

TOWN OF LAUDERDALE-BY-THE-SEA
BOARD OF ADJUSTMENT MINUTES
Town Commission Meeting Room
Wednesday, October 15th, 2008 at 11:00 A.M.

I. CALL TO ORDER

Vice Chair Joseph Couriel called the meeting to order at 11:00 a.m. in the absence of Chairman Thomas Carr. Members present were Vice Chair Joseph Couriel, George Crossman and Carol Dickman. Also present were Town Attorney Daniel Abbott, Development Services Director Jeff Bowman, and Board Secretary Colleen Tyrrell.

II. PLEDGE OF ALLEGIANCE TO THE FLAG

The Pledge of Allegiance was recited.

III. SWEARING IN OF NEW BOARD MEMBER(S)

Board Secretary Colleen Tyrrell administered the Oath of Office to Carol Dickman for her new term of office.

IV. APPROVAL OF MINUTES

Regular Meeting – August 20, 2008

The Board had no revisions to the minutes of August 20, 2008. A motion was made by George Crossman, seconded by Joseph Couriel, to approve the minutes as presented. All voted in favor to approve the August 20, 2008 minutes.

V. NEW BUSINESS

- A. Project: Coral Key Ocean Club
Applicant: Half Ventures Ocean Development of Florida LLC/ Developer Michael Arker
Location: 4601 El Mar Drive
Request: Description of Variance Appeal: The Applicant is appealing Mr. Frank Rabinowitz's letter dated July 14, 2008 as it relates to the interpretation of Section 30-123(g) of the Town's Code of Ordinances.

Town Attorney Daniel Abbott swore in all those that would be testifying regarding the Coral Key Ocean Club matter.

Attorney Michael S. Weiner of the law firm Weiner, Aronson & Mankoff, P.A., came forward to represent the Applicant. Also present for the Applicant was Court Reporter Lisa Koppel of Consor and Associates to record the testimony of the hearing.

Town Attorney Daniel Abbott asked Attorney Weiner to clarify for the board if his comments would be considered as testimony or if he was making argument as counsel for the Applicant. Attorney Weiner responded that he raised his right hand as a matter of caution. Attorney Weiner said that he was counsel for the Applicant and that the hearing was a Quasi Judicial hearing and the procedures are informal, and there would be testimony at the hearing to testify as to the facts. Attorney Weiner said that he would be making legal arguments, however, if the board considered any comments that Attorney Weiner made as additional facts, he hoped that the board would consider that to be so. For the record, Attorney Weiner said that he had expertise as a witness and as a real estate and land use lawyer. Attorney Weiner said that if the board would accept him in that regard, he felt that his credibility would suffice with regards to proceeding with the hearing.

Town Attorney Daniel Abbott asked Attorney Weiner if he would sign post for the board during this presentation if Attorney Weiner has identified himself as a witness that is giving testimony that the board should consider so that it would be propered as such so appropriate questions might be asked about it.

Attorney Weiner said that he understood what Town Attorney Abbott was saying and that he would do his best but the separation of fact and law was not always that easy. Attorney Weiner said that he understood the instructions that the Town Attorney was giving him. Attorney Weiner said that he would like to address some housekeeping items: First, the fact that he is a state and zoning lawyer - so if there was testimony that would come up in rebuttal, he had the qualifications to be an expert in that area. Second, he was handed Ordinance 2008-22 which indicated a change in procedure with respect to the Board of Adjustment. Attorney Weiner said that he appreciated what Town Attorney Abbott said, but just for the record, Attorney Weiner was not sure because the effective date of this particular Ordinance was immediately upon passage and their application for appeal was before this Ordinance and he did not know if the Ordinance would apply to them and asked that all rights be reserved at this hearing.

Attorney Weiner began his presentation and provided a copy of the Development Order for the property at 4601 El Mar Drive, Lauderdale-By-The-Sea. Attorney Weiner said that his client would explain the Development Order further and stated that the Applicant felt the Development Order was in good standing. Attorney Weiner also entered into the record Ordinance 30-123(g) which establishes the effective period for a site plan. Attorney Weiner said that it was actually G1 that he was referring to that states, "Upon approval of a site plan by the Town Commission, the applicant shall have one year to secure a building permit from the Town's permitting authority when the property which is the subject of the site plan is west of the coastal construction control line and 18 months when the property is east of the coastal construction control line". Attorney Weiner said that he wanted to correct the record that they were not before the board for a variance and they were there with respect to an interpretation by an administrative officer of the Town of Lauderdale-By-The-Sea. Attorney Weiner also entered into the record a composite exhibit that was made up of an Agenda Item Request form signed by Mr. Jim Bell, the former Development Services Director. Attorney Weiner made reference to a notation that on June 26, 2007 the Town Commission granted a time extension to July 9, 2008 along with a memorandum from Mr. Jim Bell and a letter from Mr. Bell dated August 8, 2007 confirming the Town Commission Approval. Attorney Weiner also entered into the record the letter from Frank Rabinowitz, Director of Development Services for the Town of Lauderdale-By-The-Sea dated July 14, 2008 which stated that the site plan had become null and void. Attorney Weiner stated for the record, that the Town has a record on this case, all of which was part of this record and part of any appeal with respect to this particular matter as he proceeds with their rights and remedies.

Attorney Weiner referred to Section 30-7 in the Town's Code of Ordinances and reviewed the powers of the Board of Adjustments. Attorney Weiner said that rules of law that apply are not the rules that apply for a variance and that the board was acting in a different capacity and that the board was looking at the interpretation by an administrative officer of the Town of Lauderdale-By-The-Sea. Attorney Weiner said that the decision in question was the decision rendered by Frank Rabinowitz, Director of Development Services in a letter dated July 14, 2008. Attorney Weiner read the letter that was entered into the record and also provided in the backup material for the board's review. Attorney Weiner referred to the statement in the letter that the Town Code addresses the requirement for the securing of a building permit within the time frame of the Development Order: Section 30-123(g) 1-5. *Effective period of final site plan approval.* Item number (3) states, "If an application/applicant fails to secure a building permit in the allowed time, all previous approvals shall become null and void". In the letter, Mr. Rabinowitz further states that he could not approve a request for extending an expired Development Order without the "issuance" of a building permit which, in this case, must have been issued by July 9, 2008. Attorney Weiner asked the Board if they could find in Section 30-123(g) the word "issue". Attorney Weiner said that the word "issue" was not there at all. Attorney Weiner said that Item number (3) in the Ordinance states, "If an application/applicant fails to "secure" a building permit" it would become null and void" - and that it does not talk about the issuance of a permit.

