

**BOARD OF ADJUSTMENT MEETING
CITY OF FORT LAUDERDALE
WEDNESDAY, NOVEMBER 9, 2005 – 6:30 P.M.
CITY HALL
CITY COMMISSION CHAMBERS – 1st Floor
100 N. ANDREWS AVENUE
FORT LAUDERDALE, FL**

BOARD MEMBERS

	<u>Present</u>	<u>Absent</u>	<u>Cumulative from January 2005</u>
Gus Carbonell	P		11-1
Don Larson	P		11-1
Fred Stresau	P		10-2
Scott Strawbridge	P		12-0
Binni Sweeney, Chair	P		10-2
Gerald Jordan	P		8-1

ALTERNATES

David Goldman	P
Don Zimmer	P

STAFF

Robert Dunckel, City Attorney
Don Morris, Acting Zoning Administrator

Margaret A. Muhl (D'Alessio), Recording Secretary
Jamie Oppерlee, Court Reporting Service

GUESTS

Nectaria Chakas	Susan Kissinger
Jack Seiler	Debbie Orshefsky
Paul Kissinger	

CALL TO ORDER

Robert Dunckel stated that he would begin tonight's meeting since the Board did not presently have a Chair. The meeting was called to order at approximately 6:30 p.m.

ELECTION OF CHAIR AND VICE CHAIR

Robert Dunckel stated that the first order of business this evening would be to elect a Chair and Vice Chair for the Board of Adjustment. He proceeded to hand the gavel to Fred Stresau who would act as the Chair Pro Tem.

Fred Stresau opened the floor for nominations for the position of Chair.

Don Zimmer nominated Fred Stresau for Chair of the Board of Adjustment. Seconded by Scott Strawbridge. Fred Stresau declined and stated that he also served on another Board at the City.

Fred Stresau nominated Binni Sweeney for Chair of the Board of Adjustment. Gerald Jordan moved to nominate Don Larson for Chair of the Board of Adjustment.

Don Larson seconded the nomination of Binni Sweeney for Chair of the Board of Adjustment. Don Larson withdrew his nomination for Chair.

There being no other nominations for the position of Chair for the Board of Adjustment, the nominations were closed. The Board unanimously elected Binni Sweeney as Chair of the Board of Adjustment.

Fred Stresau proceeded to open nominations for Vice Chair of the Board of Adjustment.

Gerald Jordan nominated Don Larson for Vice Chair of the Board of Adjustment. Seconded by Binni Sweeney. There being no other nominations for the position of Vice Chair, the nominations were closed. The Board unanimously elected Don Larson as Vice Chair of the Board of Adjustment.

Chair Binni Sweeney proceeded to call the meeting to order and then introduced the Board.

2. APPEAL NO. 05-39

APPLICANT: Francis Schultz

LEGAL: "Lauderdale Harbors," Block 8, Lot 16 of resubdivision of Blocks 15 to 19
Including Section "A", P.B. 28, P. 28

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

STREET: 1436 SE 13 St.

ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47-5.31 (Table of dimensional requirements for the RS-8 District) – To permit a 91' –0" side yard for an open porch where the Code requires a minimum 25' –0" side yard when abutting a waterway.

Chair Binni Sweeney announced that this matter had been deferred. Don Morris explained that a request was made to have this matter deferred until February 9, 2006. He stated that the property owners would have to be notified within 300' of the subject property.

Motion made by Don Larson and seconded by Fred Stresau to defer this matter until February 9, 2006 at 6:30 p.m., and that the property owners within 300' of the subject property be re-notified. Roll call showed: YEAS: Fred Stresau, Don Larson, Binni Sweeney, Gus Carbonell, Gerry Jordan, Scott Strawbridge, and Don Zimmer. NAYS: None. Motion carried 7-0.

APPROVAL OF MINUTES

Motion made by Don Larson and seconded by Fred Stresau to approve the minutes of the October 11, 2005 Board of Adjustment Meeting.

Don Morris stated that the minutes showed that Birch Willey was absent at that meeting, but he was not a member of the Board any longer at that point.

