

**Board of Adjustment Meeting**  
**City of Fort Lauderdale**  
**Wednesday, June 14, 2006 – 6:30 P.M.**  
**City Hall**  
**City Commission Chambers – 1<sup>st</sup> Floor**  
**100 North Andrews Avenue**  
**Fort Lauderdale, Florida**

<b><u>Board Members</u></b>	<b><u>Attendance</u></b>	<b>Cumulative 2006</b>	
		<b><u>P</u></b>	<b><u>A</u></b>
1. Gus Carbonell	A	4	2
2. Gerald Jordan	P	5	0
3. Don Larson	P	5	0
4. Scott Strawbridge	P	5	0
5. Fred Stresau	P	5	1
6. Birch Willey	A	5	1
7. Binni Sweeney, Chair	A	4	2

**Alternates**

David Goldman	P
Don Zimmer	P

**Staff**

Robert Dunckel, Assistant City Attorney  
Don Morris, Planning and Zoning  
Sandra Goldberg, Recording Secretary

**Guests**

Wilson Atkinson	Margaret Nusser
Dennis Nusser	Jack Ragland
Melinda Urschaltz	Kevin Boyd
Jim Kevern	Karim Admanko
Natasha Talib	David DeCespedes
April Donelson	Mark Aril
Steve Tillbrook	Steve Wallace
Jennifer Wallace	Malcom Palton

Bryan Pheghry	Raul Lozano
Gilberto Parra	Kevin Knight
Victor Toledano	John Vaughn
Glen Masser	Gaylord Wood
Sara Horn	Clyde Horn
Patricia Cohen	Edward Williams
Scott Park	David Weeks
Wolfgang Mohl	Kaiser Talib
Pat Mayers	Robert Steinloff
Mark Bud	George Counts
Jack Freedman	Mohammed Ajadin
Mike Mentura	Richard Williams
Tammy Crawford	Andy Ziffer
Rebecca Covey	

### **Index**

<b><u>Case Number</u></b>	<b><u>Applicant</u></b>	<b><u>Page</u></b>
06-11	Challenge Warehousing, Inc.	<a href="#">2</a>
06-04	Kaizer Talib	<a href="#">5</a>
06-16	High Point Group, II, LLC	<a href="#">13</a>
06-17	Steve and Jennifer Wallace	<a href="#">14</a>
06-18	Old Florida Corp.	<a href="#">15</a>
06-19	Michael Morabito	<a href="#">16</a>
06-20	V&L Associates, LLC	<a href="#">17</a>
06-24	Casa Real Investments, LLC	<a href="#">19</a>

### **Call to Order**

Vice Chair Larson called the meeting to order at 6:35 P.M., 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 Mr. Stresau and seconded by Mr. Zimmer to approve the minutes of the May 2006 Board of Adjustment Meeting. Board unanimously approved.

Board members disclosed communications they had regarding agenda items. Mr. Stresau announced that he had a conflict with item 2. Mr. Dunckel explained that a vote of majority plus one was required to grant a variance. If only five members were voting, this would require a four out of five vote. Therefore, the applicant for item 2 might wish to request a continuance.

**All individuals wishing to speak on the matters listed on tonight's agenda were sworn in.**

Agenda item 2 was taken first because the respondent for item 1 was late.

**2. APPEAL NO. 06-11** (*Deferred from May 10, 2006 Meeting*)

[Index](#)

**APPLICANT: Challenge Warehousing, Inc.**

**LEGAL: "Croissant Park", P. B. 4, P. 28, Block 9, Lots 7-15**

**ZONING: B-3 (Heavy Commercial/Light Industrial District).**

**STREET: 1217 SW 1<sup>st</sup> Avenue**

**ADDRESS: Fort Lauderdale, FL**

**APPEALING: Sec. 47-18.29.A.5 (Self-storage facility)**

Requesting a variance to permit a non-conforming existing structure to setback 1' 8" from the front property line (SW 1<sup>st</sup> Avenue), where Code requires a 20 (twenty) foot landscape buffer area along S.W. 1<sup>st</sup> Avenue.

Mr. Wilson Atkinson, attorney for the contract purchaser, informed the Board that the current use of the property was a bonded distribution warehouse that was currently code-complaint, even though a portion of the front wall was immediately adjacent the sidewalk [had 0 setback]. The self-storage warehouse for which his client intended to use the property was a less intensive use, but code stated specifically that self-storage businesses must have a 20-foot front setback. Mr. Atkinson presented photos of the property and stated that with the exception of the northeast corner, the property had setbacks over 20 feet. Mr. Atkinson had discovered that setback variances had been granted to other businesses in the immediate area.

Mr. Atkinson noted that tractor-trailers now using the property were often forced to park in the street, causing a traffic hazard, and reiterated the fact that a self-storage business was a less intensive use. Mr. Atkinson noted that the landscape area on the property would be appreciably increased when the property was used for the self-storage business as well. Mr. Atkinson explained that the entire electrical service, the first floor concrete stairway, emergency fire exits and support columns were all located within the front 20 feet of the building, making it unfeasible to remove the front 20 feet of the building to comply.

Mr. Strawbridge asked if this meant the hardship was economic; Mr. Atkinson said the hardship was the conflict between the planned use and the specific setback requirement. Mr. Atkinson noted that his client did not create the hardship, and his use of the building would be in greater harmony with the neighborhood and lessen traffic issues.

Mr. Goldman asked if the 11,000 square feet of proposed landscape area was in addition to the required amount; Mr. Atkinson stated that the total was greater than code required. Mr. Atkinson described for Mr. Zimmer where the existing building would remain and where the addition would be located. Mr. Michael Madfis, architect for the applicant, explained to Mr. Zimmer that the large

asphalt area had been used for outside storage; he did not know if that area was originally permitted for landscaping, as Mr. Zimmer suspected. Mr. Madfis confirmed for Mr. Zimmer that Terry Burgess approved the site for two loading zones for this use. Mr. Zimmer remarked that none of the loading zones could accommodate a semi-trailer. Mr. Madfis said the concept of this building was for a more urban use, meaning that large, perimeter-loaded storage units were not included. Mr. Zimmer argued that a semi trailer could not access the loading area. Mr. Zimmer said he wished he had seen a site plan, and listed his objections, based on the renderings:

- ❖ Lack of controlled access
- ❖ Lack of lobby
- ❖ Ground floor plan does not show electrical equipment to which Mr. Atkinson referred
- ❖ Plan does not show stairs leading outside at ground level

Mr. Madfis said the plans were submitted with the application, and confirmed that the office space was located in the front portion, with the main entrance onto the sidewalk. Mr. Atkinson agreed to a continuance if Mr. Zimmer wanted more time to review the plans.

