

**BOARD OF ADJUSTMENT MEETING
CITY OF FORT LAUDERDALE
WEDNESDAY, MARCH 8, 2006 – 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		15-1
Don Larson	P		15-1
Fred Stresau	P		14-2
Scott Strawbridge	P		16-0
Binni Sweeney, Chair	P		13-3
Gerald Jordan	P		3-1
Birch Willey	P		3-0

ALTERNATES

David Goldman	P
Don Zimmer	P

STAFF

Robert Dunckel, Assistant City Attorney
Don Morris, Planning and Zoning
Yvonne Blackman, Planning and Zoning

Margaret A. Muhl, Recording Secretary
Sandra Goldberg, Court Reporting Service

GUESTS

Robert Lochrie	Don Israel
Deborah Acker	William McClellan
Robert Campbell	Joel Figer
Daniel Murphy	

CALL TO ORDER

Chair Binni Sweeney called the meeting to order at approximately 6:32 p.m. and proceeded to explain the purpose of this Board. Roll call was taken and a quorum was present. She then announced that the Board of Adjustment had jurisdiction to hear cases involving requests for variances, special exceptions, temporary non-conforming use variances, and appeals regarding

interpretations made by zoning officials. She further advised that the proceedings were quasi-judicial meaning they were similar to court proceedings. Witnesses would be sworn and limited time would be available for cross-examination. The Board would make all decisions based on evidence presented for each case which had to meet the criteria of the Code. She further explained that no hardship could be self-created, nor did economic hardships qualify. She stated that a majority of the Board plus one vote was necessary for granting a variance.

Chair Binni Sweeney then proceeded to introduce the members of the Board, and explain the procedure that would be followed during tonight's meeting.

APPROVAL OF MINUTES

Motion made by Birch Willey and seconded by Don Lawson to approve the minutes of the February 8, 2006 Board of Adjustment Meeting. Board unanimously approved.

In regard to the cases on tonight's agenda, the Board made the following disclosures: Don Larson stated that he had spoken with Robert Lochrie regarding Appeal No. 06-06. Gus Carbonell stated that he also had spoken with Robert Lochrie in connection with Appeal No. 06-06. Gerald Jordan stated that he had spoken also with Robert Lochrie. Scott Strawbridge stated that he had spoken with Mr. Taylor in connection with the case that was on the agenda for a rehearing. Fred Stresau stated that he had spoken with Robert Lochrie.

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

1. APPEAL NO. 06-06

APPLICANT: 1751 Marietta LLC

LEGAL: "Harbor Heights," P.B. 34, P. 33 The North 80 Feet of the South 240 Feet of Parcel "D"

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

STREET: 1751 SE 25th Avenue

ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47-5.31 (Table of Dimensional Requirements for the RS-8 District)

Requesting a variance to allow a side yard setback of between 4.45 and 3.40 for a single-family home where Code Section 47-5.31 requires a 5' side yard setback.

Robert Lochrie, attorney for the applicant, stated that this was a request for a variance from the side yard requirements of the City's single-family RS-8 zoning district's requirements. He explained this was an unusual request because they were not asking for a variance to build something, but so they could retain a previously constructed building at its present location.

Mr. Lochrie explained that the property was located in the Harbor Inlet area. He explained the property to the north of the subject site was zoned RMM-25 (multi-family buildings), to the west the property was zoned B-2 (multi-family buildings), and to the south and east the properties were zoned RS-8. He proceeded to show a photograph of the subject property.

Mr. Lochrie continued stating that the house was designed to meet the City's zoning requirements. It was designed to have 5' setbacks on the sides, but when a survey was done and the foundation

poured, it was discovered the building was located improperly on the site and had been shifted to the north. He explained that he was not suggesting that the City made an error because the surveyor had shown 5' setbacks between the foundation and the property line. He proceeded to distribute copies of the spot survey that had been conducted and signed off on. He explained that during the Certificate of Occupancy process, the City had been alerted of this discrepancy and a new survey had been conducted. He stated the building met all Code requirements, but at the east side of the property there was a 4.5' setback, and on the south there was a 5.5' setback. The encroachment increased as one went to the west. He proceeded to distribute copies of the revised survey dated December 2, 2005. He explained further that the original surveyor had made an error and possibly that could have occurred due to the shape of the site since it was a trapezoid.