Board unanimously approved the minutes as corrected.

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

Chair Binni Sweeney asked if any of the Board members had any conflicts with items on tonight's agenda.

Gus Carbonell stated that he had a conflict regarding Item #3, Appeal No. 04-40, because Mr. Elwell was his client.

Don Larson disclosed that he had spoken with Jack Seiler regarding Appeal No. 05-38 and Appeal No. 05-40.

Fred Stresau stated that disclosures should be made at the beginning of each case.

1. APPEAL NO. 05-38

APPLICANT: John Storelli

LEGAL: "Victoria Park," P.B. 10, P. 66, Block 20, Lot 6 and the north 36 feet of Lot 7

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

STREET: 631 NE 18 Avenue

ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47-5.31 (Table of Dimensional Requirements for the RS-8 District): To permit a 6.6' rear yard for the enclosure of an existing 400 sq. ft. carport to a single-family dwelling, where the Code requires a minimum 15' rear yard for a single-family dwelling.

Don Zimmer disclosed that he had spoken with Jack Seiler. Don Larson stated that he had spoken with Jack Seiler. Chair Binni Sweeney stated that she also had spoken with Jack Seiler. Gerald Jordan stated that he had spoken with Jack Seiler. Gus Carbonell stated that he also spoke with Jack Seiler.

Jack Seiler, attorney, stated that this was an old case, and they were seeking an after-the-fact permit. He explained that a carport had been built in 1963 which had been permitted, but in 1997 the rear yard setback had been changed with the ULDR, and therefore, the carport became a non-conforming structure. He stated that a variance had been denied by this Board previously, and the applicant had to wait for two years to re-file. He stated that originally there had been some confusion as to what the owner's intentions were for the property. He explained the carport would be converted to a garage, and precedent had been set in the City's older neighborhoods for such structures. He further stated that this conversion was desired for safety reasons. He added that adjacent neighbors wrote letters in support of the variance.

Don Zimmer asked what were the materials used in the original carport. Mr. Seiler explained that it had been built of cement blocks. Mr. Zimmer asked if the conversion had also been built of cement blocks. Mr. Seiler confirmed.

Scott Strawbridge stated that the owner had been denied a permit based on zoning, but it had not been a pre-construction application, but an after-the-fact application.

Mr. Seiler stated that the problem was that they had been done together. Since the variance had not been granted, the City would not issue the permit. He further explained that the structure was being built during the process for requesting the variance. He added that photographs were distributed to the Board to show the owner's use of the garage.

Gus Carbonell asked about the structure of the carport before it had been enclosed.

John Storelli explained that there were columns and beams, along with a foundation. Mr. Seiler reiterated that the structure had been permitted in 1963.

Mr. Seiler stated that the vote denying the variance had been 4-3, and that it had been denied due to the Board's confusion as to how the owner was going to use the carport.

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 Scott Strawbridge to close the public hearing. Board unanimously approved.

Motion made by Don Larson and seconded by Don Zimmer to approve the variance as requested. Roll call showed: YEAS: Fred Stresau, Don Larson, Gus Carbonell, Gerry Jordan, Scott Strawbridge, Don Zimmer, and Binni Sweeney. NAYS: None. Motion carried 7-0.

3. APPEAL NO. 05-40

APPLICANT: Edwin C. Elwell/Paul Houlihan

LEGAL: "Osceola Park," P.B. 9, P. 46, Block 4, Lots 5 and 6.

ZONING: RD-15 – (Residential Single-Family/Duplex/Low Medium Density District)

STREET: 1820 SW 21 St.

ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47-3.3.B.3 (Non-conforming lot) – To allow lots that are non-conforming, due to their areas to be split into originally platted lots. Lots are presently merged because they are under single ownership.

Gus Carbonell stepped down during this case.

Nectaria Chakas, attorney, proceeded to show a platted map of the site. She stated that the lots were 50' x 110' with a few being 45' in width. She stated that plat lots must be conforming with Code. She explained that at some point one of the owners built a house on both lots, and therefore, the lots were merged. She stated that her client purchased the property with the intention of demolishing the existing houses and constructing a duplex on each lot. Due to changes in the Code, the lots had merged, and a request would have to be made before the Board of Adjustment.