Mr. Dunckel asked Mr. Morris what was triggering compliance with a new code provision in this case. Mr. Morris explained that self-storage businesses were specifically required to have 20-foot setbacks. He confirmed that this was considered a change of use. Mr. Atkinson disagreed, and said he had submitted an administrative request and “did not wish to get into an argument with the zoning department over that technical issue.” Mr. Madfis explained that enlargement of a non-conforming structure was allowed, provided the enlargement was within the current zoning requirements, but the change of use triggered the nonconformity.

Mr. Dunckel stated that the ULDR provided a mechanism for appealing the interpretation of a zoning official. Applying for a variance amounted to an admission that they did not comply; Mr. Dunckel felt that if they ended up in court, Mr. Atkinson may be estopped from using the argument unless he requested a continuance, and coupled the request for a variance with the interpretation issue.

Mr. Madfis reiterated that variances had been granted in the area for similar concerns, and variances had been granted in the City for other self-storage units for similar issues and hardships. Mr. Atkinson said he felt this was a “classical variance.” He thought the new use was an improvement to the neighborhood and would be better maintained than the current use.

Mr. Strawbridge asked if the applicant could appeal the zoning interpretation if the application for the variance was denied. Mr. Dunckel stated that he could, but he advised the Board to remember for the purposes of their vote that the request was being made for something that the code did not allow. If the applicant appealed the zoning interpretation and that interpretation were reversed, the applicant could build what he wanted.

Vice Chair Larson opened the public hearing; there being no one from the public wishing to speak on the item, discussion was brought back to the Board.

Mr. Jordan said he could not see the hardship. He confirmed that the applicant could still appeal the zoning interpretation. Mr. Goldman felt that the issues on this property were not unique, and he felt the majority of the criteria for granting a variance were not met.

**Motion** made by Mr. Zimmer, seconded by Mr. Jordan to grant the variance. In a roll call vote, the motion failed 0 – 5.

**1. APPEAL NO. 06-04** (*Deferred from February 8, 2006 Meeting*)

[Index](#)

**APPLICANT: Kaizer Talib**

**LEGAL: "Victoria Park", P. B. 15, P. 52, Block 13, the Northerly 25.0 Feet of Lot 5,  
All of Lot 4 and the Southerly 19.0 feet of Lot 3**

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

**STREET: 450 Victoria Terrace**

**ADDRESS: Fort Lauderdale, FL**

**APPEALING: Sec. 47-5.31 (Table of dimensional requirements for the RS-8 district)**

Requesting a variance to install a wind-mill (Wind Generator) at 55'-0" height where the maximum height of a structure in the RS-8 District is limited to 35 feet.

Mr. Dunckel noted that the Board's packet included a letter from the applicant that included an analysis of a lawsuit: the City of Ormond Beach versus the State of Florida. Mr. Dunckel distributed a copy of Florida Statute 163.04 and a copy of the Ormond Beach case. Mr. Dunckel noted that the applicant's conclusions differed from Mr. Dunckel's regarding the statute and the case. The applicant stated that on appeal, the fifth district court of appeal held that "a City may not restrict or prohibit the construction and maintenance of a renewable energy source." Mr. Dunckel quoted from subsection 1 of 163.04: "Notwithstanding any provision of this chapter or other provision of general or special law, the adoption of an ordinance by a governing body, as those terms are defined in this chapter, which prohibits, or had the effect of prohibiting the installation of solar collectors, clotheslines, or other energy devices based on renewable resources is expressly prohibited."

Mr. Dunckel stated that a trial judge granted a variance for a windmill, and the court reversed this with regard to height and side yard setbacks. The court found that the applicant "must still abide by the setback and height restrictions of the zoning ordinance, "unless he can demonstrate the requisites for a variance, i.e., that the variance was needed so that the windmill can operate satisfactorily." Mr. Dunckel continued that the applicant was not entitled to "optimum" performance, if something less than that would produce "satisfactory" performance of the windmill.

Since this decision in 1983, the state legislator had amended Section 163.04 with subsection 4: "The legislative intent in enacting these provisions is to protect the public health, safety and welfare by encouraging the development and use of renewable resources in order to conserve and protect the value of land, buildings and resources by preventing the adoption of measures which will have the ultimate effect, however unintended, of driving up the costs of owning and operating commercial or residential property beyond the capacity of private owners to maintain." Mr. Dunckel noted that this subsection was added subsequent to the Ormond Beach case, therefore the Ormond Beach case was not controlling. He felt a pivotal issue in this case was whether the denial of the variance would have the effect of driving the cost of owning or operating commercial or residential property beyond the capacity of private owners to maintain. If the Board felt this was the case, they should go back to subsection 1 and to the Ormond Beach case, which stated that the applicant was only entitled to "reasonable" use.

Mr. Dunckel reminded the Board that the Board could not accept the testimony of a layperson that was an opinion. Testimony concerning optimum versus reasonable use, and the effect on the cost of operating the property would be confined to experts. The Board should refer back to the criteria in their ordinance for granting a variance, including:

- ❖ Not granting the variance would deprive the owner a substantial property right enjoyed by others in the same district
- ❖ The unique hardship is not self-created by the applicant or his predecessors
- ❖ The variance is the minimum that would enable reasonable use of the property and the variance would be in harmony with the intent of the ULDR and the use would not be incompatible with adjoining properties and neighborhood

Mr. Kaizer Talib, the applicant, said he had been researching solar and wind energy for 25 years. Mr. Talib felt it important for everyone to contribute to the creation of renewable energy sources. Mr. Talib continued that the additional height was needed for the windmill to reach above the neighboring buildings and trees to access the wind. Mr. Strawbridge wanted to know how an analysis would be performed to determine the impact of nearby buildings and trees on wind. Mr. Talib explained that this was not necessary; one could look across the canal from his home and see the rows of 5-story buildings that were being constructed that would obviously interfere with the wind. Mr. Talib that he had received advice from windmill manufacturers regarding the height, and noted that the windmill would function even better on a 100-foot pole.

