

Board of Adjustment Meeting
City of Fort Lauderdale
Wednesday, July 12, 2006 – 6:30 P.M.
City Hall
City Commission Chambers – 1st Floor
100 North Andrews Avenue
Fort Lauderdale, Florida

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

Alternates

David Goldman	P
Don Zimmer	A

Staff

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

Sandra Goldberg, Recording Secretary

Guests

Scott Bensch	Steven Osber
Don Paulter	Richard Meis
Rich Beers	Wayne Abbott
Woody Friese	William Lynch
Neal Kalis	Joseph Pasquale
John Zalai	Tony Cappadona
Daniel Carnahan	Nolan Haan
Todd Stone	Carol Cappadona

George Dern

Robert Lochrie

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Call to Order

Chair Sweeny called the meeting to order at 6:33 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

This item was deferred because Board member copies were missing one page.

Board members disclosed communications they had regarding agenda items.

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

1. APPEAL NO. 06-21

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APPLICANT: Wayne S. Abbott Revocable Trust, Wayne Abbott, Trustee

LEGAL: "Resubdivision in Blocks 3 & 4 of Venice" P. B. 35, P. 18,
Block "B", Lot 10 and the south 5.00 feet of Lot 9

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

STREET: 421 Isle of Capri

ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47-5-30 (Table of dimensional requirements for the RS-4.4 district)

Requesting a variance to allow a building height of 35'3.7" for a recently constructed residential single family home where Code Section 47-5.30 allows for a maximum height of 35'.

Mr. Neal Kalis, representative of the trust, stated that the Abbots were present, as well as the home's original architect, Woody Friese; a new architect, Joe Pasquale; Bill Lynch, a property surveyor, and Dan Carnahan, the original surveyor.

Mr. Kalis wanted to be sure that their application for the variance would be included in the case record; Mr. Dunckel confirmed this. Mr. Kalis explained that Mr. Abbott hired a contractor to build this home in 2003. Mr. Kalis stated that the allowed maximum height for the building was 35 feet; this, added to the FEMA flood elevation of 7 feet, totaled 42 feet. The post-construction home stood at 42.3 feet: 3.6 inches too high, or .71% of the overall allowed height. Mr. Kalis presented a copy of a “spot” survey and the final survey to the Board.

Mr. Kalis continued that the surveyors had relied on an “inappropriate benchmark” resulting in the finished floor layout and building elevation’s being too high. The physical structure was actually slightly shorter than the design. Mr. Kalis explained that the building was “sitting on a pile of dirt and a slab that’s too high.”

Mr. Kalis said the Certificate of Occupancy was issued in June 2005 and his clients moved in. Sometime in September 2005, the City filed a Code Compliance case against the property. Mr. Kalis had then hired a new surveyor to determine where the problem lay. The new surveyor determined the total finished height of the building: 42.3 feet. Mr. Kalis referred to a rendering depicting the building’s height. Mr. Pasquale had then been retained to consider potential remediation. Mr. Kalis said the roof would be “scooped out” in the center to reduce the height, a project that would entail considerable work and expense. The resulting difference in appearance from ground level would be imperceptible.

Mr. Kalis stated:

- ❖ The situation was peculiar to the property;
- ❖ Granting the variance would not negatively affect the neighborhood;
- ❖ Costs to remediate were excessive;
- ❖ The situation was not cause by the owner;
- ❖ Other conditions for the variance were satisfied as well.

Mr. Kalis presented a petition signed by eleven neighbors in support of the variance.

Mr. Daniel Carnahan, surveyor, said he first learned of the problem a year ago. He had assumed management of the company that performed the original survey after it went out of business. Mr. Carnahan explained that he had researched the original survey, trying to find the benchmark that was used, but could not find the proper records. He believed the original surveyor had used 1929 National Geodetic data, and the City used 1988 data; these differed by less than a foot and could themselves vary. Using the City’s benchmark, the new surveyor had determined that the first survey was incorrect, and submitted the new survey, however this was after the Certificate of Occupancy had already been issued. Mr. Carnahan stated the surveyor who staked out the building had made the mistake; he did not believe the owner or contractor had done anything wrong.

Mr. Dunckel corrected Mr. Carnahan's benchmark statement and informed him that the City, in fact, used NGVD 1929; the other that was sometimes used was NAVD 1988.

Mr. Carbonell said this was a common problem in the City; it was usually not even noticed. Mr. Carnahan noted that the benchmarks in this area of the City were settling. Mr. Carbonell felt someone at the City should have realized a problem at the time the spot survey was submitted. Mr. Carnahan said the spot survey was based on the original benchmark.