Ms. Chakas stated that they are requesting that the lots no longer be merged so that a duplex could be built on each lot. She explained that the prior zoning for the site had been R-2, and a re-subdivision of lots

was permitted. She proceeded to read from that Code as follows: "If lots in a subdivision plat of record are re-divided..." (which is what they are now requesting) and "...if they are re-divided there shall be no reduction in the lot area." She explained they are only requesting to go back to what existed previously. She stated they met with the neighborhood and letters had been submitted in support of this variance request. She stated that they also made some concessions in the setbacks to make up for any deficiencies that might exist in the lot size.

Ms. Chakas further stated that these lots were non-conforming because of the lot square footage. She stated that 6,000 sq. ft. was needed for lot area, and each of the lots contained 5,500 sq. ft., which was a 9% reduction in regard to what was presently required by Code. She stated they wanted to construct a duplex on each lot which was allowed by the current Code, and to re-divide the lots.

Robert Dunckel asked when the applicant had acquired title to the property. Ms. Chakas stated that it was this year.

Scott Strawbridge disclosed that he had spoken with Nectaria Chakas regarding this matter. Don Larson stated that he also had spoken with Nectaria Chakas. Fred Stresau stated that he had spoken with Nectaria Chakas.

Robert Dunckel stated that the Code provision read as follows: "If two or more lots with continuous frontage are in a single ownership, and if any of the lots are non-conforming, the non-conforming lot and the parcel or lot abutting the non-conforming lot shall be deemed by operation of law to be merged and to be considered an undivided plot. No development permit shall thereafter be issued for a use of the non-conforming lot which has been merged with another parcel, which recognizes a reduction of the merged parcel below the requirement for a lot which meets the ULDR requirements of the zoning district where the lot is located." He explained that the Board was being asked to grant a variance which rendered the last sentence that had just been read as null and void.

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

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

Don Zimmer asked if 3 units could be built on the 100' frontage.

Don Morris, Planning and Zoning, stated that if 3 or more units were built, they had to be defined as a townhouse or cluster development. He explained that townhouses were not permitted in an RD-15 area. He also stated that cluster homes had to go before the Planning and Zoning Board.

Chair Binni Sweeney stated that the sign at the site advertised the proposed units as "townhouses." Don Morris stated that staff did not consider the units as townhouses, but duplexes.

Motion made by Fred Stresau and seconded by Don Larson to grant the variance as requested. Roll call showed: YEAS: Gerry Jordan, Scott Strawbridge, and David Goldman. NAYS: Don Zimmer, Fred Stresau, Don Larson, and Binni Sweeney. Motion failed 3-4.

Gus Carbonell returned to the Board at this time.

4. APPEAL NO. 05-42

APPLICANT: Paul and Susan Kissinger

LEGAL: "Coral Ridge Galt Add No. 1," P.B. 31, P. 37, Block 51, Lot 11

ZONING: RS4.4 – (Residential Single-Family/Low Density District)

STREET: 2633 NE 27 Court

ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47-19.2 (Accessory buildings and structures, general) – To allow for a trellis and masonry BBQ to be setback 1.1' from the side property line, where the Code requires a 5' setback pursuant to Sec. 47.192FF and to allow said BBQ and trellis to be 16' in length, where 12' in length is the maximum allowed pursuant to Sec. 47.19.2FF.

Paul Kissinger, owner, stated that they were remodeling their home, and were presently redoing their landscaping, including a BBQ at the site. He stated that detailed plans marked Exhibit "A" were submitted to the Board. He stated that they were informed that permits for their fence, the irrigation, and the paver area for the hardscape improvements were needed, along with a permit for the electrical work. He explained that at the time of the inspection for the paver areas, they were informed by the Inspector that their plans were not detailed enough for that work, along with the BBQ. He stated they were surprised because originally the City told them their plans were too detailed for the work to be done.

