

IN THE CITY OF CORAL GABLES
BUILDING & ZONING DEPARTMENT

CASE NO.: 8677-Z

LOT(S) 77, BLOCK: 2
OLD CUTLER BAY SECTION 4, PB/PG: 82/34
360 SOLANO PRADO

ROBERT S. FINE, ESQ. - APPLICANT
ROBERT S. FINE AND ISABEL FINE - OWNER
RAUL SOTOLONGO - ARCHITECT/ENGINEER

BOARD OF ADJUSTMENT OF CORAL GABLES

Commission Chambers
405 Biltmore Way
Coral Gables, Florida
Monday, 8:00 a.m.
September 8, 2008

CITY OF CORAL GABLES
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APPEARANCES:

BOARD MEMBERS PRESENT:

JOHN C. LUKACS, CHAIRMAN
SERGIO ARTIGUES
SHARON LANGER
DR. JOE BRIGGLE
TONY BELLO

FROM THE CITY:

ELIZABETH L. GONZALEZ, SECRETARY OF MEETING

FROM THE HOMEOWNER:

ROBERT S. FINE

1 THEREUPON:

2 (The following proceedings were had:)

3 * * * * *

4 (Thereupon, all participants were sworn.)

5 * * * * *

6 CHAIRMAN LUKACS: Okay. The first item for
7 this morning is Item Number 8677-Z, the
8 property located at 360 Solano Prado.

9 Elizabeth, please.

10 MS. GONZALEZ: Yes. The applicant is
11 requesting several variances. Item Number
12 1 and Number 2 are interrelated, so the
13 Chairman has asked that we consider both
14 together.

15 Item Number 1 is for a cantilever slab,
16 with a 13-foot requirement set -- setback area.
17 Item Number 2 is for the installation of
18 mechanical equipment on the cantilever slab
19 encroaching into the setback area.

20 The required side setback for this
21 property, as per site specifics, is ten feet.
22 The applicant is requesting to provide six
23 feet, versus the required ten feet.

24 The Zoning Code is specific, and states
25 that no portion of a building is allowed to

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1 encroach into any setback area. The Code is
2 also specific in stating that mechanical
3 equipment shall comply with the setbacks as
4 prescribed for the residence.

5 This is a new single family residence. The
6 lot is not unusual in shape. The applicant has
7 failed to demonstrate a hardship, in order to
8 be allowed to encroach into the required side
9 setback area.

10 After review of the plans, Staff feels that
11 an alternate location could be found conforming
12 to the standards as provided by the Code.
13 Therefore, Staff recommends denial of Items
14 Number 1 and 2.

15 CHAIRMAN LUKACS: Mr. Fine, do you
16 wish to come forward?

17 What we're going to do is, there's a
18 number of variances that you've requested.
19 So in regard to Items Number 1 and 2, we'll
20 address those, as they do deal specifically
21 with the setback issues.

22 MR. FINE: Okay. Mr. Chairman, there's
23 five variances. One has Staff recommendation
24 and the others don't. I was wondering if the
25 Board wishes to go with the one that has Staff

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1 recommended first or do you want us to take
2 them in chronological order?

3 CHAIRMAN LUKACS: We'll take them in
4 chronological order.

5 MR. FINE: Okay.

6 CHAIRMAN LUKACS: Thank you.

7 You may begin.

8 MR. FINE: Good morning, Mr. Chair, Members
9 of the Board. My name is Robert Fine, here on
10 behalf of myself and my wife, Isabel, in regard
11 to -- I apologize for my voice in advance --
12 this application for variances for our
13 residence at 360 Solano Prado.

14 Also with me here today is Thomas Mooney, a
15 Coral Gables resident, but more relevant to
16 this hearing, a planner with the City of Miami
17 Beach's Planning Department, and who's here in
18 the roll of expert witness. I'll discuss Mr.
19 Mooney's credentials a bit later, and ask that
20 you recognize him as an expert.

21 Also with me today is Raul Sotolongo, who's
22 the project architect, and he's here for any
23 questions that may come up during the course of
24 the hearing.

25 You may remember, I was here about

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1 two-and-a-half years ago seeking some variances
2 for my home, a project that included
3 significant renovations and an addition of
4 about a thousand square feet, to result in a
5 home of about 5,000 square feet.

6 Three variances were sought at that time, a
7 front yard setback variance, a landscape open
8 space variance, and a variance of the pitched
9 roof materials provision of the Zoning Code, in
10 order to have a metal roof.

11 This Board handed the landscape open space
12 area variance and the setback variance. An
13 appeal of the denial of the variance regarding
14 the roof materials was unsuccessful as
15 appealed, but it spurred on legislative action
16 and the City Commission opened up a window of
17 time, whereby a resident south of US-1 could
18 apply for and receive approval to have a metal
19 roof.

20 I applied for and received such approval.

21 I then applied for a building permit, and
22 it seemed like I was on my way to getting my
23 house project going. I was, I believe, two
24 signatures away from having my building permit
25 to start, when a one inch galvanized steel

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1 waterpipe -- my house was built in the '60s --
2 broke and I found myself with twenty inches of
3 water -- no kidding, twenty inches, under 4,000
4 square feet of crawl space in my house.

5 (Unintelligable) it started sinking
6 differentially, and due to the incredible
7 makeup pressure of the house, more distinctly,
8 the structure concrete slab, it caused
9 beautiful select maple wood floors to first
10 cup, then buckle, and then in some areas curve
11 up -- up whole.

