

**CITY OF FORT LAUDERDALE, FLORIDA
REGULAR MEETING OF THE PLANNING AND ZONING BOARD
CITY COMMISSION CHAMBERS
100 NORTH ANDREWS AVENUE**

**WEDNESDAY, MAY 19, 2004
6:30 P.M.**

<u>Board Members</u>	<u>Attendance</u>	(P)	(A)
Barbara Curtis, Chair	P	23	1
Gerry Cooper	P	22	2
Kenneth Hawkins	P	20	4
Mary C. Fertig	P	24	0
Alan Gabriel	P	22	2
James McCulla	P	20	4
Charlotte Rodstrom	P	14	2
Judith Hunt	P	7	0

Planning Staff: Chris Barton, Liaison to the Board
Greg Brewton, Zoning Administrator
Liz Holt, Planner III
Angela Csinsi, Planner II
Kevin Erwin, Planner I

Legal Counsel: Sharon Miller, Assistant City Attorney

Court Reporting Service: Margaret D'Alessio

**NOTE: ALL INDIVIDUALS WHO PRESENT INFORMATION TO THE BOARD
DURING THESE PROCEEDINGS AFFIRM TO SPEAK THE TRUTH**

Chair Barbara Curtis called the meeting to order at approximately 6:30 p.m. with Mayor Naugle leading with the Pledge of Allegiance.

Chair Barbara Curtis proceeded to introduce Commissioner Teel of District I and State Representative Ellyn Bogdanoff. She then began introducing the members of the Planning and Zoning Board, along with City staff present at tonight's meeting. She also welcomed Acting City Manager, Alan Silva, and Commissioner Moore to the meeting.

Introduction – New Member

Chair Barbara Curtis proceeded to introduce Randy Powers as a new member of the Planning and Zoning Board.

Presentations

Mayor Naugle stated that after 6 years of service tonight was the last meeting for Barbara Curtis. He continued stating that it was incredible that the Commissioners received such great amounts of work out of the volunteers on the various boards. He

stated that Barbara Curtis had done a tremendous job and proceeded to thank her for her hard work by presenting her with an award.

Commissioner Moore proceeded to present Kenneth Hawkins with an outgoing gift for his hard work on this Board for the last 6 years. He also thanked Barbara Curtis for her hard work on this Board in the last 6 years. He stated that the Commission appreciated all their efforts and support.

Commissioner Teel presented Carolina Wiebe with an outgoing gift for her hard work on this Board for the last 5 years. Carolina Wiebe thanked the Board and the Commissioner and stated that it had been an eye-opening experience in seeing the different perspectives regarding planning and zoning issues. She hoped the words and opinions that she had offered were well-received, and thanked the Board for the opportunity to have served.

2. **Bank Atlantic Branch Bank/Flex Allocation** **Kevin Erwin** **2-ZR-04**
 Request:** * Rezoning w/Site Plan w/ Flex Allocation,
 Residential to Commercial /Bank Facility
 w/drive thru/B1-RMM25 Proposed to CB
 P.B. 2, P. 18, Block 232, Lot 5
 and Lot 20, less South 22 feet
 and Block 232, Lot 4 and Lot 21
 Location: 1750 East Sunrise Boulevard

Chair Barbara Curtis stated that the applicant had requested a deferral until June 16, 2004 for this item so that he could meet with the neighborhoods and make them better informed in regard to this project.

Motion made by Alan Gabriel and seconded by Gerry Cooper to defer this item until June 16, 2004. Board unanimously approved.

4. **Inwood Property Investments/** **Kevin Erwin** **10-P-03**
 R-O-W Vacation

Chair Barbara Curtis announced that there was a sign issue in regard to this item.

Chris Barton stated they had been informed by a Board Member yesterday that the sign was located approximately 3 properties down from where the project and vacation were located, and therefore, it did not meet the sign notification requirements of the Code.

Alan Gabriel asked if the matter was to be deferred or would the Board just not hear the case.

Sharon Miller, Assistant City Attorney, stated that generally the Board had chosen to defer such items. She explained there was a provision in the Code that stated it could be waived, but unless there were other circumstances, this Board's practice had been to defer these types of matters.

Motion made by Gerry Cooper and seconded by Charlotte Rodstrom to defer this item until June 16, 2004.

James McCulla asked if the applicant was present this evening. He proceeded to ask why the property had been noticed incorrectly.

Jerry McLaughlin, McLaughlin Engineering, stated that there were 4 lots and they had tried to find something to secure the signs to so they would not be trespassing. He stated that staff had advised them the sign was not in the center of the property, and therefore, they had relocated it.

Chair Barbara Curtis asked staff where the sign was to be placed if there was more than one piece of property.

Chris Barton stated that it was a vacation and the sign should be located in front of one of the properties. In the past for a site plan that affected more than one property, it had been suggested to the applicant that a sign be placed in front of each property that was to be demolished for the development. In this case, one place within the strip vacation they had requested would have been adequate. He further stated that he had been informed by the staff planner who had reviewed this matter that the sign was not in front of any of the 4 properties. He stated there had been some confusion as to what was to be vacated.