Mr. Lochrie explained that the site was adjacent to the north to multi-family zoning which had more significant setbacks. He stated that to the south where the setbacks had been exceeded, there were single-family homes.

Mr. Lochrie continued stating that they have been working with the surrounding neighbors, and La Marietta Association was in support of this project. He also stated that a letter of support had been sent from the Harbor Inlet Homeowners Association, along with a letter from John Murphy, the property owner to the south, in support of this project.

Chair Binni Sweeney proceeded to open the public hearing.

Robert Gibbon stated that he was the proposed purchaser of the home that had been built, and had been under contract since October, 2005. He explained that La Marietta Association was in support of this variance, and other neighbors he had spoken with also had no objections. He explained that there would be more concern on their part if the structure was demolished and new construction occurred.

Deborah Acker, Board of Directors Member at La Marietta, stated that their Association has eight members and they feel this variance would not have any negative impacts on the neighborhood. She stated they would oppose if the structure was demolished and new construction built. They felt the setback was sufficient. She reiterated that they were in favor of the variance.

William McClellan, President of the La Marietta Co-op, stated that most of their homeowners were elderly and would be upset with new construction at the site.

Chair Binni Sweeney stated that a letter of objection had been received from one of the La Marietta homeowners. Ms. Acker explained that one of the absentee owners had originally objected to the variance, but now was in favor of it.

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

Motion made by Don Larson and seconded by Gus Carbonell moved to close the public hearing. Board unanimously approved.

Fred Stresau asked to see the photograph where the encroachment occurred on the side yard. He then proceeded to ask who owned and maintained the wall in the area. Robert Lochrie explained that there was a fence at the site and it had been erected by the applicant.

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

Fred Stresau stated that there had been cases before this Board where buildings had been constructed in a setback and were presented to this Board after-the-fact. He stated that in one case the matter had been appealed and taken to the City Commission who had advised the applicant to put in additional landscaping. He stated this applicant had attempted to mitigate the problem by putting in additional landscaping. Otherwise, he would have had to demolish approximately 35% - 40% of the building.

Robert Dunckel explained that a request for a re-hearing was a situation where an application for a variance or special exception had been denied by this Board, and the applicant had filed a motion for a rehearing. The Board was constrained to grant such a request for re-hearing in two circumstances. The first being that the rehearing was necessary in order to correct an error, and the second circumstance was that a rehearing was necessary so the Board could be presented with new evidence or information for their consideration, which had not been previously submitted.

2. 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 plated lots. Lots are presently merged because they are under single ownership.

Gus Carbonell stepped down from the discussion on this matter due to a conflict of interest. Don Zimmer, alternate, sat in his place.

Robert Lochrie, attorney for the applicant, stated that this was a request for a rehearing. The request was to allow for a separation along lot lines of two lots. He stated that the City's zoning code provided for two elements regarding lots. The first was the minimum lot width and the two lots in question did meet such requirements. The second item was the minimum lot area, and in this case due to the shortness of the depth of the subject lots, each lot was short 500 square feet.

Robert Lochrie stated that regarding new information, one of the important facts was that there were significant lots in the area that were already developed or being developed in this manner. He further stated that in researching the lots, they had discovered the ownership of the lots and how it affected the outcome. Secondly, he stated that in looking at the section of the Code, the old Code stated (pre-1997) that in situations where the lot coverage size had not been met but had been recorded, the lots could continue being utilized as a single lot. Post 1997, the Code eliminated that language. He added that there was a specific list of elements which needed to be brought to the attention of the property owners. Furthermore, he stated that no one came to the meeting from the neighborhood, probably due to the recent hurricane, but tonight some members were present and believe it is important for them to state their perspective in regard to this matter.

Robert Lochrie stated they were requesting the opportunity to appear before this Board at their next meeting, and provide all the new evidence for their consideration and have this matter reheard.

Chair Binni Sweeney proceeded to open the public hearing.

Daniel Murphy, 910 SW 10th Terrace, stated that he wanted to urge this Board to vote in favor of the rehearing. He added that he also owned the property at 1801 – 1811 SW 23rd Street.

Robert Campbell stated that he owned properties at 1811 SW 23rd Street and 2009 SW 18th Avenue, and did not oppose a rehearing.

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

Gerald Jordan stated that the lots were 500 square feet too small, and tonight they were to decide whether the Board should rehear the matter. Scott Strawbridge stated that since there was new evidence in this case, what was the proper procedure that the Board should follow.