Mr. Kissinger explained that photographs of the BBQ were submitted to the Board. He stated that it was not an obstruction to their neighbor because it was behind their fence and was counter height. He stated further that they thought they were in compliance with their improvements, but were informed they were not. He stated that some of his neighbors were in attendance tonight, and letters had been submitted in support of this request.

Debbie Orshefsky, attorney, stated that the City had missed the opportunity to provide better directions regarding this project. She stated that if the Zoning individual had advised the Kissingers that they were in the setback, changes could have been made at that time.

Ms. Orshefsky stated that the first level of debate was whether this was a permanent accessory structure or an accessory structure and was 10' or 5' needed. She stated that if one read the Accessory Provisions in Section 47-19.2, this structure was more of an accessory use to the principal use. She stated that the next question was what was a BBQ most like - a shed, a spa, a freestanding shade structure, or a mechanical or plumbing piece of equipment, all of which would require a setback of 5'. She asked if it was considered more like a planter which required a 3' setback. She stated that it was more like a planter. She felt it was within this Board's discretion to decide what was the nature or extent of the nature of the variance required in this case. She further stated it was somewhere between 2' and 4' since they were setback 1'. She asked the Board to remember that there was 10' between the structure and the neighbor's residence. She stated that there were no adverse affects to the neighbors. She reiterated that staff had not provided correct instructions to the applicant regarding the project. She stated that such errors could be corrected by this Board through a 2' or 4' variance.

Robert Dunckel stated that everyone needed to remember that due to damaging weather, structures that were here today could be gone tomorrow. He asked if the applicant was willing to stipulate that this improvement would have the status of a legal non-conforming structure if the variance was granted in case it would be destroyed by 50% or more, then the variance would no longer exist. Ms. Orshefsky confirmed. She reminded everyone that the trellis was also included in the request.

The following disclosures were made by the Board. Don Zimmer stated that he had spoken with Paul Kissinger regarding this matter. Binni Sweeney stated that she also had spoken with Paul Kissinger.

Don Zimmer asked for some clarification as to what information had originally been submitted to staff. Mr. Kissinger explained what plans had been included. Don Zimmer stated that the plans really did not differentiate clearly as to what were new improvements and what already existed. He stated that he did not see elevations for the BBQ or the trellis in the materials submitted. Mr. Kissinger explained that a survey of existing conditions before the improvements had also been submitted.

Ms. Orshefsky stated that the person from zoning who reviewed the plans should have asked about the BBQ. She further stated that she was not sure if the details regarding height and other specifications were relevant, other than that a BBQ was proposed and the applicant had been informed that a permit was not necessary for its construction. She continued stating that the fundamental issue was that the BBQ was against the property line.

Don Zimmer further stated that the permit only stated "paving." He asked if the permit application had included all the other improvements that were to be constructed. Mr. Kissinger confirmed.

Scott Strawbridge disclosed that he also had spoken with Mr. Kissinger regarding this matter. He further stated that mistakes do happen, but the Kissingers had attempted to do the right thing. He reiterated that rarely are plans approved on the first submittal. Mr. Kissinger confirmed and remarked that his fence took a few attempts.

Gerry Jordan explained that Paul Kissinger was a landscape architect, and therefore, should have been aware that he could not build in the setback. Mr. Kissinger stated that he was aware that an accessory structure could not be built in the setback, but in reading the Code, he did not feel that the BBQ fell into that category. He explained that the posts for the trellis were located in the setback, along with the fence. He felt that a trellis was not an accessory structure such as a shed. Gerry Jordan reiterated that no structures could be built in a setback. He stated that a lot of information had been submitted, yet this minute detail had been missed.

Ms. Orshefsky reiterated that mistakes did happen all the time. She stated that she had attempted to review what a trellis was and how it was dealt with. She did not feel such information was "clear cut." Therefore, staff had to clarify such things. She stated that when someone made every effort to cover all the bases, and then the rug got pulled out, lawsuits were created. She stated that the government was held to a certain standard, and the Board was to evaluate whether this request should be granted. They had to determine what was right and fair. She felt what was right and fair was for this Board to approve the request as submitted.