Gerry Cooper stated that the sign was to be posted 15 days prior to the meeting.

Andre Assante, Hendricks Isle resident, stated that he had lived in the area for 20 years. He asked how they could find out what was going on with the subject properties. He stated the island was becoming over built.

Chair Barbara Curtis stated that they were not here this evening to discuss such matters, but were here for a specific item. Presently, she explained they were discussing whether this matter should be deferred due to the fact that the sign had not been properly installed.

Mr. Assante stated they had seen the sign and that was why they came to the meeting.

Chris Barton stated that he would explain the process to Mr. Assante regarding what was being proposed for a given property within the City.

Roll call showed: YEAS: Randy Powers, Mary Fertig, Alan Gabriel, Kenneth Hawkins, Gerry Cooper, Charlotte Rodstrom, and Barbara Curtis. NAYS: James McCulla. Motion carried 7-1.

Approval of Minutes – April 21, 2004

Alan Gabriel stated that on page 21, Item #8, it showed the motion had failed 5-2, but it should read: **The Motion passed 5-2.**

Motion made by Alan Gabriel and seconded by Kenneth Hawkins to approve the minutes of the April 21, 2004 Planning and Zoning Board meeting as corrected. Board unanimously approved.

Election of New Officers

Chair Barbara Curtis reminded the Board that there would be an election for new officers at the Board's next meeting.

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|-----------|---|--|------------------------|
| 1. | <u>Gerald E. Hamel/Flex Allocation</u> | Angela Csinsi | <u>125-R-03</u> |
| | Request:** | Site Plan Approval for Mixed Use w/Flex Allocation/Six (6) Unit Multi-Family Residential on Employment Center Land Use (RMM-25)
P.B. 2, P. 15
Lots 14 and 15, Everglade Land Sales Company | |
| | Location: | 2012 South Miami Road | |

Chair Barbara Curtis announced that this item was quasi-judicial.

Sharon Miller, Assistant City Attorney, explained that certain items on the agenda were considered quasi-judicial which meant that the items were treated similar to Court matters, but with less formality. She further stated that the case would be presented, and individuals wishing to speak on such items would be sworn in, and the Board would disclose any communications or site visits in regard to the property. She also advised that anyone testifying could be cross-examined, and that exhibits used in the presentations would remain as part of the record.

The Board proceeded to make their disclosures as follows: Mary Fertig stated that she had been to the site. Alan Gabriel stated he had been to the site. Kenneth Hawkins stated that he had been to the site. Charlotte Rodstrom stated that she had been to the site. Randy Powers stated that he also had been to the site. Barbara Curtis stated she had been to the site.

William Osborn, architect, stated that presently on the site were two duplexes which had been built in the early '60's which were beyond repair. He explained they were to be demolished and they were going to construct a 6-unit apartment building with underground parking. He explained further that all apartments were to have two bedrooms and two bathrooms. He stated that his client was tentatively getting a lease with the Art Institute indicating that they would lease the apartments for their students. He stated they were requesting two flex units. He informed the Board that the School Administration had approved and stated that one student was being added to the schools.

Angela Csinsi, Planning and Zoning, stated that the applicant proposed to build a 6-unit, two-story multi-family building on property presently zoned RMM-25. The Land Use is employment center, and therefore, the applicant must meet certain sections of the Code, including the Mixed-Use Section 47-28.21, along with Neighborhood Compatibility

Section 47-25.3 and Adequacy Requirements Section 47-25.2. She further stated that the proposed side yards needed a 4' modification due to half-the-height requirement for the district. She stated they did meet the front and rear side setback requirements. She stated that the site was surrounded by 1,2 and 3-story residential buildings, including Mediterranean Village and Arbor Bay Apartments. She stated that this Board was to determine whether the proposal met the criteria for neighborhood compatibility, and whether the intent and spirit of the dimension regulations had been maintained.

Ms. Csinsi stated that should the Board approve this request, staff recommended the following conditions:

1. Upon approval, the applicant had eighteen (18) months to apply for and twenty-four (24) months to obtain a building permit as per ULDR Sec. 47-24.1.M.
2. Prior to application for a building permit, a Construction Debris Mitigation Plan shall be submitted to include, but not limited to, the requirements of the Construction Debris Mitigation Policy, as approved by the City's Building Official.
3. Final DRC approval.

Charlotte Rodstrom asked if the concrete walk would be similar to the existing sidewalk. Mr. Osborn confirmed. Ms. Csinsi stated that it was required to be 7' in width per the mixed-use requirement.

Alan Gabriel asked for some further clarification regarding the yard modification request. He added they were not meeting the required setback. Mr. Osborn stated they were meeting the requirement because it was a mixed-use, but one did not have to meet that requirement if the property was under 10 acres. He stated that he had been informed they used commercial zoning regarding the setbacks. Mr. Gabriel stated further that the required yard setback was 14', and they were requesting 10' at both sides. Mr. Osborn reiterated that everything had been approved by DRC. Mr. Gabriel reiterated that this Board decided whether the side setback was appropriate or not.