Attorney Weiner further commented that Mr. Rabinowitz failed to correctly state the standard of the very Ordinance he quotes in the July 14, 2008 letter. Mr. Rabinowitz made the determination that the Applicant failed to "secure" a permit but he used the standard of "issuance" of a permit. Since Mr. Rabinowitz applied the wrong standard and asked that his client do more than what the Ordinance requires, Mr. Rabinowitz was clearly in error. Attorney Weiner said that this was only one word but words were important and they were especially important when property rights were an issue. Attorney Weiner asked that his client be brought to the stand to testify with respect to the matters before the board and what preceded them.

Developer Michael Arker of 5100 North Ocean Boulevard, Lauderdale-By-The-Sea came forward to address the board. Mr. Arker stated that he was President of Half Ventures Ocean Development of Florida LLC.

Attorney Weiner asked Mr. Arker to describe the proposed development to be located at 4601 El Mar Drive.

Mr. Arker said that it was a 26 unit hotel and that 90 percent of the building was 3 stories and on one corner there would be 3 stories over 1 story. Mr. Arker said that all of the parking is contained in the building on two floors and no street parking would be required and there would be extra parking for guests and staff. Mr. Arker said that a swimming pool would be on the roof and indicated that the building met all the criteria for setbacks, etc. Mr. Arker said that it was a green friendly building.

Attorney Weiner verified with Mr. Arker that Half Ventures Ocean Development of Florida was the owner and developer of the building and asked when the site plan application was submitted to the Town.

Mr. Arker responded that the application was submitted in September or October of 2006. Mr. Arker stated that approval of the Site Plan was given in January or February of 2007.

Attorney Weiner asked Mr. Arker to explain or describe the hurdles, difficulties and situations with respect to the property that Mr. Arker had to confront in order to move the application forward.

Mr. Arker said that one of the requirements was to get the Fire Marshall to approve the location of the fire hydrants. After the Fire Marshall reviewed the locations once or twice, approval was obtained. Mr. Arker said that the Town had originally passed a reconfiguration for El Mar Drive which was rescinded after the fact. Mr. Arker said that he had also received paperwork from Mr. Bell re-viewing the review which had different answers from the original one. Mr. Arker said that he then made an appointment with his architect and engineers to visit Tatiana Solovieva and Frank Rabinowitz to review the blue prints. Mr. Arker said that they went over everything with a fine tooth comb including every measurement. Mr. Arker said that everything fit. There was a comment by Mr. Bell about the fire hydrant and said that Tatiana Solovieva made a statement that the Fire Marshall had power over where everything would go. Mr. Arker said that they followed all of the requirements. Mr. Arker said that the Department of Transportation said that a special lane was required in the streetscape because you could no longer make a right turn when you were driving west on Washingtonia Avenue. So they included that information on the plans. Mr. Arker said that they reached an impasse because they did not know where to go because of the paperwork Mr. Bell sent to them. Mr. Arker said that was eventually clarified by Tatiana Solovieva and Mr. Rabinowitz. After that, they were able to proceed and start to get the permits from Broward County.

Attorney Weiner said that a site plan in Lauderdale-By-the-Sea initially was for six months – the six months went by and verified that Mr. Arker was granted an extension. Attorney Weiner said now that Mr. Arker had to deal with another governmental agency, he asked Mr. Arker what he had to go through with Broward County.

Mr. Arker said that he called the building department and obtained copies of all the permits that he had and said that he had to prove how many rooms were in the building because if you are adding rooms or taking away rooms, you have to pay an impact fee on that. Mr. Clark reviewed the plans and said they were fine and then a young lady came in and said that they were not acceptable. Mr. Arker said that they left and went back to the Town and was able to get a certified letter that verified the number of rooms and that there was no change in the number of rooms in the building. Mr. Arker said they went back to Broward County and paid the impact fee of \$1,111.00. Mr. Arker said that they began the next stage and went back to the Town because on the plans there were pavers drawn that would go across Washingtonia and El Mar Drive. Mr. Arker said that months and months ago he had gone before the Town Commission to tell them that he would like to put in the pavers at his expense because he said there were pavers across El Prado and Minto was putting in pavers and there were also pavers further down and it would be more appropriate to keep that look going from one end of El Mar to the other. Mr. Arker said that a controversy started and that he was mis-quoted. Mr. Arker said that he never received an answer from the Town Commission and Mr. Rabinowitz advised him to go back to the building department.

Attorney Weiner commented that Mr. Arker proceeded through all of these events even though he was not able to get the answers he was looking for. Attorney Weiner said that Mr. Arker had to obtain from Broward County an independent environmental review and sub-surface water calculation along with other matters such as that. Mr. Arker confirmed what Attorney Weiner stated and said that Broward County was still working on those issues. Attorney Weiner asked Mr. Arker to read a memorandum from Mr. Bell to Town Manager Esther Colon regarding staffs recommendation, "The Coral Key Ocean Club provides a significant upgrade to the property and provides for quality redevelopment in the area. The existing buildings on the site are non-conforming".

Attorney Weiner stated that the recommendation of Mr. Bell was Mr. Bell's conclusion for the project. Attorney Weiner stated that Mr. Arker's testimony was that he continued throughout the year to diligently continue to move the project forward. Mr. Arker responded, "Absolutely".

Attorney Weiner asked Mr. Arker to identify and explain two fee statements from Broward County. Mr. Arker said one fee payment was in the amount of \$1500.00 for surface water rights and the other was in the amount of \$40.00 for the foundation. Attorney Weiner verified that these were fees that Mr. Arker paid in addition to the impact fee of \$1,111.00 and presented them to the board secretary for the record.

Attorney Weiner asked Mr. Arker to explain to the board what he was holding. Mr. Arker said that he was holding a copy of the blue prints of the project. Mr. Arker said that in the original approved plans, he reduced the height on 90% of the building from 3 over 1 to 3 stories and there was only one section that was 3 over 1 story. Mr. Arker said that the blue print had been stamped by the Building Code Services of Broward County with a permit number 08-01617.

