was designated as multi-family facilities and were referred to as SSRF (Social Services Facility).

Mr. Brady stated that in an RMM-25 and an SSRF use, Category 4 permitted conditional use with specific regulations and were listed in Section 47-1831.3.1. He explained that this property never went through such process because the regulations were not in place. He stated that the only index showing that the subject property was SSRF was an occupational license under which it operated. He stated this is still a multi-family use in existence since 1926, and should be treated accordingly. He stated further that the conversion to put it back as it existed would be an appropriate use because it was grandfathered, and therefore, they should be entitled to that effect. He further stated that Mr. Jordan, the purchaser, is going to eliminate the 4-unit building sitting to the left of the main building, and would also eliminate one interior unit. Therefore, there would then be a total of 34 units. He continued stating that to uphold staff's interpretation and application of the regulations relative to this property would have a significant negative effect on the area and the community in general because it destines the property for the wrecking ball. He stated that if staff's interpretation is upheld, the property's value would compel individuals to come in and build townhouses and demolish the historic structure.

Mr. Brady further explained in detail a building on 8<sup>th</sup> that had been remodeled.

Robert Dunckel stated that assuming there was to be a change in use, there were provisions which would make the structure non-conforming, and he asked what those would be.

Mr. Brady stated that the first would be parking and the second would be a density problem with the land use plan. Mr. Dunckel asked if some of the matters could be corrected with parking reductions and variances. He reiterated that the density exceeded what was permitted by the land use plan. Mr. Brady confirmed. Mr. Dunckel stated that he did not think this was a change in use.

Chair Patricia Rathburn stated that her interpretation was that the purchaser was asking for the Board to determine that there was never a change in use, and the owner was continuing to retain the multi-family use. Mr. Brady confirmed, but stated they were challenging the application and the need to apply the change in use criteria. Chair Patricia Rathburn stated that she was looking to find an interpretation of the Code in order to allow them to maintain the building. She felt a good argument had been made in that respect.

Binni Sweeney stated that she did not think that history had anything to do with the interpretation.

Mr. Brady stated that the Board always makes a close call in terms of harm that might be done to a community, and conversely in terms of the benefit that could be derived from such a close call. Binni Sweeney reiterated that this was strictly an interpretation of the Code. Mr. Brady emphasized that the building had always been used as a multi-family structure since 1926, and therefore, there should not be any change of use criteria applied.

Charles Jordan, prospective buyer, stated that when a building was used as a retirement home, people typically purchased such building and converted it to a residential facility. He stated that had been done in the late '60's, but no one realized they were giving up their rights regarding density, parking, and the other issues connected with this building just because the subsequent law had been changed. He explained

that their had been a group called Neighborhoods at risk who had pushed the SSRF ordinance through the process. The reason for the SSRF was not to perpetuate it, but to regulate it and provide for a reasonable review process to minimize its negative impacts on the neighborhood. He stated that was important to the residents of Sailboat Bend. He further explained that the ordinance had never contemplated that a multi-family property would lose its rights.

Binni Sweeney stated once again that history had nothing to do with the interpretation.

Chair Patricia Rathburn stated that everyone recognized the historical significance of the Abreu building from the 1920's, but that had nothing to do with the use issue.

Don Morris explained that their department wanted to save the building. He stated that in looking at uses throughout the City, there had been Code changes, and when that occurs there are new requirements for uses. The multi-family use is permitted on this property, but one had to go through a change of use process. He explained that there were certain criteria required for the change of use such as:

1. SSRF requires one parking space for every 1,000 sq. ft. of multi-family use.
2. Operational activity was to be looked at to see if the site had the same or lesser impact on the community.
3. Change of use is required by a Site Plan Level I.

Binni Sweeney stated that even though since 1968 the property was used as a multi-bed facility as opposed to single-family, the use never changed.

Don Morris stated that staff required more information on the use, and had to base their decision on the information which had been presented. He added that he believed there were timeframe issues involved in this matter.

Binni Sweeney asked if the matter should be deferred due to the time constraints involved, and further stated that by receiving more information it could be beneficial to the application.

Charles Jordan stated that he had placed a contract on the property in April, but in June had discovered that a parking issue was involved. He stated further that he had discussed the matter with staff. He advised that Mark Nelson was the current owner of the property.

Mark Nelson advised that his family had owned the property since 1968.

Binni Sweeney stated that staff made their interpretation based on the information presented to them. Mr. Nelson stated that he had met with staff and added that he was going to lose money selling the property to Mr. Jordan. He explained that Mr. Jordan would make less money keeping the property historic. He reiterated that this was the last attempt to save the building, and if the building could not be saved in this context, the value of the building would be zero compared to a resale value. The other option would be to demolish the building, but the City did not want to do so.

Binni Sweeney stated further that the wheels of justice and City government move slowly, and the Board wants to help in this matter. If the matter was deferred, the additional information could be given to staff and then possibly their interpretation could be changed or modified.

Mr. Nelson stated that staff had the opportunity during their meetings to obtain additional information. He stated that Mr. Jordan had only been involved since April, but this had been a 5-year process and time was of the essence.

Chair Patricia Rathburn stated that this was the softest interpretation issue she had ever experienced with staff since they wanted to retain the building. She added that deferring this matter might not resolve the issue which was whether the property had retained the multi-family character. It has been operated as a facility renting beds and a retirement home. She stated that the question before the Board was that this was a very specific piece of property and should a determination be made that the sub-use of the multi-family property was not a change of use, but a continued use.