Gerry Cooper stated that he did not know what the Art Institute had to do with this matter because whether they got tenants or not was not relevant to the discussion. He proceeded to read from the back-up as follows: "The setback requirements in RMM-25 are half-the-height of the building when this is greater than the minimum required. The proposed height was 28' that would require side yard setbacks of 14'. The applicant is requesting a 4' modification to both side yards." He asked for staff to provide some clarification on the matter.

Ms. Csinsi stated that she was not aware that he had not been informed of that, but it did state in the mixed-use section to refer to CB district for dimensional requirements. However, she explained there was a conflict in the Code where it stated they had to meet the district where the mixed-use project was located. She further stated that whenever there was a conflict in the Code, they went with the more restrictive of the two.

Mary Fertig asked if the applicant had been informed of the commercial zoning at another meeting, and proceeded to ask if such minutes were available. Ms. Csinsi confirmed.

Judith Hunt entered the meeting at approximately 7:00 p.m.

Mr. Osborn explained that he had spoken with Terry Burgess in Planning and Zoning, and he had informed him to follow the CB setbacks since the property was under 10 acres. He further stated that he was not aware that he was requesting a side yard amendment.

Chris Barton stated that in the ULDR Item #7, Section 47-18.21.3, Mixed-Use Development on Employment Center Land Use Designated Parcels stated as follows:

“Notwithstanding any other provisions of the ULDR to the contrary, the dimensional requirements for mixed-use on employment center land shall be governed by the dimensional requirements set forth in 47-620, Table of Dimensional Requirements for the CB District.”

Mr. Barton continued stating that notwithstanding any other provisions because this was on RMM-25 land, the RMM-25 land prevails. He stated that this might have been discussed with Mr. Burgess at some point during the DRC process, and he apologized if Mr. Osborn had been misled or did not understand the situation, but they were seeking a 4' yard modification on both the north and south side yards for this development. He stated that staff believed it was appropriate, but a 4' setback would have to be approved by this Board.

Chair Barbara Curtis proceeded to open the public hearing.

Jack Loos stated that he supported these setbacks and stated he was the principal owner of Mediterranean Village Apartments that abutted this property to the east. He stated that this project would be an enhancement to the area. He stated that this owner also owned a number of other properties along the strip, and there was a missing area of sidewalk in the area. He explained that when he had built his project, they had an understanding with this owner and with this Board that when they began developing this project, they would build the missing sidewalk which ran in front of the other properties. He asked as part of the approval could this Board require the owner to install the missing sidewalk, which he believed ran from 20th Street to where Mediterranean Village came out between 21st and 22nd Streets.

Alan Gabriel stated that since Mr. Loos was one of the few property owners in the area present, he asked his opinion regarding compatibility of this project with the area. Mr. Loos stated that this property was located on the east side of Miami Road that was a mixed area of residential and warehouses. He stated that from a purely development standpoint, he believed that everything from Miami Road to Federal Highway would be better redeveloped into more commercial uses and support uses because it did not lend itself to the upgraded residential neighborhood that he would like to see. Due to the Federal Highway frontage, he felt it made more sense to have commercial and office

located in the area. He stated since this project was located on the east side of Miami Road, he believed it was compatible and felt the area could go either way.

Mr. Loos explained that FDOT was already planning to move the traffic light at Miami Road to the east in about one year due to the problems at the intersection of 17th Street. He reiterated that the area was going to change and there would probably be less traffic in the concerned strip.

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 James McCulla to approve the application as submitted per staff's recommendations.

Alan Gabriel asked if the motion was to include the installation of the missing sidewalk. James McCulla proceeded to ask the applicant for their opinion regarding the sidewalk issue.

Mr. Osborn stated that he was confused and asked if they wanted the applicant to extend the sidewalk in front of Mr. Loos's property to the north. Mr. Gabriel stated that they were referring to sidewalks on the applicant's property. Mr. Osborn asked if they wanted sidewalks at the properties even though they were not yet being developed.

Mr. Cooper stated he did not know if that was legal and if such conditions could be placed upon the applicant.

Chris Barton explained that when the Mediterranean Village project was approved, one of the requirements or conditions of approval was that they build a sidewalk from their property, which fronted on Miami Road at two locations both to the south and to the north. He stated that to the north until it tied into the sidewalk located in front of Wendy's at 17th and Miami Road. He explained that most of the sidewalk had been developed, but they had come to staff hand-in-hand with the owners of this site and several of the houses located in the gap between the north and south properties. He stated that since the areas were to be developed, and he believed a 17-unit apartment complex had previously been approved, they asked that the sidewalk not be developed until such time the owners developed the area in the gap, and then such sidewalks would be constructed. He believed that had been discussed with the City Engineer.

Mr. Barton further stated that the condition still stood and the developers of Mediterranean Village were responsible for building the sidewalk, with the exception of what was now being built. He further stated that the matter would have to be revisited with the City Engineer in order to see what exact arrangements had been made. He stated that he believed the original condition was that they would build a sidewalk all the way through the 5-property parcel that they did not own.