Attorney Weiner entered the blue print of the project as part of the public record. Attorney Weiner stated that in completion of Mr. Arker's testimony, he asked Mr. Arker if it was his testimony that Mr. Arker both secured and was issued a permit. Mr. Arker responded, "Absolutely". Attorney Weiner thanked Mr. Arker for his testimony and asked for a short recess.

Town Attorney Abbott confirmed with the board that they did not have any further questions for Mr. Arker.

Attorney Weiner began to discuss the words "secured" and "issued". Attorney Weiner said that if you checked the Merriam Webster's online dictionary you would find that the word "secured" has a number of different meanings but the one that is most applicable is that it puts beyond the hazard of losing – or not receiving. Attorney Weiner said if you look in the same dictionary for the definition of the word "issue", it was to be put forth or distributed usually official - one is a passive act and one is an active act. Attorney Weiner stated that in the first definition, all that must occur is that the permit must be set aside; in the second definition, an affirmative action has to be completed that is promulgated or there be an issuance of a permit. Attorney Weiner said that the facts stated in Mr. Arker's testimony indicates that both levels were met that they were both issued and secured. Attorney Weiner said that if the board did not like that, Mr. Rabinowitz applied the wrong standard and inserted words into the ordinance that just plainly were not there. Attorney Weiner said the Mr. Arker's testimony was backed up by the stamps and the receipts that were presented into the record and they felt comfortable with it. Attorney Weiner then entered into the record a memorandum from Architect Marc Saval which stated that permit number 08-01617 was given for this particular project. Putting aside the fact that the actual foundation permit was issued, the permit number alone would have been enough to meet this standard because it secured a permit and met the requirement of the ordinance and that is what the licensed architect signed and stated. Attorney Weiner said that it was the failure of the Director of Development Services to understand the difference in that standard which allowed him to reach an incorrect conclusion with respect to the vesting of this particular site plan. Attorney Weiner said that the board heard the testimony of Mr. Arker and had read the memorandum from Mr. Jim Bell which stated unequivocally that the site plan provided a significant upgrade to the property and that the board then heard from Mr. Arker that he had lowered the height of the building.

Attorney Weiner then brought to the board's attention, three Florida cases. The first case had to do with Rinker Materials Corporation verses the City of Miami, Citation 286SO2D552. This case went before the Supreme Court of Florida after a Board of Adjustment had denied a property owner a permit to construct a concrete plant. The Supreme Court of Florida stated, "Since the zoning regulations are in derogation of private property rights of ownership, words in zoning ordinances should be given their broadest meaning when there is no definition to the contrary and the ordinance should be interpreted in favor of the property owner". Attorney Weiner, said that the interpretation should be in their direction and that should be the stand that the board should take and not in the direction of the Town. Attorney Weiner said that the court goes on to state that municipal ordinances are subject to the same rules of construction as the State Statute.

Attorney Weiner cited another case with the Colonial Apartments in the City of Deland that was decided in the 5th District Court, Citation 577SO2D593. This case re-affirmed what Rinker said and once again the court said, "You may not insert words or phrases in the municipal ordinances in order to express intentions that do not appear".

Attorney Weiner said that as late as 2005 in the case of City National Bank of Florida verses the City of Tampa, once again Colonial Apartments and Rinker were referred to and re-affirmed. The City National Bank of Florida was granted its petition of certiorari when the City of Tampa interpreted its ordinances so as to deny the bank a Certificate of Appropriateness. Attorney Weiner said that now the board could see the controlling law with respect to the argument that he was making for them at the hearing. Attorney Weiner read again, "since the zoning regulations are in derogation of the private rights of ownership, words used in zoning ordinances should be given their broadest meaning when there is no definition or clear intent to the contrary" – so you would have to give the broadest meaning to the word secure - "and the ordinances should be interpreted in favor of the property owner".

Attorney Weiner said that there was another interesting legal concept that was embraced by the Florida Courts and had two more cases to present to the board. There was a case called the City of North Miami verses Margoleese, Case 289SO2D424 and it was decided in 1974 in the 3rd District Court. The court cites other Supreme Court cases and gives the elements of estoppels and there were three in nature – the property owner proceeded in good faith – there was an act or omission of the government – it would be highly inequitable and unjust to destroy the rights previously acquired. Attorney Weiner said that Mr. Arker proceeded in good faith for eighteen months diligently pursuing the site plan despite the problems with the pavers; and the problems with Broward County; and the problems with the Fire Marshall. There has been an act by government namely the "revocation of the vested site plan" that gives a dubious interpretation of its local ordinances. The result would be highly inequitable and unjust because Mr. Arker had paid water fees, impact fees, review fees, and permit fees. Attorney Weiner said that it would be inequitable on two counts to Mr. Arker: 1) because it would be in derogation of his property rights and 2) to the Town of Lauderdale-By-The-Sea because a project that was recommended and said that it would actually increase the values in the area; and add to the area; and remove the non-conforming building which now could not be built. The doctrine of equitable estoppels is reaffirmed by the Florida State Supreme Court in Hollywood Beach verses the City of Hollywood, Case 329SO2D10 and it specifically states that it may be specially invoked against municipalities. They specifically state that you do not have to commence construction for there to be equitable estoppels. So, it is not actually necessary for Mr. Arker to get a brick on the ground – equitable estoppels applies. Attorney Weiner said that it was interesting because the last case concerns the extension of a building permit when a city attempted to revoke it. The court could not have put it better when it said that every citizen has the right to expect he would be dealt with fairly by his government. Attorney Weiner said that with respect to this particular interpretation by Mr. Rabinowitz, Mr. Arker should expect to be dealt with fairly by his government. Attorney Weiner gave a summary of his arguments which would not be in substitution of his rebuttal that he would be entitled to under the quasi judicial rules and regulations enacted by the Town of Lauderdale-By-The-Sea. Attorney Weiner closed his comments and asked that the board rule the site plan as vested and reverse the interpretation set forth in the letter of July 14, 2008 from Mr. Rabinowitz.

Town Attorney Abbott confirmed that Mr. Jeff Bowman was representing staff and asked him to come forward to give his presentation.