Mr. Talib presented photos of the proposed windmill and explained that the blades were only six to seven feet long, so the total diameter was only ten to twelve feet. Mr. Talib noted that if the generator was located higher, it was also more out of sight, and any sound would be reduced at ground level. He explained that because of the increased wind in the waterfront area, the generator did not need to be as tall as it would if it were located inland, where it might need to be 100 feet tall in order to operate effectively.

Mr. Talib noted that there had been some concern that the blades could break off; he explained that the fiberglass material of which they were constructed was over ten times stronger than the plastic used in most small wind turbines, and had a breaking strength exceeding 100,000 psi, twice as strong as normal steel. Mr. Talib explained to Mr. Strawbridge that he would be required to prove to the Engineering and Building Department that it met code requirements.

Mr. Talib explained that a generator that could withstand the required wind load could be custom-built. Vice Chair Larson asked if noise tests had been conducted. Mr. Talib explained that David Wicks would explain the sound levels to the Board as part of his presentation.

Mr. Dunckel confirmed that Mr. Talib was an architect and general contractor, but not an engineer. Mr. Talib explained that he had a degree in tropical architecture, which concerned how sun and wind affected buildings. Mr. Talib said he had not conducted a wind shadow study, but a book he authored included information on how wind shadows affected buildings.

Mr. Goldman asked why Mr. Talib decided on a height of 55 feet. Mr. Talib explained that most of the buildings in the RMM25 were 55 feet tall in the area. Mr. Talib stated that the wind generator should produce 25 – 30% of the house's energy needs. If it were only 30 feet tall and below the wind shadow line, Mr. Talib felt it would produce nearly zero percent. He said David Weeks would explain this later as well. Mr. Talib explained that the benefit of utilizing wind generator was not to make himself richer or to save a lot on utility bills. He felt that for the good of the environment, it was very important to get involved in alternative sources of energy and the United States was currently lagging behind other countries in developing and utilizing alternative energy technologies.

Mr. Zimmer suggested that Mr. Talib consider photovoltaic cells for his building. He thought the wind generator would not be worth the little wattage it would generate. Mr. Talib stated that most of his southern roof would be covered with photovoltaics, which would generate 50% of the home's energy needs. Mr. Talib explained that his home was a system of low energy need appliances and alternative energy sources. He had a solar water heater and pool heater, an induction cook top in the kitchen, and an air conditioning system that used half the energy of a conventional system.

Vice Chair Larson was concerned about hurricane force winds. Mr. Talib said the pole could be lowered and the blades locked during high winds; he reiterated that the Building Department would need to approve the design for wind tolerance. Vice Chair Larson was worried that the blades might "just come off because of a malfunction, a bolt breaks or something like that." Mr. Talib reported that windmills were located in tornado-prone areas and had survived.

Mr. Strawbridge asked Mr. Talib to respond to a letter he had received "not from an expert", that stated, "manufacturers of windmills, the wind power industry and the U.S. Department of Energy have all stated that windmills of the type proposed are not appropriate in urban areas where

neighbors are close by.” Mr. Talib stated that this letter was an opinion. Noisy air conditioning units that occasionally flew off during hurricanes were routinely attached to roofs and kept in side yards. He felt that there was fear about the wind generator because it was unfamiliar.

Mr. Dunckel confirmed that Mr. Zimmer was an architect; Vice Chair Larson was a journeyman carpenter and general contractor; Mr. Strawbridge was a state-certified building contractor; Mr. Jordan was a state-certified general contractor; Mr. Goldman was a certified planner and Mr. Stresau was a landscape architect.

Ms. Natasha Talib, Mr. Talib’s daughter and attorney, referred to Section 163.04, and explained that subsection 4 provided, “The legislative intent in enacting these provisions is to protect the public health, safety and welfare by encouraging the development and use of renewable resources in order to conserve and protect the value of land, buildings and resources by preventing the adoption of measures which will have the ultimate effect, however unintended, of driving up the costs of owning and operating commercial or residential property beyond the capacity of private owners to maintain.” She felt that the subsection’s intent was to protect the health, safety and welfare of the public at large, and should not be interpreted to apply to the applicant’s capacity to maintain the cost of his residential property. She also disagreed with the interpretation that subsection 4 operated as a conditioned precedent that an applicant must fulfill before subsection 1 could apply.

Regarding the Ormond Beach case, in which the owner requested a side yard variance to place a windmill within two feet of his north property line, and a height variance to exceed the maximum height by 16 feet. Ms. Talib felt this case was right on point. The Board of Adjustment had denied the variance and the homeowner had sought de novo review in the circuit court, which granted the variances. The City then appealed, and the district court of appeal affirmed the judgment of the trial court, in that, “ a city may not restrict or prohibit the construction and maintenance of the renewable energy source.” In so holding, Mr. Talib believed that the court held that Section 163.04 eliminated the need to prove a hardship as a basis for a property owner’s desire to install an energy device. The court stated that the homeowner must abide by setback and height restrictions unless he could demonstrate that a variance was needed so a windmill could operate satisfactorily. The homeowner was required to demonstrate that the variance was required for the reasonable use and performance of the windmill, i.e., what location and height would produce satisfactory results. Ms. Talib stated that Mr. Talib was requesting a variance to exceed the height limit by 20 feet to avoid the wind shadows from neighboring buildings in order to obtain satisfactory results.

Mr. Talib said the City had sent two experts to his house to consider if the height variance was needed. Mr. Karim Admanko and Mr. Fred Mayer had visited Mr. Talib’s house and stated they would recommend that the wind generator needed the extra height to operate. Mr. Talib had also explained that the windmill would be attached to the tie beams of the house. The inspectors had said they supported the location and height of the wind generator. Mr. Dunckel said that neither of these individuals was present, in fact one was out of town. He had spoken with both of them, and



Mr. Dunckel said, "they had some general concurrence based upon the materials that you submitted to the Board. That's what their analysis was predicated upon. I can't necessarily confirm everything you've said; the only way to do that would be to have them to testify here tonight."