12 I have some photographs here, so you can
13 see that. All the couches sitting on the
14 floors needed to be replaced. All the four
15 walls, from around forty inches down, and in
16 some cases, all the lighting needed to be
17 replaced.

18 What this does, it required me to replace
19 virtually all the interior walls, all the
20 flooring, all the tapestry in the house, even
21 if I had not planned to do so when I came in
22 for my original application.

23 That resulted in the cost of that
24 renovation addition, with these additions, to
25 be within -- at current estimates, within ten

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1 percent of the cost of building a brand new
2 house of the same square footage, and with the
3 reliability of cost estimates, initial
4 estimates you get for renovations, it could
5 well turn out that a renovation would be well
6 more costly than building brand new, and that
7 would be to end up with a house with eight-foot
8 ceilings and other mid 1960s characteristics,
9 but there are two deeply more important issues
10 for which I changed directions, simply, in the
11 process, and I'm looking to build a new house,
12 which is what the application here is for.

13 First, after the water leak was repaired,
14 that is the pipe, we continued living in the
15 house while trying to figure out what to do
16 with insurance claims, getting the cost for
17 additional subcontractors to adjust for the new
18 scope of work, when my two daughters started
19 coughing at night first, all night, every
20 night.

21 First it seemed like they had colds, then
22 not, because the only symptoms were coughs. My
23 wife basically told me to get her and the kids
24 out of the house, and I moved us into an
25 investment property we had down around 200

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1 Street and Old Cutler. That was the quickest
2 way to move out of the house, since we owned
3 that property and the tenant had just moved
4 out, and almost immediately the coughing
5 stopped.

6 My wife now says that she doesn't want to
7 move back into that house, no matter how much
8 work we do on it, because she's not confident
9 that they can get out every last tiny bit of
10 mold. It doesn't matter whether the experts
11 say they can or they cannot get them all out,
12 my wife will not move her kids back into that
13 house, period.

14 Secondly, I not only -- we got a letter
15 from Manny Lopez, the building official. It's
16 the same letter he's sent -- it's a form letter
17 he sent to everybody in the flood hazard
18 district of the City, and it talks about the
19 need to take steps to prevent flood damage,
20 among them raising up the floor elevation in
21 our homes, when we can.

22 My house's finished floor elevation, the
23 current house, is nine-foot-six-inches NGVD.
24 The flood elevation in my neighborhood is
25 eleven feet.

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1 Now, it might be possible, based on the
2 hardship that was unanticipated, you know, the
3 catastrophe involved, to get the Flood Plain
4 National Variance or sometimes called the FEMA
5 variance, which, in fact, this Board addresses,
6 but -- but why?

7 I mean, I'm building a house. I start out
8 with a metal roof. There's issues that -- this
9 way we could build a house that's protective of
10 my family, and, you know, besides that, having
11 a nice house in severe weather, and so why put
12 all this money, at least at this point, to have
13 a house that's not even above flood level, and,
14 in fact, I will cover this again later, because
15 of the added costs of doing all of this repair,
16 it likely puts me over the threshold, in both,
17 FEMA, and the City Flood Plain Ordinance, where
18 I would have to raise my finished floor
19 elevation a foot and a half, which on a house
20 that's on pilings, it's not realistic, and so
21 my hands are tied up. You know, it really
22 becomes non-optional, at this point. If I'm
23 going to do a new project, I really need to put
24 a new house there.

25 And that's why, after going through all I

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1 did in the last two years, you know, first my
2 variance appeals, trying to get permits, you
3 know, I'm starting over from the beginning, or
4 maybe I'm just a glutton for punishment.

5 Anyways, I apologize for this long story,
6 but it really sets the predicate for the
7 hearing today, and in large part, the basis for
8 a number of my variance requests.

9 As you know from the notice in your Board
10 packages, I'm requesting five variances,
11 although, as Staff mentioned, 1 and 2 on the
12 notice really go together, and arguably could
13 have gone in as a single variance under Number
14 2, but, you know, it's the type of issue that
15 if one goes, the other goes.

16 CHAIRMAN LUKACS: Mr. Fine, when I
17 looked at the physical building
18 improvements that were impacted by prior
19 approvals, has the configuration of your
20 lot size changed in any way? Have the
21 physical characteristics, as opposed to the
22 buildings, that I've heard, changed in any
23 way?

24 MR. FINE: The land has lost a lot of
25 soil and salt pebbles, it's hard to think

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1 about -- the borders of the site have not
2 changed.

3 CHAIRMAN LUKACS: The boundaries of
4 the property remain the same?

5 MR. FINE: That is -- the lot's
6 borders are the same.

7 CHAIRMAN LUKACS: The grading remains
8 the same, other than perhaps the loss of
9 some soil coming off?

10 MR. FINE: Right. The finish floor of the
11 existing house remains the same, and then you
12 have soil that's been drifted away from the
13 house, because of the water.

14 CHAIRMAN LUKACS: Thank you.

15 MR. FINE: I'd like to take a moment
16 and qualify Mr. Mooney as an expert
17 witness, because I think the best way is
18 just to bring him up to speak, if there's a
19 question or two, instead of a more formal
20 presentation.

21 MS. LANGER: Can I ask a question?

22 CHAIRMAN LUKACS: Certainly.

23 MS. LANGER: Are we supposed to be
24 taking expert testimony, One, and, Two, you
25 as Chair, sir, can you have the right --

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1 I've seen somebody try to qualify an
2 expert.

3 I know we are a quasi-judicial board, but I
4 would like some direction as to how
5 determination would be made as to whether
6 someone was properly voir dired and who makes
7 the call on whether they're an expert, and if
8 this is an appropriate way to go forward,
9 because I've never seen this happens before.