Mr. Jeff Bowman Director of Development Services directed the board's attention to the letter that was provided in the backup material for the board that was from counsel for the complainant. Mr. Bowman said that the letter stated that the nature of the Appeal was an appeal to the letter from Frank Rabinowitz and that a particular regulation, Section 30-123(g), had been misinterpreted. Mr. Bowman commented that in that code section it states that upon an approval of the site plan of the Town Commission, the applicant shall have one year to secure a building permit. Mr. Bowman referred to Exhibit E that counsel provided of the site plan stamped by Broward County for the foundation with a permit number and stated that the permit number does not become a permit until it is approved by a building official. The permit number is just a processing number. Mr. Bowman entered into the record, the Florida Building Code section 105.1 that states, "A permit shall be deemed issued when signed by the Building Official and impressed with the seal of the governmental agency issuing said permit". So, if the permit was issued on July 9, 2008, Mr. Arker would have had those signatures with that permit which Mr. Arker did not have. Mr. Bowman said that once all of the disciplines had signed off the site plan and the Building Official approves it, a permit card would be issued. Mr. Bowman said that a permit card had not been provided to Mr. Arker. Mr. Bowman said it was the Town's contention, and that he appreciated the background that the applicant had provided, but the issue was that they were contesting the interpretation of Frank Rabinowitz as it relates to the code.

Town Attorney Abbott asked Attorney Weiner if he had any questions for Mr. Bowman.

Attorney Weiner asked Mr. Bowman if he saw the word "secure" in the paragraph of Building Code section 105.1 that he read. Mr. Bowman responded, "No". Mr. Bowman added that Attorney Weiner quoted a definition of "secure" out of the dictionary which you could take bits and pieces of a large definition of that word and apply. Mr. Bowman said that the Town applies "securing" as possessing or having which the Applicant had not possessed or obtained a permit. Mr. Bowman said that the number that was put on the plans was just a processing number and it would not become a permit number until the Building Official approved that plan.

Town Attorney Abbott asked the board to address Mr. Bowman's comments.

Ms. Dickman asked Mr. Bowman that if someone has a year to apply for a permit and they apply on the last day of the year, and because it was not reviewed yet, the permit was not considered as okay?

Mr. Bowman said that was correct and stated that if you apply for a permit, you were submitting an application. Once that application was submitted it would go to the different disciplines; electrical, mechanical, plumbing, etc. Once the various disciplines sign off on the permit, the processing number becomes the permit for that project.

Mr. Crossman referred to Exhibit 'E' in their backup material which was a receipt from Broward County Building Code Services dated July 9, 2008, which was the last day of the extension granted by the Town Commission for having a permit in hand. Mr. Crossman said that there was a permit number indicated and there was a chart for approval from plumbing, building, mechanical, and electrical which had not been checked off by any of the disciplines listed. Mr. Crossman said that the conditions for acquiring a permit require that the permit be checked off by the various disciplines and then the Broward County Building Code Services presumably would give the applicant an indication to obtain a permit if everything was okay. Mr. Crossman said the conditions for obtaining a permit on July 9, 2008 had not been met if you went by that receipt, and that it was the last day that was given to obtain a permit not to apply for a permit.

Mr. Bowman said that Mr. Crossman was correct in his understanding of the process.

Town Attorney Abbott asked if there were further questions for Mr. Bowman.

Vice Chairman Couriel verified with the Mr. Bowman that the number on the Broward County Building Code Services receipt was like a folio number or a reference number for processing. Mr. Couriel said that this would not guarantee issuance of a permit. So, this was just a receipt for paperwork and would not be securing of a permit as stated in the Town ordinance. Vice Chairman Couriel said that his interpretation of the word "secure" from his own college dictionary was "to get possession of or to acquire". Vice Chairman did not see how sending a set of plans to the building department would constitute obtaining possession or acquiring a permit. Vice Chairman said it might be a matter of semantics but to a layman like himself, he thought it was very clear what the intent of the law was by the Town Commission in the ordinance cited.

Town Attorney Abbott verified that there were no further questions from the board for Mr. Bowman before proceeding with final deliberations. Town Attorney Abbott also asked if there were any members of the public present who wished to be heard on this application who would be in favor of the application or opposed to the application. Being that there were none, the evidentiary portion of the hearing had been concluded and Town Attorney Abbott asked Attorney Weiner to offer rebuttal and closing argument.

Attorney Weiner said that after hearing the questions, he said there was one factual issue that he thought was important for deliberation and if it took additional testimony from Mr. Arker, if the board would allow him to return to the stand, the application for permits and the site plan were two different items. Attorney Weiner said that he thought Mr. Arker already testified to the fact that he applied for a permit in Broward County in March of 2007 and he did not want the board to think that Mr. Arker applied on July 9th, 2008 and he wanted to make that clear for the record before he began his rebuttal.

Attorney Weiner commented that parking was a little tough in the Town because he was a little late for the hearing trying to find a parking space. Attorney Weiner said that he bet if you found something on your windshield that said "a parking ticket" and then you went to pay for it and later found out from the police chief said that it was a "speeding ticket" you would make the argument that NO this is a "parking ticket" – how could this be a "speeding ticket?" The police chief would say to you, "a matter of semantics". Attorney Weiner said that you wouldn't stop at that- you would say that you clearly saw the word parking and that you would clearly know what standard would apply to you. Attorney Weiner said that you would be upset if someone issued you