Mr. Loos stated that at that time the discussion was that when those properties were to be developed, then they would have to build the sidewalk. He reiterated that if such properties were not developed within a reasonable frame of time, then he would have to construct the sidewalks. He further emphasized that since they were now developing the

property, then it should not be a burden on Mediterranean Village any longer. He stated that their meetings and understandings with the City Engineer were that when they developed they would build the sidewalks, and if they didn't at some point he would build them.

James McCulla asked if that point had yet been established. Mr. Loos replied it had been, and they were now beyond that time frame, and therefore, the sidewalks needed to be built. He stated that they had previously built sidewalks on properties that were not

theirs, and made other neighborhood improvements, and now they were developing their properties and the previous understanding had been they would construct the sidewalks. Mr. McCulla asked for Mr. Loos to show on the diagram the location as to where such sidewalks were to be installed.

Chris Barton stated that staff did not disagree with what Mr. Loos had stated, and they believed the applicant for this parcel should be required to develop the sidewalks in front of their property, but the remaining 2-3 parcels that they were not developing, if the time period agreed to had lapsed, then perhaps the developer of Mediterranean Village should proceed and complete that portion of the sidewalk that was not subject to tonight's discussion.

Mr. Loos stated his argument was that it was an unfair enrichment to them since they owned the property. He explained he did not own any of the property in the frontage area and he felt they should construct sidewalks in front of their own property, and he would build whatever they did not own along the strip. He proceeded to show on the map the parcels where the sidewalks were to be built that included numbers 14, 15, 16, and 13.

Mr. Barton stated further that Mr. Loos was making a good point and was correct in saying that it was not fair at the time that it was approved, but they had not approved the site plan with that as a condition. He explained that the City Engineer had entered into an agreement with them for this interim procedure, and there was a time limit that may have expired. He reiterated that times and conditions had changed, and if he wanted to amend the approved site plan there was a process to be followed. He suggested that possibly Mr. Loos should go back and revisit the approval for the Mediterranean Village process if he wanted relief from building the sidewalk. He stated they could not just say no because they did not have the authority to make such a decision.

Chair Barbara Curtis stated they were not here this evening regarding that item. Mr. Barton confirmed.

Mr. Loos stated that since that had been a condition of his development, then it should be a condition for this development.

Charlotte Rodstrom stated that she understood what Mr. Loos was saying, and obviously this applicant was beginning to develop the property. She stated that the entire Miami Road was right for redevelopment, and she felt that would be forthcoming in the near future. To put the sidewalks in no matter who did it was not the right thing to do until after

the redevelopment was completed. She asked if the time frame could be extended regarding the sidewalk commitment.

Mr. Barton reiterated that the condition was subject to approval by the City Engineer and added that an extension could be requested. He stated that practically speaking, it did make sense to wait and see if the remaining 3 parcels were developed along the lines of what they were seeing in tonight's proposal.

Ms. Rodstrom reiterated that Mediterranean Village should not be required to install the sidewalks either, and then have them torn up by the owner of the property. Mr. Barton stated it applied to either one, but currently it was a condition of approval for

Mediterranean Village, but it was subject to extension and approval by the City Engineer. He reiterated that it made sense to wait, and staff recommended that they seek such an extension.

Mary Fertig stated that she was going to second the motion as long as he did not include the sidewalk issue.

Mr. McCulla stated this was not a clear-cut issue because of the conflict of the requirements placed on Mediterranean Village that might not have been fair at the time. He stated that he was not sure how to incorporate this into what they were being asked to approve at this time.

Gerry Cooper stated that there were 3 separate sidewalk issues involved. The first was whether Mediterranean Village was obligated or not, but that was not part of tonight's discussion. Mr. Barton confirmed. Mr. Cooper stated the second item was whether the parcel before the Board, at this time, should or should not have a sidewalk in front of it, and he was assuming the Board had the authority to instruct the applicant to install a sidewalk. Mr. Barton stated that was shown on the plan. Mr. Cooper further stated that the third item was the remaining portions of the sidewalk and who should construct them. Therefore, he asked if the Board had the authority to instruct this developer to install sidewalks, and asked if the Board's approval could be contingent upon them putting in sidewalks other than at the subject property.

Sharon Miller replied that only if they found that the applicant's development caused an impact that created a need for sidewalks on other than what was in front of his parcel.

Mr. Cooper felt it was unfair to tell the applicant that he had to install additional sidewalks, but if the Board felt there was an impact, then it could be done. He believed the sidewalk issue should go away, and that sidewalks only be installed in front of the subject property according to the plans.

James McCulla asked if the applicant was willing to join Mediterranean Village for an extension of the time frame. Mr. Osborn stated they were installing a 7' sidewalk in front of this project, and when completed the owner was going to begin constructing on the other sites, and then the remaining of the sidewalks would be installed at his expense. He further stated that the applicant would enter into a joint extension of time.

James McCulla stated that he wanted to add this as a condition into his motion.