Mr. Talib asked if Mr. Morris or anyone else had received a report from them, and Mr. Dunckel said, "I think Mr. Morris was in the room when they reported to us both, so I think he would confirm that that's what was said." Mr. Dunckel confirmed that they concurred with Mr. Talib's analysis of wind shadow.

Vice Chair Larson proceeded to open the public hearing.

Mr. David Weeks, Fort Pierce, stated he was a telecommunications designer, but admitted he was not an expert or an engineer. Mr. Weeks stated Mr. Talib specialized in "green building", and felt that demand was increasing for green buildings. Mr. Weeks presented photos of Mr. Talib's property and his neighbor's properties, pointing out a sailboat mast that was approximately 50 – 60 feet tall. Mr. Weeks remarked that wind was one renewable resource available to Florida residents, and was the cheapest renewable form of energy to harness. Mr. Weeks referred to a graph depicting the effects of fossil fuels on greenhouse gasses. Mr. Jordan asked if Mr. Weeks lived a "densely residential neighborhood" and asked if there were any windmills in his area. Mr. Weeks said they "hadn't gotten that far." He believed that people would eventually be lined up to get wind power.

Mr. Wolfgang Mohl explained that he was in the alternative energy business, concentrating on solar, photovoltaics, and wind energy. He had promoted and built the first solar house in Mexico, the first windmill-powered houses in Columbia, Venezuela and several islands. He had lived in a house that relied solely on wind power and photovoltaics for 17 years. Mr. Mohl felt that Mr. Talib was a pioneer and was sad that "these little details" were so complicated for them to approve. He noted the surge in the installation of diesel and gasoline-powered backup generators since the last hurricane season, and remarked that these were "500 times as dangerous as ... any wind-powered system," yet no one opposed these.

Mr. Stresau asked Mr. Mohl whether most of the windmills in the United States were located in "single-family neighborhoods where the density is four to five to six units to the acre, or aren't they more out in the country, out in the open spaces, whether it's Montana or Wyoming or southern California or Arizona? Those are the places that really we see the windmills, isn't that correct?" Mr. Mohl agreed. Mr. Stresau felt that one reason the state had passed this statute was to "enable people that were beyond the grid and that couldn't afford a \$40,000 cost to pay FPL to travel eight miles with a power line to service just their home." Mr. Mohl agreed, but noted that times had changed. He stated that "twenty years ago, it would have been very difficult to compensate for the cost, not even in ten or fifteen years, because our cost for basic products like oil was about one third of the cost which it is now."

Ms. Margaret Nusser said she was concerned about the impact of the windmill on local ibises. She described the flight pattern of the birds, and said she was concerned that the windmill would impede their flow and kill them. She thought there might also be a threat to two peregrine falcons and osprey that occasionally visited the neighborhood.

Mr. Dennis Nusser remarked that at FPL's windmill farm, located in West Virginia, thousands of bats that inhabited the nearby caves had been killed by the windmills. Mr. Nusser referred to a chart showing that a windmill of the size Mr. Talib was proposing would generate only 75-kilowatt hours per month at 8 miles per hour. Mr. Nusser felt there was not enough wind to make the windmill feasible. Mr. Dunkel asked Mr. Nusser what expertise he had. Mr. Nusser stated he was a state-certified general contractor and former project manager.

Mr. Jack Ragland said he commended Mr. Talib for his efforts, but felt this particular device was not suitable. Mr. Ragland quoted from some information he had retrieved from the U.S. Department of Energy Consumer's Guide to Small Wind Electrical Systems, describing the criteria for determining if wind power was a viable alternative for a homeowner:

- ❖ The property has a good wind source
- ❖ The home is located on at least one acre of rural land
- ❖ Local zoning codes allow wind turbines
- ❖ The bottom of the rotor blades is at least 30 feet above any obstacle within 300 feet of the tower

Mr. Ragland referred to a wind resource map, indicating that south Florida wind classification was marginal. He noted that Mr. Talib's home was in a residential urban area with tall trees and buildings and a 4-story condo across the canal.

Mr. Ragland then quoted criteria from the U.S. Department of Energy Site Analysis for Wind Generators Part II:

- ❖ The wind generator must be at least 30 feet above anything within 500 feet
- ❖ A rotating generator produces a harmonic, perceived as vibration and should never be attached to a home
- ❖ If downwind of obstacles, compensate with a taller tower

Mr. Ragland felt that Mr. Talib's wind generator required a taller height to compensate for the obstruction-induced wind turbulence, and this was an unacceptable height for this residential neighborhood.

Ms. Melinda Urschaltz said, "this proposed windmill threatens to destroy the very charm of the neighborhood that first attracted me years ago." She felt it would not be aesthetically pleasing and felt it would be visually unsettling, noisy, disruptive, unsightly, and a danger to the bird population. She also thought the windmill would "probably require a red blinking light to make it

visible to air traffic," and could hamper law enforcement helicopters in the area. Ms. Urschaltz said she was frightened by the thought of the windmill falling and closing the street. She asked the Board to consider how the windmill was not in keeping with the unique character of Victoria Park.

Mr. Kevin Boyd felt the windmill was not compatible with the neighborhood and asked the Board to deny the variance.

Mr. Jim Kevern presented a letter from the Victoria Park Civic Association, explaining that this subject was discussed by the general membership at their February meeting and the membership had voted unanimously to oppose the variance request. Their decision was based on their complaint that such a dense area was an inappropriate setting, and that guidelines for equipment of this magnitude should be incorporated in the Master Plan.

Ms. Pat Mayers said she felt this was totally inappropriate in their residential area.

Ms. Karen Malorem said she feared if Mr. Talib were granted the height variance, this would set a precedent for others requesting "other objects" at 55 feet.

Mr. Dunckel asked Mr. Nusser if he had a background in energy efficiency due to his prior employments. Mr. Nusser stated there were no other windmills in Victoria Park. Mr. Dunckel asked Mr. Nusser to consider subsection 4 of Section 163.04, and asked if property owners in Victoria Park "lacked the capacity to maintain their property without windmills." Mr. Nusser felt most people in Victoria Park could afford their FPL bills.