Mr. Bill Lynch, surveyor, said he had contacted the City to obtain their benchmark for his survey, and he had ultimately determined the height of the building to be 42.3 feet, 3 5/8 inches too tall.

Mr. Joe Pasquale, architect, explained that the high point was at the center point of the roof. He remarked that the impact of lowering the roof would be minimal. His solution was to flatten the roof behind the parapet. Mr. Pasquale said the alteration would compromise the integrity of the roof and be very expensive.

In response to Mr. Strawbridge's question about the hardship issue, Mr. Kalis said the neighborhood would suffer from the crane's and other equipment's presence to perform the work. Aside from the financial hardship of the additional work, the owner would probably need to vacate the home during the project.

Chair Sweeny proceeded to open the public hearing.

Mr. Christopher Bensch, neighbor, said the house was "sound and beautiful." He had received a mailing describing the problem, and noted how small 3 5/8 inches was. He felt this was a "non-issue" and additional construction would only cause more grievances in the neighborhood.

Mr. Richard Meis, neighbor, also felt the Abbott's house was very attractive and that there would be no negative effect if the house were left as it was. He agreed with Mr. Bensch that additional construction would be more disruptive to the neighborhood than leaving the house alone. Mr. Meis confirmed for Mr. Larson that he could not detect the additional building height.

Mr. Don Paulter, neighbor, said he understood the need to have and enforce building codes, but felt this was insignificant and "the cure is going to be worse than ... the problem."

Chair Sweeny referred to a letter addressed to Mr. Morris, of which all Board members had a copy, from a neighbor opposed to the variance.

Mr. Steven Osber said he had been hired by a neighbor to speak on his behalf this evening. Mr. Osber explained that the building and its construction had presented several problems; Chair Sweeny reminded Mr. Osber that they were here to address the height issue only. Mr. Osber felt that the mistake was ultimately Mr. Abbott's responsibility, therefore the hardship was self-created. Mr. Osber asked that the variance be denied on this basis.

Mr. Rich Beers, neighbor, stated there were other problems at the Abbott property during construction and he was reminded by Chair Sweeny that this Board was considering the height problem only. Mr. Beers said he had told Mr. Abbott during construction that the house was too high. He felt this was a case of "typical overbuilding." Mr. Beers presented a copy of an email expressing opposition to the variance from another neighbor, the Thayers.

Mr. Wayne Abbott, the owner, explained that he had trusted the system and the process. He noted that additional construction would be "extremely inconvenient" for the neighbors and for his family.

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

Chair Sweeny felt this case was an instance of "De Minimus." She noted that the Board was required to hear every case, regardless of the size of the requested variance.

Mr. Stresau felt that even if the case did not precisely meet all of the criteria, if the Board felt the issue did not "really affect the neighborhood", it was within their discretion to grant the variance.

Motion made by Mr. Larson, seconded by Mr. Jordan to grant the variance. In a roll call vote, the motion was approved unanimously.

2. APPEAL NO. 06-22

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APPLICANT: John Zalai, Sr.

LEGAL: "Coral Islands", P. B. 40, P. 11, Block 3, Lot 22

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

STREET: 2041 NE 56th Court

ADDRESS: Fort Lauderdale, FL

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

Requesting a variance to allow a 6-foot fence to be placed up to NE 21st Street/Ave. right-of-way line, where Code requires that said fence shall be set back a minimum average of 3 feet.

Mr. John Zalai, owner, explained that his contractor had not applied for a permit and then left the job unfinished and Mr. Zalai had finished it himself. Mr. Zalai said that moving the fence in three feet would place it on his pool coping, forcing him to remodel his pool. He wanted permission to leave the fence where it originally stood.

Mr. Morris explained that the code was changed approximately three years ago to require that fences in excess of 30 inches tall be placed a minimum of 36 inches from the property line. If the fence undulated, no more than 30% of the fence was allowed to encroach into this 36 inches.

Mr. Stresau said that prior to three years ago, the fence setback was three feet. They had decided that if portions of the fence were set back more than 36 inches, it should be permissible for some of the fence [no more than 30%] to be set back less than 36 inches. This allowed a bit of design latitude. Mr. Stresau noted that fence replacements/repairs might now conflict with improvements made behind existing fencing. Mr. Morris agreed that this was possible. Mr. Dunkel felt the change had been prompted to address safety concerns and to deal with unkempt swales. He thought the requirement had been coupled with a requirement for landscaping on the outside of the fence. He recalled that when this fence setback was first adopted, there was a provision allowing for improvements inside the fence line. Mr. Carbonell agreed that part of the reason for the setback change was aesthetics. The setback changed from zero feet to 2 ½ feet, where it stayed for many years. During the code rewrites a few years ago, landscape architects agreed that the straight fences could be unattractive, and suggested allowing fence design to undulate into and out of the setback. Mr. Carbonell felt Mr. Zalai had a definite hardship in this case because of the code-required pool deck.