10 CHAIRMAN LUKACS: Very briefly. The
11 Rules of Evidence in a quasi-judicial
12 proceeding are a bit more relaxed than they
13 are in a typical judicial proceeding, and
14 experts -- I haven't heard what testimony
15 Mr. Mooney intends to offer at this point,
16 and then we'll make that determination as
17 to whether or not it's relevant to our
18 determination as to whether or not a
19 hardship exists in favor of the application
20 of Mr. Fine.

21 We'll first hear from Mr. Fine. I
22 think your point is well-taken, as to what
23 testimony, if any, you intend to present by
24 Mr. Mooney.

25 MR. FINE: Yes.

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1 Also, if I may, in the new Zoning Code,
2 there's actually a provision for quasi-judicial
3 hearing variances, for when you have to submit
4 information. Actually, within the copy of this
5 package, there's a summary of his testimony,
6 because that's required to be submitted to the
7 Clerk five days ahead of time, which, in fact,
8 it was.

9 CHAIRMAN LUKACS: That's not the
10 issue. We understand you wish to make a
11 record on your application.

12 MR. FINE: Yes.

13 CHAIRMAN LUKACS: What I would like to
14 know is, what testimony, if any, do you
15 intend to offer by and through Mr. Mooney?

16 MR. FINE: Okay. As you'll see, after
17 I ask Mr. Mooney a few questions, and he'll
18 answer your questions, of course,
19 Mr. Mooney is an expert on planning and
20 zoning. He's worked for many years in the
21 senior level in the Miami Beach Planning
22 Department. Their Planning & Zoning is not
23 like Coral Gables', which is Planning &
24 Zoning. Their Planning is separate.

25 He's a resident of Coral Gables. He knows

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1 the area, and some of the issues as to
2 neighborhood compatibility. One of the issues,
3 in fact, for a variance, are the balances, the
4 hardships for the neighborhood if a variance is
5 granted. He would be speaking on some of those
6 issues. This application is similarly --
7 similar to other applications that have been
8 granted. So those would be the type of issues
9 he will be speaking on today.

10 CHAIRMAN LUKACS: Actually, before we
11 hear from Mr. Mooney, what I'd like to hear
12 first, from you, Mr. Fine, is, with respect
13 to Items Number 1 and 2, please tell us
14 what hardship results that would warrant
15 this Board granting the variances, which
16 are setback variances, with respect to
17 Items 1 and 2 of your application.

18 I don't know that that necessarily
19 requires any input from Mr. Mooney.

20 I'm not going to exclude you. He may have
21 something to say that's relevant to our
22 consideration. We'll make that determination
23 just as we go along.

24 MR. FINE: In regard to Items 1 and 2, in
25 building this house, it's in the flood control

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1 area of the City, which means any equipment in
2 the exterior of the house, with the exception
3 of pool equipment, has to be raised above
4 ground. You can't -- or -- unless your ground
5 is at flood level. That's per FEMA. It's also
6 per City code.

7 And so that's the reason we have this sort
8 of shelf, sitting at the house awaiting the
9 application, because if you're going to put a
10 generator or an air conditioner unit, it has to
11 sit on it. So there's really no hearing on
12 that.

13 Under the City's generator ordinance, on
14 the west side of the house -- on the west side
15 of the house, which is designed along the
16 setback line, I can have a generator that
17 protrudes into the setback, as a matter of
18 right, and Staff, I believe, agrees with that,
19 and I can have it there, and, again, it has to
20 be above the ground, and so -- I mean, I would
21 argue that if the generator would stay as of
22 right, that protrusion would not require a
23 variance, because otherwise, you know, certain
24 codes of the Zoning Codes say, for a generator,
25 that that remain below the (unintelligable.)

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1 But that's not the variance I'm really asking
2 for.

3 My house, my site, is actually not fully
4 regular, but it's pie-shaped, and you can see
5 this side is angled relative to the street and
6 the back property line, and so between my
7 setback line, there's one -- at least the
8 house, at this point, there is some space in
9 there. On this side, I don't have that.

10 On this side of my house, I have a
11 neighbor, who's built relatively close to the
12 setback. He's got air-conditioning, pool
13 equipment right there.

14 On this side, my neighbor, there is a
15 larger amount of yard, here to here. There, it
16 starts with a driveway and goes to a garage.

17 I mean, the truth of the matter is, I can
18 build the house with a generator there, as of
19 right. The reason I'm asking for this variance
20 is, One, it saves me a little money, because I
21 have a generator here, and my breaker is here,
22 it cuts a long line of very expensive copper,
23 and it's inefficient, but for my neighbors, if
24 I put a generator here, and, in fact, they
25 don't have one, when windows are open after a

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1 storm, this is very close to this window.
2 Legal, as of right, but very close to this
3 window.

4 Whereas, I flip the equipment and I put my
5 generator over here, I'm at least forty, maybe
6 fifty feet to the face of my neighbor's garage,
7 and then his house is set back another twenty
8 feet, where there's anything residential on the
9 second floor, and, you know, as long as I was
10 coming in for a variance anyways, you know, it
11 seemed to me, it's a better result for my
12 neighbors. It saves me a little money in
13 copper, it doesn't change my life, but it's
14 more beneficial to my neighbors and that's why
15 I'm requesting it.