Fred Stresau stated that it was his impression that a structure had to be reviewed by the Building Department in connection with wind loading. He stated that he did not have a problem with the BBQ, but he felt the trellis had to pass certain engineering standards. He further stated that this was a structure, and he asked if possibly the Plans Examiner had missed that this was a new trellis.

Don Zimmer stated that for years he objected to how the term "structure" was applied. He believed the book stated that a structure was anything manmade. He stated that the Code defined things that were manmade and were permitted in the setback. Therefore, he felt they could not always use the term "structure" as meaning permanent or movable. He stated that everything created was a structure. He stated that architects and engineers had to detail things such as these type of structures in their plans.

Ms. Orshefsky stated that if the Board granted the variances for the trellis and BBQ, then they would pursue after-the-fact permits. She added that if modifications had to be made to the trellis, they would be done. She stated that the electrical work for the BBQ had been permitted, and therefore, it was not an issue.

Don Zimmer stated that he did not object to the BBQ, but did object to the trellis. He asked if there could be two separate motions for the trellis and BBQ.

Gus Carbonell stated that he did not object to the BBQ. He asked if the trellis was on the front property line. Mr. Kissinger explained that the trellis was on the side of the property. Gus Carbonell further stated that it was easy for the Plans Examiner to miss the trellis.

Mrs. Kissinger stated that she had pulled a lot of permits in the past, and she had been told that they were supplying too much information. She stated that the individuals doing the "walk-thru" permits were very stressed. She explained what work they were going to do. She reiterated that staff had informed her that a permit was not necessary for the BBQ or the trellis.

Scott Strawbridge stated that the BBQ was considered an accessory structure.

Don Larson stated that he did not object to the BBQ, but had a problem with the trellis. He asked if the fence was 6' in height. Mr. Kissinger confirmed. Don Larson stated that he did not object to the trellis as long as it met Code requirements and passed all inspections.

Don Morris stated that whatever was built had to meet all Code requirements.

Chair Binni Sweeney stated that the adjacent neighbors were opposed to the request.

Mr. Kissinger asked to read the letter in opposition. He stated that the facts in the letter were incorrect.

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 Gerry Jordan to close the public hearing. Board unanimously approved.

Scott Strawbridge stated that the neighbor's letter stated that the fence was 8' in height. Mr. Kissinger corrected that statement and reiterated that the fence was only 6' in height.

Chair Binni Sweeney stated that she did not have a problem with the BBQ, but did object to the trellis because she believed it was a structure, and that a landscape architect should be familiar with the setback requirements.

Motion made by Fred Stresau and seconded by Don Larson to grant the requested variance in connection with the BBQ. Roll call showed: YEAS: Gus Carbonell, Gerry Jordan, Scott Strawbridge, Don Zimmer, Fred Stresau, Don Larson, and Binni Sweeney. NAYS: None. Motion carried 7-0.

Robert Dunckel clarified that counsel had stipulated during the presentation that if the variance was granted, they would treat the matter as a non-conforming use, and if the structure was destroyed by more than 50%, the variance would go away. He asked if that was included in the previous motion.

Fred Stresau clarified that his motion was to approve the application for the BBQ without the caveat regarding possible destruction.

Motion made by Don Zimmer and seconded by Gerry Jordan to approve the requested variance in connection with the trellis, including the caveat regarding 50% destruction. Roll call showed: YEAS: Scott Strawbridge. NAYS: Gus Carbonell, Gerry Jordan, Don Zimmer, Fred Stresau, Don Larson, and Binni Sweeney. Motion failed 1-6.

"For the Good of the City"

Introduction of New Member

Don Morris proceeded to introduce David Goldman as the new alternate to the Board of Adjustment. He advised the Board that Birch Willey was waiting to see who the new Chair was going to be for this Board so that he could address his letter to the proper person.

Fred Stresau reminded the Board that they needed to make all motions in the positive.

Robert Dunckel reminded the Chair that a roll call vote was not necessary for closing the public hearings.

There being no further business to come before this Board, the meeting was adjourned at approximately 7:51 p.m.

Chair

Binni Sweeney

ATTEST:

Jamie Opperee 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.