Mr. Karim Admanko, Design Manager for the City of Fort Lauderdale, explained to Ms. Talib that he was a civil engineer with a professional engineer license and twenty-five years experience. Mr. Admanko said a project engineer, Fred Mayer, and expert on electrical generators and windmills, had reviewed Mr. Talib's materials, but he was not present. They had conducted a site inspection to determine how the structure would be installed, and wind load effects. Mr. Admanko responded to Ms. Talib's question that they had both agreed that this was a good design for an alternate source of energy and recommended the concept to the City. Mr. Admanko said he was not an expert and could not answer whether the windmill would operate satisfactorily without a height variance. He said he advised Mr. Talib to consult a structural engineer regarding attaching the pole to his home. Mr. Admanko said he had no opinion regarding whether the windmill would reduce the cost of maintaining the property.

Ms. Talib requested a continuance until Mr. Mayer could be present to testify. Mr. Dunckel reminded the Board that the applicant had chosen to go forward this evening.

Mr. Dunckel asked Mr. Admanko how many times in his eighteen years with the City he had consulted the zoning code and Mr. Admanko said "none." He admitted he had no familiarity with variance requirements and had no opinion whether one should be granted.

**Motion** made by Mr. Jordan, seconded by Mr. Zimmer, to close the public hearing and bring the discussion back to the Board. Board unanimously approved.

Mr. Dunckel advised the Board to consider Ms. Talib's request for a continuance. He remarked that Mr. Mayer would probably not add much to the testimony they heard from Mr. Admanko, except for a bit more specificity regarding wind shadow studies.

Ms. Talib stated that the continuance from last month's meeting was for the sole purpose of obtaining Mr. Mayer's report. It was only half way through this meeting that Mr. Talib had found out Mr. Mayer was unavailable. Since Mr. Mayer was the City's expert, and Mr. Talib expected him to attend, it should not be prejudicial to Mr. Talib that he elected to proceed. Mr. Talib stated that Mr. Mayer's testimony would be critical.

Mr. Stresau feared that if they continued the case, they would be forced to start over at the next meeting. Mr. Strawbridge confirmed with Mr. Dunckel that "it's not the City's obligation to build a case for Kaizer." Mr. Dunckel explained to Mr. Goldman that in his opinion, there were no due process issues raised by not hearing Mr. Mayer's testimony.

**Motion** made by Mr. Stresau, seconded by Mr. Jordan, to continue the case. In a roll call vote, the motion failed 0 – 6.

Mr. Talib stated that the meeting had been continued in order to hear from Mr. Mayer and they had still not heard from him. Mr. Talib said Mr. Mayer would testify to the effects of wind shadow, which was very important to Mr. Talib's request for the height variance.

**Motion** made by Mr. Jordan, seconded by Mr. Goldman to grant the variance. In a roll call vote, the motion failed 6 – 0.

Mr. Jordan said he would vote against the variance because of neighborhood compatibility issues. Mr. Jordan said he would be "mad as hell if it went in my back yard."

Mr. Strawbridge stated they were using a specific set of criteria for this case, not their usual criteria. Mr. Dunckel had advised them to consider whether they were preventing the property owner from a reasonable use of his property, economically and otherwise. Mr. Strawbridge felt that there were better alternative resources available and felt the unit was not worth the cost. Mr. Strawbridge also wondered why the City should supply data Mr. Talib could use to buttress his case. He felt Mr. Talib should provide his own experts.

Mr. Dunckel clarified that according to the statute, the question was whether the effect of denying the variance would be to drive the costs of owning and operating the property beyond the capacity of private owners to maintain: "if you couldn't have windmills in Victoria Park, would that have the effect of depriving private property owners of the ability to maintain their property." If the Board decided that denying the variance did not place it beyond the reach of private property owners to maintain, they could apply the traditional ULDR criteria for hardship.

Mr. Stresau felt the case might hinge on a court's interpretation of paragraph 4 of the statute. Mr. Stresau said he agreed with Mr. Dunckel, and he had also anticipated a wind shadow study from Mr. Talib to prove his need for the height variance, but Mr. Talib had not provided one.

Mr. Goldman felt the application did not meet the criteria for a variance, and agreed with Mr. Stresau that no evidence was presented to prove a difference between "satisfactory and optimum" performance.

### 3. APPEAL NO. 06-16

[Index](#)

**APPLICANT:** High Point Group, II, LLC

**LEGAL:** "Coral Ridge" P.B. 21, P. 50, Block 10, Lots 9 and 10

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

**STREET:** 2765 NE 14<sup>th</sup> Street

**ADDRESS:** Fort Lauderdale, FL

**APPEALING:** Sec. 47-19.3.G (Boat slips, docks, boat davits, hoists and similar mooring devices)

Requesting a variance to allow boats to be docked in a position that they setback zero (0) feet from both side property lines, where code requires said boats to be docked in a position that does not cause it to extend beyond the required setback lines for the principal building. In this case, the required side setback is ½ height of the building, which is 26 feet.

Mr. David DeCespedes, representative of the owner, referred to renderings and explained that they wanted to add boat slips behind the property and space them out. This spacing would be more aesthetically pleasing, provide easier docking and reduce wakes and crowding. Mr. DeCespedes agreed with Vice Chair Larson that there was no hardship, but noted that the variance would allow the slips to be improved.

Ms. April Donelson, Director of Sales and Marketing for the Highpoint Group, agreed with Mr. DeCespedes that the variance would allow for aesthetic and noise improvements. Vice Chair Larson argued that noise would not decrease with their plan. Mr. Jordan felt their allowing the variance would result in other neighbors requesting the same thing.

Mr. DeCespedes pointed out that on Hendricks Isle and Isle of Venice, boats were allowed to dock right up to the property line; they were requesting a similar situation here. Mr. Morris confirmed for Mr. Strawbridge that there was no setback requirement for a boat dock in the City, but boats must maintain the required building yard. Mr. DeCespedes remarked that code specifically stated that Hendricks Isle and Isle of Venice were exempt from the setback requirement. Mr. Stresau felt this was because these areas were permitted first, and the code was changed when the Commission saw what this looked like. Mr. Dunckel said a formula was originally used, and these areas had conformed to the formula.