something that said "permit number" not "processing number", nothing other than "permit number" and you knew that you had to have a permit number secured. So what is it? Are you going to defend the government that gets the chance to switch words on you? Attorney Weiner asked why somebody did not put processing number on these things. Attorney Weiner said that they put "permit number" on the forms. Attorney Weiner asked if you wouldn't demand that the Director of Development Services use the right words and not the wrong words. Attorney Weiner referred to the Supreme Court cases that say when you interpret these ordinances, we don't want Mr. Policeman to change "parking" into "speeding". Attorney Weiner said it was just the opposite and that he wanted the board to interpret these ordinances in light of the property rights the board would be taking away in favor of Mr. Arker. So, if there was any doubt in the board's mind, the doubt should be resolved in this direction. Attorney Weiner referred to a Florida Supreme Court Case 20S02D126 of 1944 called Singer verses Scarborough where the Department of Liquor Control would not "issue" a permit but Dade County was processing the permit and the Supreme Court told them to issue the permit because the permit was secured. Attorney Weiner said that this case was not about a liquor license but this was not some type of dream that some cagey lawyers came up with but that this was a problem that had occurred before and if you meant "issued" the Town's ordinance should say "issued". Attorney Weiner said there was some mention that Mr. Arker was not guaranteed the "issuance" of a permit. Attorney Weiner understood what the board member was saying, but then the Town's ordinance should say "Site plans are not extended unless you guarantee the issuance of a permit". Attorney Weiner said that he thought that all of the board could understand Mr. Arker's situation and what the law says on the interpretation of ordinances. The testimony was that all of the quotations were about issuance, issuance, issuance –not once was there any link to the word "secure". Moreover, no one touched the issue of equitable estoppels and isn't that the way you would expect government to treat you. Aren't you glad that if you did something in good faith and worked hard at it and there was a board sitting in judgment of what you were doing, the board would reach a similar conclusion? Attorney Weiner said that in this particular instance, that they have met the standard of proof and that the board should in fact reach the conclusion that Mr. Rabinowitz's letter was wrong and the site plan was vested.

Town Attorney confirmed that Mr. Bowman had nothing further to add to the record and advised the board that the evidentiary and the closing portions of hearing was concluded and that the board begin their deliberations to determine if the administrative decision that was under appeal should be recommended to be affirmed or reversed.

Mr. Crossman said that it was his opinion that it was easier to assign a permit number at the beginning and then take it to the individual permitting agencies to have them verify that this was indeed a permit having passed all of the approvals and conditions and being signed off on that piece of paper. Mr. Crossman said that it was a matter of expediency for Broward County Building Code Services to assign a permit number at the beginning of process which is a process they probably had been using for more than fifty or sixty years.

Ms. Dickman referred to a memorandum dated August 7, 2008 from Architect Marc Saval that indicated that the permit number would be the permanent identification number for the plans and would follow the plans through construction until a C.O. was issued. The memorandum further states that the permit number is the only one the project receives from the Building Department and is unique to each project and that a permit was secured.

Vice Chairman Couriel interjected that the statement in the memorandum was from the Applicant's architect and it would collaborate the Applicant's position that a permit was secured. However, Vice Chairman Couriel said that it was his interpretation of Exhibit "E" which is the Foundation application, if the stamp that Broward County uses indicated application number in lieu of permit number, the board would not be there discussing the issue. Vice Chairman Couriel said that just because they put a permit number on the plans, it does not become a permit until a date is affixed next to the permit number. Vice Chairman Couriel said that it was his opinion that it was not a permit until it was signed off by all of the authorities and was secured by their signatures and date of those giving the approval.

Vice Chairman Couriel verified that there was no further discussion and asked the board for a motion.

Mr. Crossman made a motion, seconded by Vice Chairman Couriel, to deny the appeal based on the fact that the conditions for issuance of a permit had not been met.

Town Attorney Abbott asked the board if there was further discussion to the motion or the board could proceed with the vote.

Ms. Dickman asked Town Attorney Abbott if it was the board's obligation to decide only on the legal status and not take into the consideration all things that the developer had done to improve that property.

Town Attorney Abbott said that Ms. Dickman was correct and that the standard in front of the board was whether the Town's building official made a mistake when the letter was drafted.

Vice Chairman Couriel asked the board to continue with the vote. In a roll call vote, Mr. Crossman and Vice Chairman Couriel voted in favor to deny the Applicant's appeal. Ms. Dickman voted against the denial of the Applicant's appeal. The motion carried 2 – 1.

- B. Project: Wings Beachwear Sign
 Applicant: Art Signs Company Representative for Wings Beachwear
 Location: 4405 Ocean Drive
 Request: Description of Variance Request: The Applicant is requesting exception to the Town's Zoning Code, Chapter 30 to erect (2) non-conforming signs:
Sign 2 on SE corner of building, proposed letter size 36 inches (18" maximum allowed – Code section 30-507); proposed square footage 59.79 sq. feet (32 sq. feet maximum allowed – Code section 30-508(c)(2))
Sign 3 on west side of building/ square feet of sign: proposed 39.41 sq. feet (Not permitted. Does not front a street – 32 sq. feet maximum allowed - Code section 30-508(c) (2); proposed letter size 36 inches (Not permitted. Does not front a street – 18" maximum allowed – Code section 30-507).

Town Attorney Abbott advised the board that he had distributed to them a copy of Town Ordinance 2008-23 that was adopted on second reading and finally adopted last evening and noted that the ordinance had changed in several areas the criteria the board would employ when considering a variance request.

Town Attorney Daniel Abbott swore in all those that would be testifying regarding the Wings Beachwear Sign variance application.

Architect Steve Brandt of S. H. Brandt Associates came forward give a presentation for the Wings Beachwear Sign variance. Mr. Brandt said that they were before the board requesting a variance for the signs that they would like to have on the building. Mr. Brandt gave a brief history and said that the real issue started when they asked to get a sign on the southeast corner of the building. Since they were putting a sign on a projected roof area, it did not meet any of the definitions of the code. Mr. Brandt said that the code had very specific definitions for many types of signs but, unfortunately, the Wings sign did not fall into that type of criteria. Through discussion with the Town staff, they came to the determination that if they called this a canopy sign and met the criteria for a canopy sign, they could really meet the requirements of the code. All they had to do was to meet the additional requirements in terms of sign size, color, lighting and other various aspects of the code. Mr. Brandt said that Wings Beachwear uses the name "Wings" on their buildings for their identification and they do not use any additional verbiage. Wings Beachwear is a thirty year old company that has multiple locations throughout the United States which were generally located front and center of the downtown area in the tourist areas close to the beach. Once they are in those locations, they want to establish their identification as strongly as possible so that they could attract the clientele that they want.