16 Had I had no other variances, would I come
17 in for that variance alone? No, I would not.

18 CHAIRMAN LUKACS: The arrow at the
19 bottom of the drawing that you're
20 presenting to us, that's north?

21 MR. FINE: That's north. So this is the
22 canal behind Solano Prado, and this is the
23 street here.

24 CHAIRMAN LUKACS: You pointed off to
25 the west side of the property?

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1 MR. FINE: Right, the west side.

2 CHAIRMAN LUKACS: What equipment, if
3 any, do you intend to place in that area?

4 MR. FINE: If the variance is granted, I
5 would be putting in air-conditioning condensing
6 units there, and possibly some pool equipment,
7 but not all of it, because I can't fit it all
8 for the whole house on that side.

9 CHAIRMAN LUKACS: And in the setback
10 will be, the air conditioning and
11 mechanical equipment is ten feet?

12 MR. FINE: It's ten feet.

13 CHAIRMAN LUKACS: Okay. This house,
14 this is a redesign?

15 MR. FINE: This is -- this is a new house.

16 CHAIRMAN LUKACS: A new house, new
17 construction?

18 MR. FINE: New construction.

19 CHAIRMAN LUKACS: So had your
20 architect considered the setback
21 requirements, he could have conceivably
22 designed this home, new construction, by
23 utilizing the existing, or, excuse me, the
24 regulations that have been described?

25 MR. FINE: Well, it was actually originally

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1 designed with a generator there, which I can
2 have as of right. So he designed it within the
3 Code.

4 CHAIRMAN LUKACS: I'm just trying to
5 understand your argument. Your position is
6 that because there's a specific provision
7 in the Zoning Code that allows for a
8 generator to be placed approximately within
9 five feet --

10 MR. FINE: Right, within five feet.

11 CHAIRMAN LUKACS: -- as a matter of
12 right, that --

13 MR. FINE: Right.

14 CHAIRMAN LUKACS: -- that same
15 permission should be granted with respect
16 to an air conditioning unit or mechanical
17 equipment?

18 MR. FINE: What I'm saying is, in an
19 equitable, since I can have equipment there
20 anyways.

21 Does it mean it presents a hardship? The
22 answer is, no -- I'll tell you that straight
23 out -- but it doesn't create a burden,
24 having -- switching mechanical to mechanical.

25 When that generator is running and my

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1 neighbors have the windows open, it puts it
2 much farther away from anybody's house, and,
3 again, you know, it's not a live or die
4 variance, if we don't get that. You know, life
5 can go on, but, you know, to help my neighbors
6 out, and we'd like to do that when we can. We
7 can't always, but --

8 CHAIRMAN LUKACS: If the variances
9 that you request for Items Number 1 and 2
10 are not granted, will those decisions, not
11 to provide you with a variance, impede your
12 ability to use this property as a single
13 family residential property?

14 MR. FINE: No.

15 CHAIRMAN LUKACS: Okay. Members of
16 the Board, any questions for Mr. Fine?

17 MR. BELLO: Have you consulted with your
18 neighbors on the other side?

19 MR. FINE: We've spoken to the neighbor.

20 MR. BELLO: And he's okay?

21 MR. FINE: We don't have objections.

22 MR. BELLO: Have you included that in --

23 MR. FINE: I have not, my wife -- actually
24 that house is vacant. It's been used as an
25 investment home for about ten years. They live

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1 in Pinecrest.

2 So it wasn't myself who did it.

3 CHAIRMAN LUKACS: Thank you, Mr.

4 Bello.

5 Any further questions of Mr. Fine,

6 Members of the Board?

7 Is there anyone present today who wishes to

8 speak in favor, other than you, Mr. Mooney?

9 MR. FINE: I don't think we have Mr. Mooney
10 for this item here.

11 CHAIRMAN LUKACS: I didn't think so.

12 Anyone who wishes to speak in opposition to

13 this application, with respect to Items

14 Number 1 and 2?

15 The public hearing is closed.

16 Members of the Board, is there a motion or

17 further deliberation?

18 MS. LANGER: I'm ready to make a motion.

19 Unfortunately, I don't see a hardship, so I

20 don't see how we can do anything but deny his

21 request.

22 CHAIRMAN LUKACS: Is there a second?

23 MR. ARTIGUES: I'll second.

24 CHAIRMAN LUKACS: Is there any further

25 discussion?

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1 There being none, Ms. Gonzalez, may I have
2 a roll call, please?

3 MS. GONZALEZ: Mr. Artigues?

4 MR. ARTIGUES: No.

5 MS. GONZALEZ: Mr. Bello?

6 MR. BELLO: The motion is to deny?

7 MS. GONZALEZ: To deny.

8 MR. BELLO: And so your answer is, yes,
9 isn't it?

10 MR. ARTIGUES: Yes, to deny.

11 MR. BELLO: Yes.

12 MS. GONZALEZ: Dr. Briggles?

13 MR. BRIGGLE: Yes.

14 MS. GONZALEZ: Ms. Langer?

15 MS. LANGER: Yes.

16 MS. GONZALEZ: And Mr. Lukacs?

17 CHAIRMAN LUKACS: Yes.

18 Let's proceed with Item Number 3, please.

19 MS. GONZALEZ: Item Number 3, the
20 applicant is requesting a variance to
21 provide 37 percent of the site area versus
22 providing the required 40 percent of the
23 site area, which must be allocated for open
24 landscaped area.

25 The Code was recently changed and an

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1 increase from 35 to 40 percent was
2 implemented. This clearly indicates the
3 City's position in promoting more green and
4 pervious areas. This is a single family
5 residence, and after review, a reduction in
6 either the driveway or the decking or the
7 building, would satisfy the required 40
8 percent as described by the Zoning Code.