Vice Chair Larson proceeded to open the public hearing.

Mr. Robert Steinloff, neighbor of the property, said he felt the rules for this area were appropriate and did not see why the variance was needed.

Mr. DeCespedes reiterated that they would not bring in more boats with the variance.

**Motion** made by Mr. Stresau, seconded by Mr. Jordan, to close the public hearing and bring the discussion back to the Board. Board unanimously approved.

Mr. Stresau said he saw no hardship.

**Motion** made by Mr. Stresau, seconded by Mr. Goldman, to grant the variance. In a roll call vote, motion failed 0 – 6.

#### 4. APPEAL NO. 06-17

[Index](#)

**APPLICANT:** Steve and Jennifer Wallace

**LEGAL:** "Lauderdale Isles No. 2", P.B. 37, P. 44, Block 8, Lot 11

**ZONING:** Broward County Code RS-5 (One-Family Detached District)

**STREET:** 2518 Nassau Lane

**ADDRESS:** Fort Lauderdale, FL

**APPEALING:** Broward County Code Sec. 39-286

Requesting a variance to allow a garage addition to an existing single-family residence with a 5' 2" side yard where a minimum 7.5 ft. side yard is required.

Mr. Mark Bud, project architect, stated the property was recently annexed, and was currently zoned RS-5, but Mr. Bud hoped it would become RS-8. Mr. Bud felt the hardship was not self-created, as the structure was 50 years old.

Mr. Zimmer felt the hardship was 100% self-inflicted; it was possible to move the new construction and conform with the setback requirements. Mr. Bud felt this property should be regulated as an RS-8, which had only 5-foot setbacks.

Mr. Steve Wallace, the owner, said at the time of annexation, City representatives had explained zoning issues they might face. After last year's hurricanes, the carport was badly damaged and Mr. Wallace assumed while drawing up plans that the new zoning setback would be 5 feet. Mr. Wallace wondered when his property would be governed by Fort Lauderdale code. Mr. Morris explained that after annexation, the area was "re-land used", which took approximately 18 – 24 months. The City then realized special zoning requirements must be written recognizing the neighborhood's unique characteristics. The City was in the process of hiring a planning consultant to work on the rezoning process and the City hoped to have recommendations from the consultant after 6 months.

Mr. Wallace felt his hardship was caused by the age of the home and hurricane damage, and his plan would probably meet the new zoning.

Mr. Stresau noted that three cases had come to the Board with issues similar to Mr. Wallace's, and the Board had granted their variance requests. Mr. Stresau felt it unfair to "hold that entire neighborhood hostage until the City gets around to rewriting the new zoning code."

Vice Chair Larson proceeded to open the public hearing.

Mr. Malcom Palton, neighbor, said he eventually wanted to add on to his house as the Wallaces were, but said he would wait until the City changed the code, or knew he would need a variance. He felt a 7 ½-foot setback was much too large for the lot size.

Mr. George Counts, neighbor, remarked on how small the lot sizes were, and that the setbacks were intended to "keep from jamming the houses together." Mr. Counts felt that owners were granted variances and "get their houses all jammed up, and then they move", but the crowding they left behind was permanent. Mr. Counts noted there was still dispute over the zoning, whether it was County or City, and many things were grandfathered in as part of the annexation agreement. He felt they should "check very closely before you start jamming all these houses together on these miniscule pieces of property."

Mr. Wallace confirmed that the Board had copies of letters from the neighbors.

Mr. Bud explained to Vice Chair Larson that altering the plan as Mr. Zimmer had suggested would "screw up the roof line on the north side of the house." It would also affect the spaces between the bedroom and garage. Mr. Bud stated that since this was a small lot, "you put a two-car garage on it, the majority of the front elevation of the house is going to be a two-car garage."

Mr. Stresau suggested "setback averaging", where a setback of 10 feet on one side, offset back a setback of 5 feet on the other would average 7 ½ feet.

**Motion** made by Mr. Strawbridge, seconded by Mr. Jordan to close the public hearing and bring the discussion back to the Board. Board unanimously approved.

Mr. Strawbridge agreed with Mr. Stresau that it was unfair to hold homeowners hostage while the City sorted out the new zoning.

**Motion** made by Mr. Strawbridge, seconded by Mr. Stresau to grant the variance. In a roll call vote, motion failed 4 – 2 with Mr. Jordan and Mr. Zimmer opposed.

## **5. APPEAL NO. 06-18**

[Index](#)

**APPLICANT:** Old Florida Corp.

**LEGAL:** Lengthy metes and bounds description on file with the Board of Adjustment and located in Lot Five (5) of the FLORIDA APARTMENTS PLAT, Plat Book 68/19 regarding POINSETTIA LANDINGS, a Condominium

**ZONING:** RML-25 (Residential Low Rise Multifamily/Medium High Density District).

**STREET:** 1300, 1320, 1340, 1400, 1420 & 1460 NE 18<sup>th</sup> Street

**ADDRESS:** Fort Lauderdale, FL

**APPEALING:** Sec. 47-19.5.b (Fences, walls and hedges)

Requesting a variance to construct a 10' high wall on the West property line (next to the railroad tracks), where code allows a maximum wall height of 6' 6".

Mr. Bryan Phegry, Old Florida Corporation owner, explained that one of the buildings abutted the railroad and they wanted the wall to help deflect the sound.

Vice Chair Larson opened the public hearing.

Mr. Steve Tillbrook, representative of a neighboring property, stated his client supported the application.

**Motion** made by Mr. Strawbridge, seconded by Mr. Jordan to close the public hearing and bring the discussion back to the Board. Board unanimously approved.

**Motion** made by Mr. Zimmer seconded by Mr. Goldman to grant the variance. In a roll call vote, Board unanimously approved.



**6. APPEAL NO. 06-19**

[Index](#)

**APPLICANT:** Michael Morabito

**LEGAL:** "Sixteen Subdivision", P. B. 69, P. 30

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

**STREET:** 901 SE 17<sup>th</sup> Street

**ADDRESS:** Fort Lauderdale, FL

**APPEALING:** Sec. 47-19.2.DD (Temporary sales or construction facility)

Requesting a temporary non-conforming use permit to allow a temporary sales or construction trailer for banking operations while an existing bank building is undergoing extensive interior remodeling, where the code limits use of such trailers to temporary sales or construction offices.