Mr. Brady stated that staff had already interpreted the Code, and the SSRF had been changed back to a duplex. He explained that the law was that once staff made their interpretation, unless it was in error or done in bad faith, then that was the law. In the future in order to achieve a different result, the Legislature would have to act. He stated there was precedent in this case from staff defining the law today.

Chair Patricia Rathburn stated that she wanted to determine this matter without referring to precedence, and she was not prepared to set precedence. She stated that she was prepared to make a determination and interpretation regarding the subject property. She reiterated that there were unique circumstances involved. She stated that she hoped the issue of precedence would not affect the Board.

Al Massey asked if they were under an erroneous standard because if that was the case, then it is important and possibly the matter should be deferred.

Fred Stresau stated that if a determination was made regarding the duplex as opposed to a 35-unit building that was a different situation. Al Massey reiterated that they did not have all the information and were only speculating. Fred Stresau agreed and stated it would be difficult for him to believe that staff's determination on a duplex would be consistent with a ruling regarding a larger structure.

Robert Dunckel stated that he was not ready to agree with Mr. Brady's argument, and if staff had erred, they were not bound to continue to repeat such error. He stated that various elements had to be reviewed regarding a precedence.

Chair Patricia Rathburn stated interpretation was done on a case-by-case basis.

Binni Sweeney stated that since staff wanted to save the building, she felt more time should be given to review the facts. She stated that what staff has been doing for the last 20 years was not multi-family.

Mr. Nelson stated that comments were made by Mr. Morris regarding assisted living. Don Morris stated that there were different levels of assisted living, and the point being made was that staff did not know the operational activity taking place at the site. Binni Sweeney suggested that Mr. Nelson once again meet with City staff. Mr. Nelson reiterated that he had contracts pending.

Robert Dunckel asked what were the "drop-dead" deadlines. Mr. Nelson stated that the timeline was September 1<sup>st</sup> for this particular contract. He stated that a previous potential purchaser had looked at the building from a financial standpoint, but could not save the building. The City Commission would not permit the building to be torn down. He stated that in one sense the City is telling him they would not permit demolition of the building, but yet the building had not been designated historic. He further stated that he had two offers for the property, and if the City did not permit them to save the structure due to parking or density issues, then there was a problem.

Scott Strawbridge stated that once in a while they had the chance to do the right thing. He reiterated that this was a unique circumstance and the Board should act in the interest of the City. He believed that input should be received from the neighborhood. He stated that the single biggest issue being discussed in this matter was the impact of the parking on the community.

Binni Sweeney disagreed and stated they were discussing an interpretation. Scott Strawbridge stated that he was talking about the outcome of the Board's decision. Binni Sweeney further stated that the last time this Board did something for the good of the City, they had granted variances on Commercial Boulevard so the bank could be constructed, and now the Bank was moving.

Chair Patricia Rathburn stated that she did not think that on an interpretation issue the neighborhood should be involved because that was not relevant. What was relevant was whether staff made a correct interpretation. She stated this was a unique and special circumstance, and the Board had the flexibility to decide whether staff was correct in their interpretation.

Fred Stresau stated that they need to look and see if significant changes have been made inside the building that would have changed it from what they anticipated it to be in 1926, when there were no zoning codes to 1980 or 1979 to an SSRF. He stated that it has always been a mutli-family dwelling and originally built as one. He felt it would be wrong to say that 50 years after it was built, it should change imagically to an SSRF. He further stated that many SSRFs have apartments and hospital facilities in them, and he was not sure that staff in making their determination had sufficient information to do so. He stated that he would vote in favor of this. He stated that if people bought into this, then they probably did not want parking because there would be no parking on the street because there isn't room for any.

Robert Dunckel reminded the Board that their motion needed to be made in the affirmative.

Scott Strawbridge further stated that one of the things that concerned him about this building was that it did not have the protection of the historic preservation ordinance. He proposed that something be done to protect and safeguard this building.

Chair Patricia Rathburn reminded the Board that they were concerned at this time with the interpretation involved in this matter. She strongly recommended that individuals concerned with historic preservation take steps to protect this building.

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

Angela Cohn, President of Gulf Stream Condominium Association, stated that their building had always had individual units. She stated that the Towers have been identified as retirement center but actually is an institution. She stated it is a change of use and has different levels of assisted living. She recommended that additional information be given to staff regarding the residents of the building. She stated that most were not self-sufficient individuals.

**Motion** made by Binni Sweeney and seconded by Fred Stresau to uphold the Zoning Administrator's interpretation. Roll call showed: YEAS: Al Massey. NAYS: Scott Strawbridge, Gerry Jordan, Fred Stresau, Binni Sweeney, Gus Carbonell, and Patricia Rathburn. Motion failed 1-6.

**“For the Good of the City”**

**Motion** made by Binni Sweeney and seconded by Fred Stresau to change the Board of Adjustment Meeting date from October 12, 2005 to Tuesday, October 11, 2005 at 6:30 p.m. Board unanimously approved.

**Motion** made by Binni Sweeney and seconded by Gus Carbonell to adjourn the meeting.

There being no further business to come before this Board, the meeting was adjourned at approximately 8:43 p.m.

Chair

\_\_\_\_\_  
Patricia Rathburn

ATTEST:

\_\_\_\_\_  
Jamie Opperlee for Margaret A. Muhl (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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