9 The applicant has failed to demonstrate a
10 hardship for this request, and, therefore,
11 Staff recommends denial of Item Number 3.

12 CHAIRMAN LUKACS: Mr. Fine, the Board
13 has been provided with a packet as to each
14 of the requests. If you can speak to the
15 issue of hardship and the justification,
16 from a hardship standpoint, as to why Item
17 Number 3 should be allowed.

18 MR. FINE: Okay. I'd would like to
19 start by going back to the original
20 variance that was granted by this Board a
21 couple of years ago, and in your package
22 that I handed out, it has the site plan of
23 what was approved.

24 In my neighborhood, the seawall is at four
25 feet elevation, it's actually fairly low, and

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1 my -- the existing house has four-nine --
2 nine-foot-six, and because these are not Gables
3 Estates, lots that are very big, you sort of
4 basically get very steep backyards, that often
5 aren't very feasible, and so what we did in the
6 original project, which, by the way, the Board
7 granted, also had Staff recommendation, and we
8 have a transcript of Staff recommending it, we
9 created a retaining wall, so that once you came
10 in through the seawall, you would have a flat
11 area, and those steps are covering thirty
12 inches, and have a flat backyard that had some
13 usable space, and the material is like wood
14 decking there, that's in there for a couple of
15 reasons.

16 One is, it's conducive to the use, but,
17 also, because DERM requires, on relatively
18 recent regulations, when you do work on the
19 seawall, they want you to have a design so that
20 water from the yard can't spill into the bay,
21 and so you normally have -- they want a
22 six-inch drop.

23 One of the things that we asked if we could
24 do is to build decking underneath, have space
25 to catch six inches of water, so that when it

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1 first rains, that can sort of keep the water
2 and holds it in there and won't go over.

3 So you know that one of the purposes,
4 clearly, for landscaped open space is for
5 percolation of the water and maintain it on
6 your site, and because of that, it gives you,
7 in effect, one hundred percent percolation in
8 the area -- and by the way, the reason we're
9 talking about this variance, it all has to do
10 with this area to the water side, we'll have
11 the (unintelligable) there, which will be
12 duplicated in the new project.

13 Once you have this retaining wall, and you
14 go down, you have an area that becomes very
15 tough to maintain. You're downstairs. It's
16 fairly narrow. And, you know, in an attempt to
17 design a property that was useful and that
18 could be maintained -- because one of our
19 obligations as residents is to maintain our
20 yards.

21 I just wanted to let you know that this is
22 relatively maintenance free, and it's usable,
23 and, again, this is on -- this is really that
24 strip on the other side of the retaining wall.

25 Now, when you translate over to the new

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1 project, we've got the same retaining wall
2 here, and a couple of things happened here.
3 The house now is going to go from nine-foot-six
4 to eleven feet, and in doing that, that
5 exacerbates that slope problem all the more.

6 But what we're trying to get approval,
7 actually, is to do some seawall maintenance and
8 floor maintenance and possibly raise the
9 seawall cap to five feet, and that's the worst,
10 but even if we're able to do that, I still have
11 a net increase of six inches to the seawall cap
12 to finish for -- what I have to transition.

13 Now, I think it should be noted, and I'm
14 going to get into this a little further in the
15 hearing, I came in, I got approval from this
16 Board, I was proceeding under the old Zoning
17 Code, I was fully vested in my metal roof, and
18 under that process, I was fully vested, and
19 then I had an event take place, and that event
20 was not of my control or doing, and the reason
21 we're here today and doing a different project,
22 is a catastrophe beyond my control, and I think
23 that makes my circumstances unique, relative to
24 the neighborhood at large, because, again, we
25 went through it, and but for that, in fact,

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1 this property would be under the old Zoning
2 Code.

3 That old Zoning Code only required 35
4 percent landscape open space. The new one
5 requires 40.

6 What we -- even with the new project,
7 though -- one of the decisions, I should say,
8 was to build a one story house. A lot of
9 people are building two story houses in the
10 neighborhood. New neighbors started to move --
11 you know, I don't know if any of you live in
12 Cocoplum, but if you see it, I mean, it's very
13 built up, all two stories in height, and the
14 character of the neighborhood is one where all
15 of the homes were one story, which necessarily
16 covers more land area.

17 So, anyways, even in doing that, what we
18 ended up with was, while I'm asking for a
19 variance to allow us -- to allow 37.2 percent,
20 that actually is an amount that would have been
21 allowed, would have been well over the old
22 Zoning Code, which was 35 percent.

23 In doing this, we got to the point we're at
24 37 and some. From what we had originally been
25 vested in, we are higher than that.

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1 The new code requires 40, and, again, we've
2 got the issue of really how we maintain this
3 area, with the slope. I may be able to put
4 some landscaping in there -- put some plants
5 and landscaping (unintelligible), but regarding
6 this slab, I have no option, in terms of the
7 seawall, here. To make this backyard usable, I
8 need to create flat areas. That retaining
9 wall, that's what does it, but, again, once you
10 do that, you've created an area that's harder
11 to maintain, in terms of how we're doing it.