The motion read as follows:

Motion made by James McCulla and seconded by Mary Fertig to approve the application as submitted per staff's recommendations, including the condition that the applicant for this project and the developer of the Mediterranean Village would jointly request an extension of time for the construction of sidewalks in the area.

Judith Hunt disclosed that she had been to the site.

Chair Barbara Curtis stated that since the applicant had stated that he was going to develop the other parcels, then Mediterranean Village should not have to construct the sidewalks.

Mr. Barton stated that now it had come to the attention of the Planning Division who had the responsibility of monitoring conditions that the time frame agreed to with the Engineer had expired. He further stated they would now have to inform the City Engineer that they needed to revisit the situation, and recommend that they enter into a discussion with Mr. Loos and extend the period of time until such time when Mr. Hamel will state that he is or is not going to finish developing his parcels.

Mr. Loos stated that they had numerous discussions in the past with the City Engineer, but they had not yet gone through a formal extension process. James McCulla asked if Mr. Loos was satisfied with the added condition to the Board's approval. Mr. Loos confirmed.

Mr. Cooper stated that he wanted to refocus the Board's attention away from the sidewalk issue. He reiterated there was an existing Code that stated one-half the height. He did not think it was right to let someone come in and build 8' higher, while the Code was pushed aside and side yard modifications were granted. He stated he was voting against this project because he did not think it had to be built 8' higher than permitted.

Sharon Miller stated that she needed to speak to the interpretation of this provision of the Code. She stated she was not certain that the interpretation of meeting the modification was correct. She further stated that she would review the matter with the Zoning Administrator and review the facts of this case.

Chair Barbara Curtis asked if this matter should be deferred. Sharon Miller replied that the Board should defer if the application was to be denied based on that fact.

Motion made by Alan Gabriel and seconded by Gerry Cooper to defer this matter.

James McCulla asked if the 28' was the peak of the roof. Mr. Osborn confirmed and stated if the building was 20', it would have a flat roof which would spoil the appearance of it. He further stated that at the side setbacks, the building was 17' 4" from the ground and then sloped back. Mr. McCulla stated he was not going to support the deferral, and that they should treat the peaked roof as an architectural feature.

Charlotte Rodstrom stated that she agreed, and stated that she liked the underground parking, and felt the parking and the walkway would add nice features to the area. Mr. Osborn stated that the parking was the reason for the height.

Alan Gabriel stated that there was a legal question as to whether something was appropriate or not, and whether they should grant a waiver. He stated further he did not think they could move forward and vote on something they were not sure of. He stated he was not saying he was against the project, but he was concerned about the legal issue. He felt such answers were necessary before they moved forward with the matter.

Gerry Cooper stated that he agreed with Alan Gabriel, but since James McCulla had raised the height issue, he asked how height was measured for this project. Mr. Barton stated that it was measured to the ridge line.

Mary Fertig clarified that if the Board voted against this application based on interpretation there was a concern, but if they were to approve the application, then such a concern would not be raised and there would not be a need to defer the matter. Sharon Miller confirmed. Ms. Fertig stated that the legal issue entered the picture only in the event that the Board did not approve the application on that one point. Sharon Miller again confirmed.

James McCulla stated if they were illegally granting an exception to the side yard setback requirement, he would be concerned, but at worst they would be overcompensating by providing an exception to a setback rule that they found out after-the-fact did not apply.

Roll call showed: YEAS: Alan Gabriel, Kenneth Hawkins, and Gerry Cooper. NAYS: Judith Hunt, Mary Fertig, James McCulla, Charlotte Rodstrom, Randy Powers, and Barbara Curtis. Motioned failed 3-6.

Motion made by James McCulla and seconded by Mary Fertig to approve the application as submitted per staff's recommendations, including the condition that the applicant for this project and the developer of the Mediterranean Village would jointly request an extension of time for the construction of sidewalks in the area. Roll call showed: YEAS: Mary Fertig, James McCulla, Charlotte Rodstrom, Randy Powers, Judith Hunt and Barbara Curtis. NAYS: Alan Gabriel, Kenneth Hawkins, and Gerry Cooper. Motion carried 6-3.

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| 3. | <u>Courtney Case, Inc. Warehouse/
Conditional Use</u> | Angela Csinsi | <u>6-R-04</u> |
| | Request:** | Condition Use w/Site Plan Review/
Light Industrial Building (B-3)
P.B. 1, P. 88 – Block 201,
Lots 1, 2, 3, 4 | |
| | Location: | 1004 N.W. 1 Street | |

Chair Barbara Curtis announced that this item was quasi-judicial.

The Board proceeded to make the following disclosures: Judith Hunt stated that she had been to the site. Mary Fertig stated that she had been to the site. Kenneth Hawkins stated that he had been to the site. Charlotte Rodstrom stated that she had been to the site. Randy Powers stated that he had been to the site.

Courtney Case stated that he had owned this property for the last 10 years, and it had been a car wash since he had purchased it. He stated that he wanted to develop the property and demolish the current structure, and build a car wash that would be indoors. He felt the project would improve the neighborhood.