Mr. Brandt referred to the color rendering display in front of the board that depicts the building as it would be and as approved with the addition of the sign. Mr. Brandt stated that the sign they were proposing would meet the requirements for a canopy sign which states that the height of the letters could not be more than 18 inches high and the sign area could not be more than 32 square feet. Mr. Brandt said that the problem with this type of signage was that there were only five letters. So in order for them to use the sign to the maximum advantage, they needed to make the letters larger. Mr. Brandt said that in the variance application they made the argument that company names like Blue Moon Fish Company; or Bank of America would be appropriate for the 18 inch letter height requirement. Mr. Brandt said that it would not be an appropriate application for a company name that would only have five letters. Mr. Brandt said that the Applicant was not looking to put additional lettering on the building and that they only wanted to use the name Wings and let the reputation of the company stand.

Mr. Brandt said that the other requirement was that you needed to be 32 square feet or less in the sign area. Mr. Brandt said that the way you would measure this according to the code would be to measure it by a rectangle

or square that would encompass the entire sign. Mr. Brandt said that, unfortunately, this sign is set on a radius and they would be punished by the code because the top of the highest letter and the bottom of the lowest letter would be more than the height of the letters. Mr. Brandt said the width of the points of the letters would be wider than the width of the letter. Mr. Brandt said that if you were to re-calculate the dimensions based on a curved rectangle, which would be the height of the letters by the width of the letters, it comes down to more like 42 square feet, so they are a lot closer to the requirements than it appears. Mr. Brandt said that if you were to measure the sign based on the area of each letter, the dimensions would be somewhere around 15 square feet. Mr. Brandt said that if you were to make a box sign with the letters on it, you would use the box as the area for the sign and it would need to be 32 square feet. If you used channel letters like the ones they are using, which were internally illuminated with a frosted, clear plastic front, you could ultimately calculate the area of the sign per letter. In that case, they would be somewhere in the area of 15 square feet, which would be way below the requirements of the code.

Mr. Brandt referred to the Lauderdale-By-The-Sea Sign Code Section 3508(c) Item 2 for B1 Zoning that allowed them to have building identification signs – one sign per building per street frontage with a sign area of not more than 32 square feet and a sign height of no greater than 35 feet. Mr. Brandt said that the building was not 35 feet and told the board not to worry about the 35 feet height. Mr. Brandt said that meant they could have a building identification sign of 32 square feet on each side of the building. Mr. Brandt said that if they go with the definition of a building identification sign in the code, it states that a sign displaying only the name and/or address of the building or development. In other words, Mr. Brandt, said that they were allowed to have two signs on the building that identify the building of 32 square feet each. Mr. Brandt said they were proposing to take those two building identification signs that they were allowed and combining them into one identification sign at the intersection of the two signs. Mr. Brandt said that they were asking to be allowed to increase the area of the sign from 32 square feet to almost 42 square feet if you calculate it at an angle or almost 59 square feet if it was calculated by the big square that would encompass the letters.

Mr. Brandt said that the code also allows them to have other types of signs indicated in Section 9 of the same Section C. In addition, each store front business may display no more than two of the following permanent signs which Mr. Brandt called a business sign and in that chapter, it basically states the same thing with the exception that you would be only allowed to have one sign per street front and you would only be allowed to have 32 square feet per sign. Mr. Brandt said that the argument now was that they were allowed to have two building identification signs- and their building is called Wings - and they want to put their building identification sign on the southeast corner - and they want to combine the two signs they were allowed into one sign. Mr. Brandt further stated that they were still allowed to have two business signs. Mr. Brandt said that they have one business sign on the northeast corner that meets the code requirements that is currently permitted. Mr. Brandt referred to the rendering displayed for the board. So, Mr. Brandt said that if they were allowed to combine the two business signs into one sign and were allowed to combine the areas into 64 square feet, the only issue left would be the height of the letters. Mr. Brandt said that he felt that the 18 inch letter height requirement was just too restrictive in this application for a sign having only five letters.

Mr. Brandt went on to sign number three located on the west side of the building that is indicated in the rendering displayed for the board. Mr. Brandt said that the west side of the building had been currently stuccoed and had been brought up to the standard indicated in the rendering. Mr. Brandt asked the board to recall the Mack's Grove building and said that they had a sign in that exact location that they want to have a Wings sign. That was the identification sign that everyone remembers coming down Commercial Boulevard towards A1A and approaching the beach. Wings requested that they be allowed to put a similar sign in that same location but was denied the application based on the requirement of the code that the sign needed to be on a street front. Mr. Brandt felt the requirement was somewhat silly but that is what the code states. However, Mr. Brandt said that they are allowed to have two business identification signs – and they are allowed to have two business signs – in other words, they could have two signs on the south side and two signs on the east side. Mr. Brandt said that they were asking to have one sign that was permitted on the northeast corner, one on the southeast corner and one on the west side of the building. Mr. Brandt said that when they designed this sign for the west side of the building, they used the same standards for the sign on the southeast corner which was the main entrance and the only difference was that it was laid out on an arc and the way you would calculate the area would be much less. Mr. Brandt said that these signs would come down to 39 square feet. Mr. Brandt said that the issue here was if they would be allowed to have a sign that was not on the street. Their contention was that this area would be more visible from Commercial Boulevard than the actual south side of the building which they felt would not be appropriate to have a sign of any sort because of the architectural embellishments that they designed for the building. In conclusion, Mr. Brandt asked the board to approve all of the conditions that they were asking

because they felt that the signage they would be using would be appropriate for the application – and he felt the size was appropriate and the signage would be an asset to the building.

Town Attorney Abbott asked if anyone had any questions for Mr. Brandt.

Mr. Crossman asked if the 1 ½ candle power on the proposed sign would have any affect on the sea turtle nesting.

Mr. Brandt said that it didn't matter because they would have to meet the code requirements.

Vice Chairman Couriel asked Mr. Brandt what were the size of the letters in the rendering for the main entrance.

Mr. Brandt said that if they went with the 18 inch letter height they would take advantage of the additional sign area and add additional verbiage in that area. Mr. Brandt said that the sign would not only say Wings but it would also say "All you need to reach the Beach" which is their tag line. Mr. Brandt said that they could do the same thing in the other locations but they did not feel it was appropriate to have all of the other garble on the building and thought it would be better to keep it very simple and clean and that they were trying to combine the areas of the letters into a very simple sign.

Vice Chairman Couriel stated that the 18 inch letters would still be visible.