12 So had I not had the catastrophic event, I
13 would actually be under the 40 percent lot
14 coverage, and, in fact, I missed it slightly,
15 but had a variance from this Board, based on
16 the same criteria, and although this is a new
17 house, you know, I'm still -- compared to that
18 project, which was a thousand square foot
19 addition at the wings, that was really similar
20 in scope to what we're looking at here how the
21 house is, and so I respectfully request that
22 you consider the flood, so to speak, as a
23 hardship that took place, which took me out of
24 an approval that I already had, you had
25 improved it, and even to the extent that some

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1 of it is not conforming, we have made it less
2 not conforming. We're making it less not
3 conforming than with the other standard I was
4 vested under, and it serves the purpose
5 (unintelligible) with the other neighbors all
6 along the back of that and makes it easier to
7 maintain.

8 CHAIRMAN LUKACS: It's unfortunate
9 that you had to suffer, you know, the
10 effects of a flood, but getting back to
11 your issue of prior approvals, were not
12 those prior approvals granted with respect
13 to your property, same property, as it was
14 improved previously, that is, with the
15 prior home on the property?

16 MR. FINE: With the prior home and the
17 addition, yes.

18 CHAIRMAN LUKACS: Okay. And the
19 existence of the prior home, those building
20 improvements bear a relationship to
21 variances that were granted by this Board,
22 correct?

23 MR. FINE: That's correct. They -- they
24 really went -- went to that.

25 CHAIRMAN LUKACS: Okay. In reality,

1 today we're not dealing with those
2 improvements or site improvements that
3 existed previously, but, rather, with a
4 clean slate, if you will, in that we're
5 dealing with the design of a new home and
6 new construction, correct?

7 MR. FINE: Correct, except that we wouldn't
8 be here but for the catastrophic event that
9 happened. We would be building -- hopefully
10 getting close to finishing that other house,
11 which changed the circumstances, and notably,
12 it's not like we built this house and added,
13 you know, 2,000 square feet in the middle of
14 the planning project, which took up all the
15 land space. We're really right about the same
16 square footage. So it's really -- I found that
17 we actually made it more efficient, so I have
18 better than I had under those variances, you
19 know, in doing new, but this is what we ended
20 up with.

21 CHAIRMAN LUKACS: In the design of
22 this new home --

23 MR. FINE: Yes.

24 CHAIRMAN LUKACS: -- could you have
25 compromised any other improved areas in

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1 order to satisfy the open landscape
2 requirement under the Code --

3 MR. FINE: Well --

4 CHAIRMAN LUKACS: Compromise is not
5 the right -- did you have allocated other
6 areas?

7 MR. FINE: Right. Well, there certainly is
8 some overage, and some part of the overage has
9 to do with interpretation of the Code.

10 For example, from that stair down, to the
11 pool deck, there's stepping stones, you know,
12 stones.

13 Staff interprets those stones as being not
14 landscape space. I think it's sort of weird,
15 but that's how it's interpreted. So, you know,
16 a fair amount of that amount that we're over is
17 really stepping stones in the landscape.

18 The driveway, you know, relative to what's
19 in the neighborhood and cars and whatnot, it --
20 it really is not an oversized driveway. Could
21 it be trimmed just a little bit? It probably
22 could, but if you start -- you know, it's only
23 twelve feet, it's not like, you know, some of
24 these big eighteen, twenty foot driveways here.

25 So we really haven't done a lot that's

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1 still in there, and -- but, here, in the pool
2 area, you know, aside from these areas here,
3 there's really not a lot of room around the
4 pool.

5 So like I said, we tried to be very
6 efficient. I do variances for a living. I
7 tried, as much as I can, you know, to minimize
8 what I can do and we have improved from what we
9 had before, and -- but this is where we were
10 able to get at this time.

11 CHAIRMAN LUKACS: Would it be safe to
12 say that you have alternates, that if
13 employed, would allow you to comply with
14 the landscape requirements under the Code
15 today?

16 MR. FINE: I would have to say, yes. I
17 mean, it might change some of the character of
18 some of the things we're doing, but if I had to
19 do it.

20 CHAIRMAN LUKACS: Okay. Members of
21 the Board, any questions for Mr. Fine?

22 MS. LANGER: I have a question for Staff.
23 Should I ask it now?

24 CHAIRMAN LUKACS: Yes, please.

25 MS. LANGER: Is it true that the

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1 difference would not be -- the 37 versus
2 the 40 would not be there if you didn't
3 count the stepping stones?

4 MS. GONZALEZ: The stepping stones are
5 not counted as green area.

6 CHAIRMAN LUKACS: Okay.

7 DR. BRIGGLE: I have a question.
8 We're talking about 552?

9 MR. FINE: 552.

10 CHAIRMAN LUKACS: Mr. Artigues?

11 MR. ARTIGUES: Yes. You just answered one
12 of my questions.

13 500 and some change?

14 MR. FINE: Right.

15 MR. ARTIGUES: What was the total FAR of
16 your project before?

17 MR. FINE: Both houses, under a/c, were
18 running about 5,000, 5,100 square feet, and so
19 they're both -- they're almost identical in
20 square footage.

21 MR. ARTIGUES: Because I noticed that
22 this -- your floor area factor is 6,700 and
23 some change on your new project.

24 MR. FINE: Well, because of the terraces.

25 MR. ARTIGUES: Okay. Now, on your previous

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1 project, it didn't seem like you had that
2 gazebo area off by the pool. The pool decks
3 are similar, it's a different design, but as
4 far as square footage --

5 MR. FINE: Right.

6 MR. ARTIGUES: -- it looks like this one
7 has an additional item, which is that -- looks
8 like a trellis area there?

9 MR. FINE: Yes.

10 MR. ARTIGUES: Roughly, it seems to me like
11 that area, which is an additional area, which
12 was not taken into consideration before, is
13 almost about the size that you're over,
14 roughly. Do you know what the area floor
15 factor was before?