Chair Sweeny proceeded to open the public hearing. There was no one present from the public wishing to address the item.

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

Motion made by Mr. Strawbridge, seconded by Mr. Stresau, to grant the variance. In a roll call vote, the motion was approved unanimously.

3. APPEAL NO. 06-23

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APPLICANT: Alex Glass

LEGAL: "Waverly Place", P. B. 2-D, P. 19, Block 113, Lots 1-4

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

STREET: 233 SW 9th Avenue

ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47-24.5.A.3.a (Subdivision regulations)

Requesting a variance to allow two single family detached dwellings on a lot, where Code allow a maximum of one (1) single family dwelling unit or duplex on a lot or parcel which lot or parcel was of record as such in the official records of the County as of March 1, 1989.

Mr. Nolan Haan, representative of the owner, explained that there were two historic properties in the Sailboat Bend Historic District that were underutilized, with homes situated on double and triple lots. Ms. Mary Ellen Clark wanted to move her house to the applicant's property to maximize both properties. Mr. Haan said relocation of Ms. Clark's home would free her property for townhouse development. He noted that this proposal had already been approved by the Historic Preservation Board, but the Certificate of appropriateness was contingent upon this variance because code allowed only one primary structure per parcel. Mr. Haan felt that this presented a hardship, and that the historic overlay presented special circumstances; this therefore satisfied criteria A and B.

As to criterion C, Mr. Glass could choose to add a large addition to his house, compromising its historic integrity, or to connect Ms. Clark's house to his via an air-conditioned space. Mr. Haan felt that neither of these options was in the best interest of the historic homes. Mr. Glass could also divide his property into two parcels, requiring a variance, but this would carry "catastrophic financial implications." Mr. Haan explained that there was another option: the illegal demolition of an historic structure, the fine for which was \$500. Mr. Haan admitted that "without creative solutions, and faced with enormous financial gain, this option is very attractive." Mr. Haan felt the solution proposed by Mr. Glass and Ms. Clark would benefit the neighborhood and the City and have no adverse effect on any historic structure. Regarding criterion E, Mr. Haan provided photos of 9 other historic houses within a 2-block radius that shared a lot with another primary structure.

Chair Sweeny said she could not tell from the photos that the houses in the photos shared a lot; Mr. Haan asked her to take his word for it.

Chair Sweeny proceeded to open the public hearing. There was no one present from the public wishing to address the item.

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

Mr. Haan confirmed for Mr. Strawbridge that the Historic Preservation Board had reviewed the site plan and approved the request unanimously. Mr. Strawbridge noted that placing the houses on one lot created confusion regarding the property's front and sides, and their attendant setback requirements. He thought other variances might be needed to allow the houses' proposed placement on the lot. Mr. Morris confirmed that the HPB could approve some yard reductions in the Sailboat Bend Historic District. Mr. Haan assured Mr. Strawbridge that they had. Mr. Morris confirmed that the HPB liaison, James Cromar, had informed him that the HPB had approved the relocation and setbacks.

Mr. Dunckel said he had been unaware that the HPB could grant yard modifications. Mr. Dunckel felt the minutes and final order from the HPB should be included in the application.

Mr. Carbonell remarked that Ms. Clark's home was his favorite house in Sailboat Bend. Mr. Carbonell admitted that attaching townhouses to a single-family home, as had been done on one of his projects in Sailboat Bend, was "the wrong thing to do." He wished they had applied for a variance instead. At that time, there had been promises to change the ordinance, but nothing had changed.

Chair Sweeny stated several Board members wished to see the HPB's meeting minutes regarding the case.

Motion made by Mr. Stresau, seconded by Mr. Strawbridge to defer the case to the Board's August meeting. In a voice vote, motion was approved.