Mr. Raul Lozano, architect, explained that during the survey, asbestos was discovered in the ceiling. The Bank wanted to use a trailer temporarily while construction continued, hopefully for four to five months. Mr. Lozano presented a photo of the trailer and a plan describing where it would be located on the site. Mr. Lozano confirmed for Mr. Strawbridge that no existing green space would be altered in the project.

Mr. Morris confirmed for Mr. Zimmer that the plan met all ULDR requirements except the use of the trailer, including parking.

Vice Chair Larson opened the public hearing; there being no one from the public wishing to speak on the item, discussion was brought back to the Board.

**Motion** made by Mr. Goldman, seconded by Mr. Jordan, to grant the variance. In a roll call vote, Board unanimously approved.

**7. APPEAL NO. 06-20**

[Index](#)

**APPLICANT:** V&L Associates, LLC

**LEGAL:** Redivision of Lots 3-12 inclusive P.B. 38, P. 18, Block 8  
and all of Block 16, Lot 16

**ZONING:** CB (Community Business)

**STREET:** 3465 Galt Ocean Drive

**ADDRESS:** Fort Lauderdale, FL

**APPEALING:** Sec. 47-6.20 (Table of dimensional requirements) – Requesting a variance to allow 0 (zero) setbacks for the front and corner yards of an existing nonconforming building, where the code requires the nonconforming building meet minimum Unified Land Development Regulations (ULDR) requirements of 5' front and corner yards due to a change of use in the building, and  
**APPEALING:** Sec. 47-21.9.A.1 (Vehicular use areas) – Requesting a variance to permit 0%

landscape area, where a minimum of 20% is required. **APPEALING: Sec. 47-21.9.A.2.a (Perimeter landscape area)** – Requesting a variance to allow a 0 (zero) perimeter landscape area where a minimum width of 5' is required adjacent to right-of-way. **APPEALING: Sec. 47-21.9.A.2.b (Perimeter landscape area)** – Requesting a variance to allow a 0 (zero) perimeter landscape area where a minimum width of 2½' is required adjacent to an abutting property. **APPEALING: Sec. 47-21.9.A.4.b (Peninsular and island landscape areas)** – Requesting a variance to allow 0 (zero) peninsular tree islands where (1) one is required for every 4 (four) spaces where motor vehicles back out directly onto an alley. **APPEALING: Sec. 47-21.9.C.1 (VUA planting requirements)** – Requesting a variance to allow 0 (zero) trees and shrubs where (1) one is required for every 1000 sq. ft. of Vehicle Use Area. **APPEALING: Sec. 47-21.11.A.6 (Backout parking)** – Requesting a variance to allow 0 (zero) Landscape area at the front of a backout parking space, where a minimum 5' width is required.

Mr. Steve Tillbrook, representative of the owner, explained that Doctor Toledano wanted to bring his medical practice to the building. Dr. Toledano's office had been located in the Cleveland Clinic until it closed a few years ago. Mr. Tillbrook presented photos of the area and noted that no changes would be made to the newly-improved landscaping in the municipal parking lots. Mr. Tillbrook then presented a rendering of the proposed project and the site plan. He noted that the new requirements were triggered by the change of use to a medical office. Mr. Tillbrook explained that existing code was not designed to accommodate a building such as this: the building's parking was in a municipal lot, not on-site; the landscape requirements for the building were satisfied by the landscaping in the parking lot, and the buildings were constructed when there were no setback requirements. The variance requests primarily concerned the front and corner setbacks and the landscaping for the seven parking spaces at the rear of the building.

Mr. Tillbrook said they had mailed 3,500 notices, including to nearby condominiums, and received a few letters of support. Mr. Tillbrook said that total demolition would probably be required in order to change the building's use and comply with code. It would never be possible to comply with parking requirements. Mr. Tillbrook said they would go to the Planning and Zoning Board for a parking reduction.

Mr. Tillbrook explained how the project met the criteria for granting a variance. Special conditions that would prevent the reasonable use of the property were: the building predated current code regarding parking and setbacks. The literal application of the code would deprive a substantial property right and make the property virtually useless. Mr. Tillbrook felt the hardship was not self-created, but caused by the code. He noted that this was a minimum variance to enable a reasonable use of the property and was compatible with and, in fact, enhanced the community.

Mr. Tillbrook explained to Mr. Zimmer that the loft did not cover the entire footprint on the ground floor. Mr. Zimmer stated they wanted to convert a usable one-story into a full two-story. Mr. Tillbrook confirmed that they would be making the same requests for a one-story building.

Mr. Strawbridge asked about employee parking; Mr. Tillbrook said some of the rear parking could be used for employees and there was additional parking available by agreement at a nearby temple. Mr. Tillbrook confirmed that a one-story building would require approximate 15 parking spaces. Mr. Stresau felt if Mr. Tillbrook was successful in arguing that maintaining the two front handicapped parking spaces meant no handicapped spaces were needed in the alley, and they committed to add that space as a landscape area, it would improve their chances for the other landscape variances.

Mr. Tillbrook said they had anticipated this and developed an alternate plan. They were working with the Building Department but had not received any decision on this yet. Mr. Tillbrook wanted to go forward with a vote from the Board on the presented plan.

Vice Chair Larson opened the public hearing.

Mr. Jack Freedman, neighbor and Commodore Condo Association president, said he represented not only the Commodore, but also Highpoint and Playa Del Sol condos. Mr. Freedman remarked on the "murkiness" of the notices. Even so, he noted there was enormous enthusiasm for the project and for Dr. Toledanos' locating here. The neighbors' concern was that the existing City landscaping would be removed. Mr. Freedman felt parking would not be an issue. Mr. Freedman said he hoped Dr. Toledano would be permitted to proceed with the project.