16 MR. FINE: No, I don't have it with me.

17 MR. ARTIGUES: I get the impression, just
18 by looking at the overall footprint, that it
19 seems like you have more square footage now,
20 and, again, that's just a visual --

21 MR. FINE: Well, the other house was a
22 squared unit, so -- before.

23 MR. ARTIGUES: And did you have the same
24 architect before?

25 MR. FINE: No. I had to start anew. The

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1 other was an addition. Actually, the house
2 originally was -- the one that was submitted
3 for -- two years ago was (unintelligable.)

4 (Simultaneous speaking.)

5 MR. ARTIGUES: I only asked that question,
6 because I think the gentleman is here, and
7 maybe he knew.

8 MR. FINE: No, he was not the architect.

9 MR. ARTIGUES: Okay. Thank you.

10 CHAIRMAN LUKACS: Members of the
11 Board, anyone else?

12 Anybody who wishes to speak in favor of
13 this part of the pending application?

14 Anybody who wishes to speak in opposition?

15 There being none, the public hearing
16 portion is closed.

17 Board, is there a motion or further
18 discussion?

19 DR. BRIGGLE: If you put a single -- yeah,
20 I have a question. If you put a single
21 stepping stone, would that still be counted?
22 In other words, I'm just --

23 MS. GONZALEZ: The stepping stones
24 would be -- correlate to steps, and steps
25 would not be considered pervious.

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1 DR. BRIGGLE: And it's 500 feet.

2 MR. ARTIGUES: I believe that -- Dr.
3 Briggles, if you're discussing the actual design
4 of that area, you could argue that they don't
5 necessarily have to be the width of the entire
6 steps. That's one possible alternative.

7 CHAIRMAN LUKACS: The reality is,
8 under a hardship, Analysis 1 that one has
9 to look at are the alternatives to the
10 homeowner and whether or not the granting
11 or denial of a variance in any way impairs
12 the owner's ability to reasonably use the
13 property for its intended purpose.

14 We're dealing with a new construction
15 here. We're dealing with a new design
16 here. We're dealing with the black letter
17 of an existing code, that has certain
18 requirements on it, and we're attempting to
19 evaluate by the testimony today whether or
20 not this variance is necessary in order for
21 the Fine family to put their property to a
22 reasonable single family residential use,
23 or, alternatively -- stated differently,
24 rather, whether the denial of this variance
25 would preclude them from doing so.

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1 Is there a motion, to approve or to deny?

2 MS. LANGER: I'll move to approve.

3 CHAIRMAN LUKACS: Is there a second?

4 Motion fails. It's not been seconded.

5 Is there a motion to deny?

6 MR. BELLO: I'll move to deny.

7 CHAIRMAN LUKACS: Is there a second to
8 the motion to deny?

9 MR. ARTIGUES: I'll second it.

10 CHAIRMAN LUKACS: Any further
11 discussion on the motion to deny?

12 There being none, Ms. Gonzalez, please
13 call the roll.

14 MS. GONZALEZ: Mr. Bello?

15 MR. BELLO: Yes.

16 MS. GONZALEZ: Dr. Briggles?

17 DR. BRIGGLE: Yes.

18 MS. GONZALEZ: Ms. Langer?

19 MS. LANGER: No.

20 MS. GONZALEZ: Mr. Artigues?

21 MR. ARTIGUES: Yes.

22 MS. GONZALEZ: Mr. Lukacs?

23 CHAIRMAN LUKACS: Yes.

24 Thank you.

25 Mr. Fine, we're going to go to Item Number

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1 4, please.

2 MS. GONZALEZ: Item Number 4 is to the
3 applicant's request to have a variance to
4 install a standing seam metal roof.

5 The Code is specific in the allowable
6 materials which may be used for pitched
7 roofs.

8 The applicant has failed to demonstrate a
9 hardship for the alternate material, and Staff
10 is bound by the materials as outlined in the
11 Zoning Code. Therefore, Staff recommends
12 denial of Item Number 4.

13 CHAIRMAN LUKACS: Mr. Fine.

14 MR. FINE: Here is an elevation of the
15 house as proposed. This house -- I should
16 say, the predecessor house, the existing
17 house, went through a variance process that
18 was denied, went through the political
19 process.

20 The City Commission opened the window and
21 said, "Apply within this 90-day period, get the
22 Board of Architect's approval, and you're
23 vested for a metal roof."

24 We did that. We went through the process.
25 We got approved. We had plans, and the

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1 building permit was within two signatures of
2 having the metal roof.

3 As I said before, you know, when we made
4 the decision to build a new house, it really
5 wasn't by choice, because even after we -- you
6 know, we had some choice regarding the removal
7 of the mold thing, we didn't have a choice
8 because of FEMA, we had to build a new house.
9 We couldn't raise the house a foot and a half.

10 And -- so once that happened, we submitted
11 it, and Staff made the determination we
12 needed -- we talked about whether or not this
13 was a large addition or whether parts of this
14 house are new and their determination was that,
15 in either, you're going to lose your vesting,
16 and that we'd have to come back to this Board
17 in order to seek a variance.

18 First, I'd ask that the Board take judicial
19 notice that based on -- we checked with Staff,
20 that the original project was approved for a
21 metal roof.

22 MS. GONZALEZ: Pardon me? What was
23 the question?

24 CHAIRMAN LUKACS: There was a request
25 from Mr. Fine for this Board to take

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1 judicial notice of the fact that a metal
2 roof was previously approved by this Board.