Mr. Brandt said the sign would be visible if the letters were even six inches but felt the larger letters would be more appropriate for this application because he did not want the letters dwarfed by the size of the building. Mr. Brandt further stated that the 18 inch letters over the main entrance were appropriate because the entrance was only about 8 to 10 feet wide but on the larger entrance on the southeast corner, the west façade was much larger and the larger lettering they were requesting were more appropriate.

Vice Chairman Couriel asked Jeff Bowman, Director of Development Services, for his comments.

Mr. Bowman referred to his memorandum dated September 12, 2008 that was provided to the board in their backup material. Mr. Bowman stated that the memorandum outlined the variance request in detail. Mr. Bowman wanted the board to consider the fact that in sign number 3, which was on the west side of the building, that if the owner of the adjacent lot wanted to develop that property to a three story building, the illuminated Wings sign would be facing that building.

Vice Chairman Couriel verified with Mr. Bowman that the current code does not allow for any sign that would not be facing a street and Vice Chairman Couriel felt that the code's intent was to clean up the appearance of the Town and not continue the number of signs that would all over the Town.

Mr. Bowman said that he was not aware of the intent of the code but if another building was constructed next to the Wings building and if there was a residence on the third floor, that sign would light up that room or that store front .

Mr. Crossman said that he remembered many years ago that the Town Commission was arguing about these signs and the argument went on and on for several meetings and they were trying to standardize the signs because if you had a small hotel and had a large free-standing neon sign in front of it, the Town Commission wanted to prevent the Las Vegas Strip look. So that was when the Town Commission might have come up with the code. Mr. Crossman said that in this case, he felt the board needed to consider the design principle called the balance of scale. Mr. Crossman said that it would not look right to have a small sign on that area and thought that all of the signs were appropriate and that he liked them all.

Town Attorney Abbott verified that the board had no further questions for Mr. Bowman and asked if any member of the public would like to be heard on this application.

Mr. Brandt said if a building was built next to Wings, Mr. Brandt said that it would to their advantage to remove the west sign and put it on the south side if that situation should happen.

Mr. Crossman commented that the west sign would be useful because when someone approaches from the bridge on Commercial Boulevard, you would see the sign.

Mr. Brandt said that it was important to realize that the way the signs were laid out, you couldn't see more than one sign at a time.

Attorney Abbott verified that there were no public comments and asked if either party wanted to make concluding comments.

Mr. Brandt said he would like to conclude that he thought the proposed signage was appropriate for the scale of the building. Mr. Brandt commented that Wings has about thirty other stores that use similar signage and if you saw one of their sign in your travels, you would remember them by their name. Mr. Brandt said that if someone came to the store out of sheer intrigue trying to figure out what kind of store it was and ended up leaving with a product, then their advertising system was very successful. So, it is important for the owners to keep the sign simple and scaled appropriately for the building to present a very established business to the public. Mr. Brandt said they would be willing to entertain the possibility of altering the signs to meet the code.

Ms. Dickman said that she thought the people wanted the Town to be more like a little village kind of feeling - not like Time Square in New York City with all of the big signs. Ms. Dickman thought the building was magnificent and that she was basically just concerned with the size of a neon sign right on the corner of Commercial Boulevard and A1A and thought the neon sign would be too overpowering. Ms. Dickman said that the building itself was so beautiful and she did not feel there was a need for a sign to be double the size. Ms. Dickman said that she did not see why the sign on the west side of the building could be done by code and be the same size as it was on the other side.

Mr. Brandt said that this was really not a neon sign. Mr. Brandt said the sign was illuminated by neon tubes in the channel lettering and there would be a frosted plastic cover over that so that you would get the color of the neon. Mr. Brandt indicated that the neon creates the continuous illumination of the letters and that the neon is not visible.

Ms. Dickman asked Mr. Brandt what the width of each letter would be.

Mr. Brandt responded that the letters would be about four inches wide.

Diane Cravets of Art Sign Company said that normally when you use neon, it was more like a trim and more like a Miami Beach look. Ms. Cravets said that this would be a completely different look. Ms. Cravets said that the look now was to use individual letters. Ms. Cravets said it was just the word Wings and you could only go so wide and they were trying to keep it neat and clean so that it would look sophisticated for the Town.

Ms. Dickman asked how many feet from the start of the "W" on Wings to the "S" at the end.

Ms. Cravets indicated that on the radius it was 14.4 5/8 inches.

Vice Chairman Couriel said that the board was looking at four variances and each one would be affected by the other and that the size of the letters would affect the coverage of the sign. Vice Chairman Couriel said that if you look at other signs in the Town such as the Benihana sign, it was a very distinctive looking building. Benihana has two signs and the size of the letters were very, very visible and no one could miss seeing them. Vice Chairman Couriel said that the beauty of the Wings building speaks for itself and when you speak about 3 feet high lighted letters on the side of the building, he did not feel that it was an image that would upgrade or improve the appearance of the Town. Vice Chairman Couriel said if the size of the letters were reduced, the Applicant probably could have met the coverage portion of the code or at least come very close to the 32 square feet.

Mr. Brandt said that they had done calculations on how they could meet the 32 square feet requirement and the sign on the west side right now would be at 39 square feet with the letter height. Mr. Brandt said if they had to meet the 32 square feet, the letters could be made 30 inches which would make the sign 12 feet which would be 32 square feet. Mr. Brandt said if the board would bear with him and give him the arch rectangle, then the only thing left would be the overall height of the letters. Mr. Brandt said that they could scale down both of the signs to 30 inches by 12 feet to meet the requirement of 32 square feet.

Vice Chairman Couriel stated that the Town code specifically prohibits you from putting a sign on the west side of the building because it does not front a street so it did not matter how much the letters were reduced, it was still

not allowed. Vice Chairman Couriel said the purpose and intent and of the code was to upgrade the Town and there was a reason the code was written the way it was.

Mr. Brandt responded that this was a one tenant building and it was possible for the building to have four, five or six tenants in the building and they would all be allowed to have individual signs and would all be allowed 32 square feet and all be allowed 18 inch maximum letter height and depending on how you read the code, possibly all on street fronts. Mr. Brandt said it would be very simple for them to say that they were two tenants and get twice the signs. However, that was not what they were asking for. They were asking to keep the building very simple and keep the esthetics of the signage to scale with the esthetics of the building.