Angela Csinsi, Planning and Zoning, stated that the proposed building was located at the southwest intersection of NW 1st Street and 10th Avenue. She stated that the applicant

proposed to build warehouse uses and a hand car wash. She explained that in a B-3 zoning district hand car washes were considered conditional uses. She explained further that this site was subject to ULDR Section 47-25.3, Neighborhood Compatibility, and Section 47-25.2, Adequacy Requirements, along with Section 47-24.3, Conditional Use Criteria. She stated that the site was surrounded by retail, automotive and industrial uses. She advised that the proposed use would be an improvement to the existing open-air car wash currently at the site. She stated that the Board needed to determine if this application met all the criteria. She explained that if this Board approved the application, staff proposed the following conditions:

1. Upon approval, the applicant has eighteen (18) months to apply for and twenty-four (24) months to obtain a building permit as per ULDR Sec. 47-24.1.M.
2. Prior to application for a building permit, a Construction Debris Mitigation Plan shall be submitted to include, but not limited to, the requirements of the Construction Debris Mitigation Policy, as approved by the City's Building Official.
3. Final DRC approval.

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

Motion made by Kenneth Hawkins and seconded by Alan Gabriel to approve the application as submitted per staff's recommendations.

Charlotte Rodstrom asked about their latitude regarding sidewalks and landscaping in the B-3 district.

Chris Barton stated that the area around this building was all asphalt. He stated the Board could have them attempt to meet the landscape provisions as much as possible. He reiterated that it was a very industrial area and sidewalks were not necessary.

Roll call showed: YEAS: Alan Gabriel, Kenneth Hawkins, James McCulla, Charlotte Rodstrom, Randy Powers, Judith Hunt, Mary Fertig, and Barbara Curtis. NAYS: None. Motion carried 8-0.

5. **Mariani, LLC/Mariani Asphalt Plat** **Angela Csinsi** **4-P-04**
Amendment

Request:** Vacation of a portion oif a Non-Vehicular
 Access Line/PEDD
 P.B. 135, P. 7, Parcel A, Mariani Asphalt
 Plat Acreage in 14-50-42
Location: 1001 S.E. 20 Street

Chair Barbara Curtis stated that this matter was quasi-judicial. The Board proceeded to make the following disclosures: Randy Powers stated that he had been to the site. Barbara Curtis stated that she had spoken with Jack Loos.

Mary Fertig stated that she had been unable to find the site. Judith Hunt stated that she also could not find the site in question and did not see any signs. She further asked if there were any assurances that the signs had been properly posted.

Angela Csinsi, Planning and Zoning, stated that the sign had been posted and was in front of the sign indicating student parking.

Jack Loos stated that one had to go into the Port to see the entrance to the property, and that was where the sign had been posted. He stated that he had not been to the site today, but he had been by the area since he was developing a major shopping center next door and stated that the sign had been posted over the period of time.

Chris Barton stated that it was not unusual for signs to be taken down or blown down. He stated that over the last 1½ years they had gone to great lengths to make sure that applicants had posted the signs. He stated further that Ms. Csinsi had seen the signs and staff had an affidavit from the applicant stating that the signs had been posted. He explained if the Board moved forward and it was later proven that the sign had not been posted, then they would be at risk. He recommended that the Board proceed forward with this item.

Alan Gabriel stated that it was a non-vehicular access line that was being discussed. He reiterated that testimony had been given that the sign had been at the site. He felt as long as the sign had been posted for a majority of the time, he did not have a problem with the issue and was willing to move forward.

Charlotte Rodstrom stated that she sympathized with Ms. Hunt because a few months ago there had been an item that she was not able to locate. She felt they needed to obtain more clarification on the harder to find areas. Ms. Hunt stated that she felt everyone needed to be handled the same and consistency was needed. She stated if they discussed this matter under "For the Good of the City," she would be in agreement to do that so they could decide how to handle such matters in the future.

Gerry Cooper suggested that the Assistant City Attorney explain what the Code stated about signs. Ms. Rodstrom reiterated that better directions needed to be given to get to the sites. Ms. Hunt stated that she had been to the site on this date, and there had been

no sign. Chair Barbara Curtis stated that normally if there was a sign issue, the Board would vote on the matter. She reiterated that each item was decided on separately.

Motion made by Judith Hunt to defer this matter. Motion died for lack of a second.

Jack Loos stated that the adjoining properties were an asphalt plant and a roofing company. He reiterated there were no residences in the area. He proceeded to explain on the map the site of the subject property. As a condition of the past approval, they were required to provide access to SE 10th Avenue from the shopping center. He explained that another individual had acquired the property currently being used as a parking lot for the Art Institute students. Currently, they had to enter through Eisenhower Boulevard and the Port Security Checkpoint in order to get to the lot. He stated that was not a good situation. There was a shuttle bus that ran on the half-hour to take the students to the school.