4. APPEAL NO. 06-25

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APPLICANT: CDJ 2601, LLC

LEGAL: "Crossroads Shopping Center", P.B. 32, P. 22, Block 10, Lots 20 and 21

ZONING: B-1 (Boulevard Business)

STREET: 2601 North Federal Highway

ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47-19.9.A.3.b & c (Outdoor display of vehicles or watercraft for sale or rental)

Requesting a variance to allow display of motor scooters during operating hours, without meeting the paving and drainage requirements for parking lots as provided in Section 47-20 (*Paving and loading Requirements*), without meeting the vehicular use area requirements of Section 47-21 (*Landscaping and Tree Preservation*), and to permit such display in a required yard.

APPEALING: Sec. 47-23.9.A.1(Interdistrict corridor requirements)

Requesting a variance to allow display of motor scooters during operating hours within the 20 foot Interdistrict Corridor, where the code requires a twenty (20) foot yard for property that abuts North Federal Highway between Sunrise Boulevard and the northern city limits.

Mr. Todd Stone, representative of Varsity Cycle, explained that the company had been selling the Vespa scooters for approximately 5 ½ years. Mr. Stone felt that the scooters were smaller than any vehicle covered by the ordinance. Mr. Stone explained that a hardship was created by the expansion of Federal Highway. He referred to photos, noting that the scooters could be displayed in an area that would not interfere with pedestrian, bicycle or vehicle traffic. Mr. Stone had presented several letters of support from several neighboring businesses.

Mr. Stone confirmed for Mr. Strawbridge that the property had been cited for the scooters. Mr. Carbonell was surprised that outside display was allowed in this area.

Mr. Morris said the Fire Department would need to sign off on the clearance around the fire hydrant.

Chair Sweeny felt there just wasn't sufficient room to display anything outside.

Chair Sweeny proceeded to open the public hearing. There was no one present from the public wishing to address the item.

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

Mr. Strawbridge felt the "little center" created a walkable, urban feel, and was compelled by the letters from the neighboring businesses stating the scooter displays improved foot traffic and business.

Mr. Stresau felt if they discussed the interdistrict corridor first, the parking area requirements became irrelevant.

Mr. Morris agreed that this was not a parking lot, but the requirements did exist for an outdoor vehicle display, and the code section must therefore be applied. Mr. Stresau noted that if the parking area requirements were enforced, the landscaping provision would be included, but would be impossible to enforce on this spot.

Motion made by Mr. Strawbridge, seconded by Mr. Larson, to approve the application for a variance for Section 47-23.9.A.1: Interdistrict corridor requirements, limiting the display to six [6] scooters, with the provision that upon demolition of the building, the variance would expire. In a roll call vote, motion failed 4 – 3 with Mr. Carbonell, Mr. Stresau, Chair Sweeny opposed.

Mr. Stone withdrew the request for the other variance.

Mr. Dunkel confirmed that any motion for reconsideration must be made by a Board member who had voted against the variance.

Mr. Tony Cappadona, owner of the company, said he was currently losing money; without the scooters displayed outside, people thought the business was closed. He noted that the person who complained about this lived nowhere near the business, and the inspection official and Mr. Morris were both sympathetic. He told the Board that the survival of his business would be determined by the Board's vote this evening.

Mr. Carbonell stated he had not wanted to set a precedent for outside display on Federal highway. Mr. Morris said the code section was specific to vehicles. Mr. Dunkel felt this could open the door to more than motor scooters, vehicles and watercraft.

Chair Sweeny felt the space would not accommodate six scooters, as they had specified in their motion. Mr. Robert Lochrie said they would be willing to ensure that sight triangles would not be affected by the scooters.

Mr. Stresau felt reducing the number of displayed scooters to three [3] would be a reasonable compromise.

Motion made by Mr. Carbonell, seconded by Mr. Larson, to reconsider their previous vote. In a roll call vote, motion passed 6 – 1 with Chair Sweeny opposed.

Motion made by Mr. Goldman, seconded by Mr. Stresau, to approve the variance for Section 47-23.9.A.1: Interdistrict corridor requirements, limiting the display to three [3] scooters, with the provision that upon demolition of the building, the variance would expire. In a roll call vote, motion passed 6 - 1 with Chair Sweeny opposed.

Motion made by Mr. Stresau, seconded by Mr. Larson, to approve the variance for Section 47-19.9.A.3.b & c: Outdoor display of vehicles or watercraft for sale or rental, limiting the display to motor scooters, and to display during business hours only. In a roll call vote, motion passed 6 - 1 with Chair Sweeny opposed.

Mr. Stresau thought a specific question he had asked Mr. Mohl at the previous hearing regarding windmills had not been included in the June meeting minutes and asked the recording secretary to check the meeting recording.

There being no further business to come before the Board, the meeting was adjourned at approximately 8:45 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.