Robert Dunckel stated that the Board needed to review whether the new information and evidence was discoverable through reasonable effort.

Chair Binni Sweeney asked if the vote would require a super majority. Robert Dunckel explained that the motion required an absolute vote of five which turned out to be the same as a majority plus one for this Board.

Motion made by Fred Stresau and seconded by Gerald Jordan to approve the issue of a rehearing. Roll call showed: YEAS: Don Larson, Ed Curtis, Birch Willey, and Don Zimmer. NAYS: Scott Strawbridge, Fred Stresau, and Binni Sweeney. Motion failed 3-4.

Gus Carbonell rejoined the Board for the remaining portion of the meeting.

3. **APPEAL NO. 04-41**

APPLICANT: Jon L. & Susan D. Shebel

LEGAL: "Rio Vista Isles Unit 3," P.B. 7, P. 47, Block 29,
Lot 7

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

STREET: 1425 Ponce De Leon Drive

ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47-19.3G (Boat slips, docks, boat davits, hoists and similar mooring devices) – Requesting a variance to permit a one (1) ft. setback from both side property lines where the Code requires a minimum five (5) ft. setback from the property line.

Dan Taylor, on behalf of the applicant, proceeded to show photographs of the site. He stated that new evidence had been discovered in this case. He continued stating that the applicant purchased this small 50' lot and had a small boat, but then had purchased a larger 48' boat. The neighbor to the north agreed to the situation for nine years, and there had been a 1' setback on both sides. Now, the neighbor was not in agreement and the applicant was requesting a variance. He further stated that the new evidence had not been discoverable at the time of the original hearing, which was that the neighbor to the south offered to purchase an interest in the boat. Therefore, the boat would encroach onto both properties. He continued stating that the application also included an amendment requesting a temporary non-conforming use. He added this was not a life-safety issue, but an aesthetic one.

Chair Binni Sweeney asked if it was appropriate for the applicant to make a request for a temporary non-conforming use at a rehearing. Robert Dunckel stated that was not the proper venue. Fred Stresau clarified that the applicant wanted to add such request to his application if a rehearing is approved. Robert Dunckel stated that they are not presenting an argument for a temporary non-conforming use tonight, but if the rehearing was granted, then they would attempt to amend the application.

Joel Figer stated that he lived directly across from the applicant. He continued stating that the applicant used their boat very little and were not a problem to the neighborhood, and he did not feel the variance would be a hardship on anyone in the area.

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 Birch Willey to close the public hearing. Board unanimously approved.

Gerald Jordan stated that when he served on the Code Enforcement Board, individuals were cited for turning their garages into room additions years back. Therefore, the matter that there had been a nine-year agreement did not have any effect on the situation. He felt they were walking into a non-conforming use and he had a problem with that, and he wanted his neighbors to meet the required setbacks.

Scott Strawbridge clarified that a time limit of one year was placed on temporary non-conforming uses. Robert Dunckel confirmed and stated that if the Board granted the motion for a rehearing that would vacate the original denial of the request for a variance, and the applicant would then return and present their case for the variance. The variance itself was not limited for one year, but as part of the advocacy and Council's attempt to market this, the applicant would couple that request with an application for a temporary non-conforming use permit which was limited to 12 months, in hopes the Board would settle for a lesser relief other than the full-blown variance. He stated that in considering the motion for rehearing, it had to be based upon new evidence that was not discoverable. Temporary non-conforming use permits have been in the Code for a long time, and therefore, were readily discoverable and would not come under the new evidence. He further stated that since the neighbor would become a co-owner in the vessel and could have it moved fell under the auspices of new evidence.

Scott Strawbridge stated that if the applicant decided to waive their request for a rehearing and submit an application for a temporary non-conforming use, could that be done. Robert Dunckel explained that the applicant could request a continuance on the motion for a rehearing which would enable them to file for a temporary non-conforming use permit at the next hearing. He stated there was a slight problem since the denial stated an applicant could not return and request the same relief in two years. Therefore, the applicant would probably be precluded from doing that.

Scott Strawbridge further asked if relief was granted would it be done so to both property owners. Robert Dunckel confirmed, and stated that the two properties could be joined as unity of title, but he believed that was a "poison pill."