Mr. Loos stated there was a non-vehicular access line because years ago he developed the property where Outback Steakhouse was and other buildings, and at the time an outfit out of Tampa, Mariani, LLC, had purchased the property in order to build an asphalt plant. When they came in for platting, his request was that they did not want all the asphalt trucks going in and out, and as part of the plat requirement the City stated there would be a non-vehicular access line.

Mr. Loos stated that there would be two benefits to the public that was that they were meeting the requirement to provide pedestrian and vehicular access to 10th Avenue. He stated they were also going to provide an alternate route for the art students so they would not have to go through the Port access. In developing the property, he explained they had been working with Port Security very closely. He stated the industrial uses would still go down Cordova, and they were building a sally-gate that was a double gate at the corner of the property.

James McCulla returned to the meeting at approximately 7:30 p.m.

Mr. Loos stated that FDOT had informed them that they were going to relocate the traffic light to 10th Avenue in 2005/2006.

Angela Csinsi, Planning and Zoning, stated that staff found the proposed revision to the plat complied with ULDR Section 47-24.5, Subdivision Regulations.

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

Motion made by Gerry Cooper and seconded by Alan Gabriel to approve the application as submitted.

Charlotte Rodstrom asked where the tank farms were located. Mr. Loos explained the property had been a tank farm and they had spent large amounts of money to clean up the area. He showed on the map the location of some asphalt tanks, and where Coastal's tanks were located.

Greg Brewton, Zoning Administrator, stated that when the research had been done, one could characterize whether the existing establishments would be consistent or not with the proposed code. He stated one of the goals was to recognize these adult establishments as such, and regulate them accordingly.

Gerry Cooper thanked staff for their extensive research, and stated he was concerned that this had been done specifically to target one particular store. Mr. Brewton replied that this amendment was done in order to update the current code as it related to the trends they noticed had occurred recently in such establishments. He further stated they were constantly updating the code for all types of regulations. Gerry Cooper stated it seemed coincidental that there was a lot of discussion taking place in regard to a store coming up on Sunrise Boulevard. Liz Holt added that updating the Adult Use regulations had been on staff's Work Plan (a/k/a pending item list) for several years now and which had been distributed to the Board and the Commission many times in the past. She explained that the City had hired a consultant about 5 years ago to evaluate the current regulations and make recommendations for any necessary revisions. The consultant completed a final draft of the report and recommendations but staff had not yet had an opportunity to develop revised regulations that implemented them. She further stated that the City Commission directed the Division's Work Plan, and they had the right to reorder the priorities.

Gerry Cooper reiterated that this was not directed towards any one particular store. Mr. Brewton replied it was not. Gerry Cooper suggested that an amortization period should be incorporated. Mr. Brewton stated they had discussed that issue, but they were going to leave that up to the deciding bodies. At this point, that was not part of the ordinance. Gerry Cooper stated that he was thinking of a 10-year amortization period, which would let everyone have the chance to change his or her product mix. Mr. Brewton stated that this would have to be decided when reviewing the final product. He explained if the Board was uncomfortable with the ordinance as presented, then the items could be reviewed at a later date.

Alan Gabriel stated they were discussing adult uses and items, but nowhere had the word "adult" been defined. Ms. Holt explained that some of the regulations, which applied to adult uses, were in Florida Statutes, license codes and various other codes and the definition was addressed there. She stated an adult was considered a person over the age of 18. Mr. Gabriel asked if the word adult should be defined in some way in the amendment. Ms. Holt replied that if the Board so desired, it could be included in this ordinance before second reading by the City Commission.

Charlotte Rodstrom asked where the word "morals" had come from in #2, Purpose of the ordinance, and if there was case law to support such wording. Sharon Miller stated that was a long-time standard language that had been included to describe cities' right to regulate for the protection of public health, safety, and morals, general welfare. This was a public purpose decided over and over again in many case laws as justifying the goal of a regulation.

Mary Fertig stated that on page 6, #9, Definition, it appeared very broad and could pertain to materials they might not anticipate including in the ordinance. For an example, she stated that recordings and other audio matter, it could refer to present day music,

and how would they classify some of the present forms of music. She asked how this definition would be applied to such things. Ms. Holt explained that the regulations in the ULDR were meant to regulate land uses, not music. She stated these were reasonable land use regulations being applied to a land use found to have certain impacts on adjacent areas. Ms. Fertig stated that depending on who was enforcing this regulation, it could be difficult to interpret. Ms. Holt stated that tonight they were only presenting the changes that were being processed. She explained there was another part of the regulations, which described more fully sexually oriented materials and other things that fell under the regulation of this ordinance. She stated the Board was not seeing the whole effect of all the current regulations because the ordinance only showed the changes.

Ms. Fertig further stated that under Definitions "b" and asked if there was a further definition of this somewhere else. Liz Holt stated there were definitions of sexually activities specifying anatomical areas already in the code under adult uses. She stated that DVD's and music was a form of expression and not defined in this particular ordinance. She said that where the ordinance stated the primary and dominant theme were already defined in the current regulations and tested in the courts over the years.