Mr. Mohammed Ajadin, neighbor, said he had no objection to Dr. Toledano's office being located here, but was also concerned about landscaping changes. Mr. Ajadin cited LEED [Leadership in Energy and Environmental Design] Green Building System recommendations for green building and environmental performance regarding the use of shade and more reflective building and paving materials. Mr. Ajadin stated that the City's Hurricane Advisory Committee had recommend promoting "Smart Growth" of the canopy and right tree/right place tree location. Mr. Ajadin felt they must implement these recommendations and continue to help improve the environment. Vice Chair Larson explained to Mr. Ajadin that the applicant was making the specific requests because of existing conditions; the alternative was to demolish the building entirely. Vice Chair Larson assured Mr. Ajadin that the applicant intended to increase the landscaping in the rear of the building and would not alter the front landscaping.

**Motion** made by Mr. Strawbridge, seconded by Mr. Jordan, to close the public hearing and bring the discussion back to the Board. Board unanimously approved.

**Motion** made by Mr. Zimmer, seconded by Mr. Jordan, to approve the variances. In a roll call vote, Board unanimously approved.

**8. APPEAL NO. 06-24**

[Index](#)

**APPLICANT:** Casa Real Investments, LLC

**LEGAL:** "River Section of Croissant Park", P.B. 7, P. 50, Block 24,  
The East 25 Feet of Lot 12 and the West 35 Feet of Lot 13

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

**STREET:** 600 SW 11<sup>th</sup> Court

**ADDRESS:** Fort Lauderdale, FL

**APPEALING:** Sec. 47-5.32 (Table of dimensional requirements for the RD-15 and RDs-15 districts) Requesting a variance to allow a 21' rear yard, where the code requires a minimum 25' rear yard when abutting a waterway.

Mr. John Vaughn, architect, explained that after designing the duplex, they contacted the City and received a fax describing the setbacks for the property. The fax indicated that the setback was measured from the wet side of the sea wall, not the property line. They had subsequently obtained approval for the project and done piling and foundation work. During a form board survey, the problem had arisen. Mr. Vaughn said altering the plans now presented a tremendous problem, and he requested a "bit of understanding."

Mr. Mike Mentura, contractor, explained that the City had indicated there was a problem while reviewing the spot survey that was required prior to the second inspection. He noted that they had been working from a set of approved plans. Mr. Mentura confirmed for Mr. Strawbridge that they had stopped work when they discovered the problem.

Mr. Vaughn stated the City representative had stated, "the rear is a 25-foot setback because you're on the water." Mr. Strawbridge said they had not received erroneous information; they did not receive all the information.

Mr. Zimmer said they had not been led astray by the zoning review, but had "hung your hat on the fact that you had a signed-off set of plans from them" and began their construction based on those plans. Mr. Vaughn said the plans were signed off by Doug Kurtcock; he had requested information about the side yard stepped setbacks, the front sight triangle, and air conditioning equipment's location relative to the rear and side property lines. He had never mentioned the rear setbacks.

Vice Chair Larson opened the public hearing.

Mr. Glen Masser said he felt this was a "blatant disregard and disrespect for established zoning codes." Mr. Masser was concerned that the building could destabilize the bulkhead on the river and wanted the developer to hold to existing code. He felt it was "bad enough these three-story structures were allowed in the first place in the neighborhood", and felt it would set a bad precedent to allow this project to continue.

Mr. Scott Park, president of Tarpon River Civic Association, stated they were opposed to the variance.

Mr. Gaylord Wood said his neighborhood was the original "compatible neighborhood" with the houses built for the naval air station. Mr. Wood remarked that the three-story townhouse was "like knife in the gut as far as neighborhood compatibility." Mr. Wood said he had alerted the Building Department and Community Inspections as soon as the batter boards were laid out. Mr. Wood felt the hardship was completely self-inflicted and said, "they need to come in with the jackhammers and make this property comply with the code."

Ms. Sara Horn stated this property was too small for the townhouse, and all the other nearby properties were approximately the same. She felt if this were allowed, every other property would eventually make the same request until the area was "nothing but wall-to-wall seawall to front sidewalk townhouse."

Mr. Clyde Horn said he opposed the variance and felt the builder made a mistake and should correct it.

Mr. Richard Williams said he found it impossible that the plan did not show both the property line and the face of the seawall. Mr. Williams said he objected to the entire building and felt the developer should correct his own mistake.

Ms. Tammy Crawford was concerned that allowing this would result in another similar request in the future.

Mr. Andy Ziffer felt there was no blatant intent by the architect to flout the requirements. He suggested allowing the builder to leave the structural elements already in the ground [below grade] and move the building back. This would prevent the need for re-demolishing the property.

Ms. Rebecca Covey thanked the developer for being "solicitous" and "considerate" of the neighbors, but noted she was also opposed to the variance. She felt that the community should not suffer because a mistake had been made.

**Motion** made by Mr. Stresau, seconded by Mr. Jordan, to close the public hearing and bring the discussion back to the Board. Board unanimously approved.

Mr. Dunckel read from Section 47-1.16, "The approval of a development permit shall not be construed to create a right to any development of property that fails to meet the requirements of all land development regulations applicable to the development."

**Motion** by Mr. Stresau, seconded by Mr. Strawbridge to grant the variance. In a roll call vote, motion failed 0 – 6.

**Report and For the Good of the City**

[Index](#)

Mr. Dunckel distributed copies of an email he had received from Mr. Morris and another email from Barry Peterson regarding the Michael Schiff project the Board had heard in May. Mr. Peterson alleged there were errors and misrepresentations made at that hearing. Mr. Dunckel also distributed a response to these allegations from Mr. Dick Coker, Mr. Schiff's attorney. Mr. Dunckel stated the Board could reconsider the case at the next meeting, if they desired.

Mr. Jordan noted that Mr. Peterson and others were upset over claims made by the realtor that she represented some of the neighbors, and any reconsideration would not change the outcome of the case.

**Motion** made by Mr. Jordan, seconded by Mr. Stresau to reconsider their vote at the May meeting regarding Mr. Schiff's case. In a roll call vote, motion failed 0 – 6.

Mr. Strawbridge felt they had "sensibly tied the variance to the best compromise that we could."

There being no further business to come before the Board, the meeting was adjourned at approximately 11:49 p.m.

Chair

---

Binni Sweeney

ATTEST:

---

Sandra Goldberg For Jamie Opperlee,  
Recording Secretary

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

---