Birch Willey stated that since they were discussing new evidence, he felt that was pushing the button more because they were now requesting a new deal since the old deal had been denied.

Motion made by Birch Willey and seconded by Don Larson to grant a rehearing of this case. Roll call showed: YEAS: Birch Willey. NAYS: Gus Carbonell, Gerald Jordan, Scott Strawbridge, Fred Stresau, Don Larson, and Binni Sweeney. Motion failed 1-6.

"For the Good of the City"

Non-Conforming Uses

Fred Stresau reminded the Board of the unresolved problem with the Parking Corporation of America in regard to a temporary non-conforming use. He reiterated that he would never again vote for a non-conforming use because it could not be enforced. Chair Binni Sweeney agreed.

Gerald Jordan stated they were hard to deal with and dragged on forever.

Scott Strawbridge reiterated that a non-conforming use had been granted for a new project, but it was past the 12-month time period and the project hadn't even begun. Chair Binni Sweeney stated that this Board had granted some extensions in the past, and new construction projects were a different matter.

Gus Carbonell stated that the School Board had been granted a one-year temporary non-conforming use and the school was completed, and a new parking lot was constructed and never used. He further stated that they had a parking agreement with the church across the street.

Don Morris stated that he would check on that matter and report back to the Board.

Robert Dunckel further stated that in regard to temporary non-conforming use permits, he wanted to have the Board consider whether that portion of the Code should be repealed. He suggested that this matter be discussed at a future Board meeting.

Chair Binni Sweeney stated that she felt it depended on what type of temporary non-conforming use was involved.

Fred Stresau further stated that the Board should be cognizant of the abuses involved when individuals make such requests.

Robert Dunckel stated they had to review how it was written because he believed the language should be tightened.

Gus Carbonell stated that the subject of surveys keeps arising. Since land was expensive, everyone wanted to build to the property line. He stated there were two types of surveys in this City. One was a real estate transaction survey which was done in connection with title work which was more expensive but more accurate. He stated that the City should require a better survey before construction was permitted. He explained that he provided a checklist and unless all those items are checked-off, he would not even begin a project.

Robert Dunckel stated that they should also make sure that surveys were abstracted for easements, utilities and other matters. He explained that the City did not require that the surveys be abstracted for easements, but the prudent attorneys and architects should make such requirements.

Chair Binni Sweeney asked what type of action could be taken by this Board to make such a recommendation to the City Commission. Robert Dunckel stated that the Board's minutes served as a source of information for the Commission.

Don Morris stated that during the DRC process, the City did receive abstracted surveys, but sometimes on smaller projects they were not required.

Scott Strawbridge stated that the language regarding non-conforming uses needed substantial tweaking, and he did not want it to be eliminated. He felt some tweaking could be done in connection with the time involved and money. He asked if they would be able to fine the violators and a time limit be placed on that violation.

Robert Dunckel stated that this was not in the Board's purview. Scott Strawbridge asked if there was a way to short-circuit the typical code enforcement process. Robert Dunckel stated that a bond could be involved. He added that possible there could be a letter of credit.

Fred Stresau reiterated that if the use was granted for only 12 months, he felt that sent a signal to future applicants that they would be held to a shorter period of time, and if they could accomplish what they needed to do in 12 months, then they needed to seek further solutions.

Don Larson stated that he would prefer to have the applicant reappear before this Board.

Sign Ordinance

Chair Binni Sweeney asked about the status of the sign ordinance.

Don Morris advised that a consultant had been hired, but the product which had been prepared was deficient, and the City was dealing with the matter.

Fred Stresau asked for Planning and Zoning to provide an update on that matter.

Windmill Status

Birch Willey asked about the status of the windmill.

Don Morris explained that legal issues were involved, but they were still planning on April for this matter.

Robert Dunckel stated that there was a statute on renewable energy sources which stated that ordinances could not be adopted that would prohibit these items. In this case just because setbacks and height limitations were involved that was not a prohibition. He believed the applicant felt he did not have to go before the Board of Adjustment and could build what he desired due to the existence of the statute.

Motion made by Don Larson and seconded by Gerald Jordan to adjourn the meeting. Board unanimously approved.

There being no further business to come before the Board, the meeting was adjourned at approximately 8:00 p.m.

Chair

Binni Sweeney

ATTEST:

Sandra Goldberg For Margaret A. Muhl,
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.