Ms. Fertig asked if #9 on page 6 was replacing the current #9. Ms. Holt explained that what was underlined was new language, and the other definitions would remain the same. She added that layers of definitions all worked together. Sharon Miller reiterated it may just be a numbering problem and that in its final version of the ordinance, the clauses would be renumbered appropriately.

Judith Hunt asked if they were looking at a definition of music that was sexually explicit stating that it would be a problem. Mr. Brewton stated that all the regulations had to be looked at together, and they could not just single out one section. He stated this ordinance had been attacked across the Nation, and they were attempting to put together an ordinance they could regulate. He stated that he did not think that any staff person could say that this ordinance could not be challenged because they have been challenged.

Ms. Holt stated they were not attempting to judge people's morals or the content of the SOMs, but wanted to regulate the land use saying if there was a certain percentage of adult inventory, they were an adult use and then are subject to dispersal and other regulations. She stated they were not making any judgments. She stated they were providing the new definitions which were in addition to the other definitions of the code some of which specified which sexual acts, images and materials were being regulated and what would now be defined as "adult materials").

Ms. Hunt stated that she did not see a definitive definition of DVD's, audio materials and such things. She felt they were attempting to push something through quickly in order to solve a political problem, but she did not think they had taken enough time on this matter.

Chair Barbara Curtis stated she did not think they were attempting to define DVD's and were stating that all such items would fall under this ordinance no matter the type of item.

Ms. Fertig stated that she was concerned the definition might be too broad. She read as follows:

“That have as their primary or dominant theme subject matter depicting, exhibiting, illustrating, describing or relating....”

Ms. Fertig felt it would depend on a person's interpretation, and believed they needed something in place that would not be challenged.

James McCulla stated that unless someone was selling only vulgar, explicit, or sexually oriented CD's or audio DVD's, it would be limited by the sales volume. Mr. Brewton confirmed and stated the Board needed to understand that the regulation would only apply to such operations within 500' of a school or church. Otherwise, there were no restrictions. He stated staff felt that the code they were bringing forward to the Board was a good one and upgraded the existing code that currently addressed this issue. He stated they were attempting to focus more on today's trends.

Ms. Holt stated that this ordinance modeled the County's, which had been in existence for the last 5 years, and had been tested in court.

Ms. Rodstrom stated that she had spoken with a Planning Director in Hanover County, North Carolina, who had reviewed this new ordinance and stated this was right in line with their codes. She further stated that in the "Purpose," it specifically stated: "sexually oriented businesses." She felt that would be explanation enough.

Gerry Cooper asked if there was anything in the new ordinance that would specifically affect the new store on Sunrise Boulevard that would not be effective without the new ordinance. Mr. Brewton stated he had not evaluated the new store, and he did not believe it was opened at this time, and therefore, would not be able to answer such a question. He stated the current code talked about inventory and sales, and since the store was not yet open, how could they analyze it? Gerry Cooper reiterated that an amortization period might be in order because it appeared the code was to be more restrictive than it had been previously. He reiterated it appeared to be broader reaching than before. Mr. Brewton stated they were updating the Code, and certain things were being more defined. Mr. Cooper asked if it would be fair for an existing business to have time to comply with the new code.

Sharon Miller stated that as currently proposed any zoning regulation would apply prospectively, and it had not included an amortization clause to apply to existing businesses. Mr. Cooper clarified that the new code would not apply to any existing business within the target area. Ms. Miller confirmed, along with Mr. Brewton. Mr. Cooper further clarified that it would only apply to new businesses. Mr. Brewton confirmed. Mr. Cooper stated it could apply in reality to the new store, but they did not know because it was not yet opened. Mr. Brewton confirmed and stated it could apply to a number of different stores.

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

Motion made by Alan Gabriel and seconded by James McCulla to approve the application as submitted with the request that the term "adult" be further defined. Roll call showed: YEAS: Gerry Cooper, James McCulla, Charlotte Rodstrom, Randy Powers, Mary Fertig, Alan Gabriel, Kenneth Hawkins, and Barbara Curtis. NAYS: Judith Hunt. Motion carried 8-1.

Elections/June 16, 2004

Chris Barton reminded the Board that on June 16, 2004, the first order of business would be to elect a new Chair and Vice-Chair for this Board.

"For the Good of the City"

Mary Fertig stated that she wanted to raise the issue of signs and clearer directions to sites. She stated that sometimes she was only aware if she was at the correct site by finding the posted sign. She asked if directions could be included to the sites. Alan Gabriel remarked that location maps were provided.

Chris Barton stated that 6-7 years ago, this Board had requested that a 300 scale map be included for locating the site. He reiterated that a small location plan was included with the site plan. He added they could redouble their efforts and ask the applicant to include more specific information and maps.

Alan Gabriel proceeded to thank everyone for celebrating his birthday with him this evening.

Motion made by Gerry Cooper and seconded by Kenneth Hawkins to adjourn the meeting.

There being no further business to come before this Board, the meeting was adjourned at approximately 10:50 p.m.

CHAIRMAN

Barbara Curtis

ATTEST:

Margaret A. D'Alessio
Recording Secretary

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