Mr. Crossman commented that he thought the lighting would be more of a glow than the normal bright neon light and felt it was a non-issue. Mr. Crossman verified that the size of the letters on the canopy sign would be 36 inches.

Vice Chairman Couriel said that if the board allowed the variance to put a sign on the west side of the building, it would be totally out of character to allow any lettering greater than 18 inches.

Mr. Brandt brought to the attention of the board another issue which was that Mack's Groves had a pole sign on the parking lot north of the site. In the development of this property, the owner donated that property to the Town for the expansion of the parking lot. Mr. Brandt said that they would ultimately reserve the right to that pole sign and they relinquished that right in consideration for these signs. Mr. Brandt felt the Town should give them some consideration. Mr. Brandt said that the parking lot now belongs to the Town and they expected the Town to expand the parking lot on that site and they were trying to incorporate that entire area into a plaza to beautify the area. Mr. Brandt said that they did not feel the pole sign would be appropriate in that area and they thought they would be given some consideration for some additional signage on the building.

Ms. Dickman said that she would go along with the sign on the west side if it was not any bigger than code. Since Mack's Groves has been closed for some time, it would be nice for people to know that a business is there operating and open. However, if a building is developed next to Wings, then they would have the option to move the sign. Ms. Dickman agreed with Vice Chairman Couriel and that the 3 feet letters were just too big and thought that 24 inches would be better.

Mr. Crossman referred to the renderings and said that you could visualize Wings on the south side and on the corner and to him that would be more garish than having the sign on the west side.

Mr. Brandt presented a rendering that was not in the board's backup material, depicting the signage lettering at 18 inches high and the area of the sign was 32 square feet and that he did not have a problem reducing the area to 32 square feet if that was their only option.

Mr. Crossman indicated that he noticed an additional sentence, "All you need to reach the Beach", under Wings on the rendering.

Mr. Brandt said that was what they were addressing.

Vice Chairman said that the additional wordage was perfect where it was shown on the rendering and understood that all they wanted was the word Wings, however, it could be very effective with 24 inches. Vice Chairman Couriel said that 24 inches could be seen all the way back to the bridge.

Mr. Brandt said that they had no problem with 32 inches.

Ms. Dickman again stated that as it is, the west sign is against the code and Ms. Dickman felt that it would be fair to have a sign on the west side with 18 inches.

Mr. Brandt referred to the optional rendering indicating the 18 inch lettering with the additional wordage that meets the code requirements and said that this would be the only option if the board did not approve the variance as requested.

Vice Chairman Couriel said that they did not have to do it that way and they would not have to maximize the letters the way it was depicted on the rendering. Vice Chairman Couriel said that they could just put Wings.

Mr. Brandt reminded the board that Mack's Groves had a mural on the entire building and it was his opinion that to reduce the lettering to 18 inches would be almost minuscule.

Vice Chairman Couriel responded that the Mack's Groves mural was very effective with the beauty of the building rather than the garishness of over oversized letters.

Mr. Brandt responded that a mural is no longer allowed by the code and they do not have that option.

Vice Chairman asked Town Attorney Abbott if the board had to take a vote on all four variances.

Town Attorney Abbott said that the board should ultimately pass upon all of the variance requests whether it was done in one or separate motions.

Ms. Cravets interjected that a 32 inch letter by 12 feet would meet the requirements of the square footage and the square footage variance would go away. So the board just needs to give them a letter size for the west side of the building.

Vice Chairman Couriel said that the board was discussing the main sign on the southeast corner of the building.

Mr. Brandt said that the option then becomes if you were going to measure the sign from tip to tip and from top to bottom along the radius, they would be inclined to straighten the sign out. Mr. Brandt said they were penalized because the sign was put on a radius arch form as opposed to straight.

Ms. Dickman said the board was suggesting that the letters be reduced from three feet to two feet.

Mr. Brandt said the 24 inch letters would probably still be over the 32 square feet requirement if it was measured tip to tip and top to bottom. Mr. Brandt said if the board would allow him to draw an arched rectangle, the arched rectangle would in essence be the same as the straight rectangle.

Vice Chairman said that Mr. Brandt said that he could make the sign straight instead of curved.

Mr. Brandt said that could be done but it would not be appropriate with the building.

Ms. Dickman asked Mr. Brandt if the sign was made on a curve and it did go over the square footage, could he calculate the square feet for the board.

Mr. Brandt said that he could not readily calculate those figures and it was not that easy to do. Mr. Brandt asked the board to look at the difference in the area of the straight sign verses the arched sign. Mr. Brandt said that the straight sign was 39 square feet and the arched sign was 59 square feet which was 25 percent more area because of the arch in the sign. Mr. Brandt said that if they wanted to keep the arch, the letters would have to be smaller than 18 inches. Mr. Brandt said that if you calculate the arch sign on the radius rectangle, it is 40 square feet right now – so it is not that far off. Mr. Brandt said that if the letters were reduced to 2 feet, you would be taking a third off or something like that.

Vice Chairman Couriel said that he understood that it would take some mathematical calculation, and that he would like to know what the square footage would be.

Mr. Crossman said that he thought the square footage was an unnecessary restriction because it says that every sign in Town has to be rectangular.

Mr. Brandt said that if the board would tell them what letter height he could use and allow them to measure along the arched rectangle, they would meet the 32 square feet requirement.

Ms. Dickman made a motion, seconded by Mr. Crossman, to approve the Wings Sign Variance based on following criteria:

- Sign #2 on the southeast corner – the letter size be reduced to 30 inches to reduce the square footage proportionately.

- Sign #3 on the west side – the letter size be reduced to 18 inches which would meet the 32 square feet

requirement and to approve the request to allow the sign on the west side of the building that does not front the street.

In a roll call vote, the motion carried 2-1.

Vice Chairman Couriel reminded Mr. Brandt that this was an advisory board and that he would have to go before the Town Commission to get a final determination of the Wings Sign Variance request.

VI. UPDATES/BOARD MEMBER CONCERNS

VII. ADJOURNMENT

Having nothing further to discuss, Vice Chairman Couriel adjourned the meeting at 1:15 P.M. October 15, 2008.

Joseph Couriel, Vice Chairman

ATTEST:

Date Accepted: _____

Colleen Tyrrell, Board Secretary