3 MR. FINE: No, by the City, for this
4 project.

5 CHAIRMAN LUKACS: Which was granted by
6 this Board --

7 MR. FINE: It was under the process by the
8 City Commission, and the Board of Architects
9 approved the metal roof supplier.

10 CHAIRMAN LUKACS: The Board of
11 Architects, they approved the metal roof?

12 MR. FINE: They approved the metal
13 roof, yes.

14 CHAIRMAN LUKACS: It was not approved
15 by this Board before the City Commission
16 meeting?

17 MR. FINE: It was approved under an
18 ordinance by the City Commission, and that
19 ordinance conditioned it on Board of Architects
20 approval.

21 CHAIRMAN LUKACS: Okay.

22 DR. BRIGGLE: Excuse me, that was the
23 previous project?

24 MR. FINE: That's correct.

25 DR. BRIGGLE: Not this existing project?

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1 MR. FINE: That's correct, yes.

2 Okay. But once -- you know, once again,
3 this catastrophic event occurred, and I no
4 longer had the ability to build that project,
5 and because that time window had closed, I
6 couldn't re-apply, and Staff interpreted it
7 that I had to come back and seek further
8 approvals.

9 Again, for the record, you've got pictures
10 of the damage that occurred inside the house.
11 I've got more, if you'd like to see it.

12 When I originally came in for a variance a
13 couple of years ago, I brought to this Board,
14 this is part of my hardship, and that was the
15 part of the changing climate. This is from AON
16 Reassurance Services, and it shows hurricane
17 activity in the Atlantic from 1984 to '94, and
18 then from 1995 to 2005. You can see it. I
19 gave you a copy in your packages.

20 A great change in both, number and
21 intensity, including those coming to South
22 Florida, and the intent, in any event, was to
23 build a house that had a stronger roof and more
24 protection for my property, in addition to
25 other additional benefits, energy, green

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1 materials, carbon footprint, but predominantly
2 it was for security of the property, which is
3 within a thousand feet of the open bay, and
4 it's not written in the Building Code, but in
5 your previous record, your wind forces are
6 higher over there, when you're near the open
7 water.

8 So, I mean, my first issue of hardship
9 is -- and I've several grounds for this
10 particular variance. And the first ground is
11 that we had an approved project, we had a
12 vested project. There was an event unique to
13 this property, that would -- that didn't allow
14 me to build the house.

15 It doesn't grant me a privilege, not in my
16 neighborhood, because that's -- and we'll get
17 to, there are now other homes with metal roofs
18 in my neighborhood, and so my first ground for
19 hardship for this variance is the catastrophic
20 event, and because of the regulatory
21 requirements requiring me to build a new house,
22 as opposed to being -- electively being able to
23 continue with the original.

24 The next issue I have for this Board is
25 that the Zoning Code provision and the City

1 approvals regarding the metal roofs are
2 arbitrary. Under the City Code, you're allowed
3 to have a copper roof and you're allowed to
4 have a copper roof painted white, for example.

5 You have evidence -- in your packages,
6 there's a transcript from the City Commission
7 hearing where Staff testified under oath to
8 Commissioner Cabrera and it looks like
9 Commissioner Withers, that, in fact, you could
10 have that as of right.

11 You also have an excerpt of a discussion of
12 the City Commission from January, this is
13 January 8th, where Commissioner Cabrera was
14 talking to the City Manager at the Commission,
15 confirming, in fact, that that was still, in
16 fact. So there was no argument about
17 interpretation.

18 If you had a -- if you wanted a white metal
19 roof, you could have a copper roof painted
20 white, gray. It would be subject to approval
21 by the Board of Architects. They approve the
22 color and materials, and the copper was
23 allowed.

24 In fact, the City has approved, and I
25 believe, without for variance, a metal roof at

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1 Merrick View, the office building, which is
2 subject to the provisions under the Pitched
3 Roof Provisions, and that is a lead covered
4 copper roof, and you have a picture, based upon
5 the permit drawing, in there, and if you
6 require, I can pull out the permit number
7 issued, but they've approved that. I do not
8 believe they even required them to get a
9 variance.

10 So I think we -- we have to take it that
11 that's something that's allowed as of right.

12 Now that we know that that's allowed as of
13 right, based on Commission testimony and based
14 on the City's actions in granting permits for
15 copper, which is covered under the materials
16 that makes it look not like copper, then the
17 question is, is it a reasonable, is it a
18 rational ordinance?

19 Well, the metal roof materials that are
20 approved -- Dade County approved or Florida
21 Building Code approved for Dade County winds,
22 in fact, are of equal and greater strength than
23 the copper roofs.

24 So we -- from an aesthetics point of view,
25 we have something that you're allowed to have

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1 that's an equal. A painted copper standing
2 seam roof looks like a painted galvalume
3 standing seam roof.

4 Strength-wise, you can get a stronger roof,
5 and we had prior approval of materials, and we
6 submitted those, for the record, to Staff.
7 They're in there already.

8 I can do a stronger roof, not with copper,
9 and that means, from our point of view,
10 honestly, from aesthetics, this is an arbitrary
11 ordinance, a requirement being imposed, because
12 they're telling me I can have something that
13 looks like a white copper roof, but yet I have
14 to pay twice the price for copper for a roof,
15 that I could for an aluminum of galvo or steel
16 roof, which I don't need approved by the Board
17 of Architects.

18 This roof, by the way, has been approved by
19 the Board of Architects.

20 CHAIRMAN LUKACS: Mr. Fine, is there a
21 distinction between a, quote, standing seam
22 metal roof, end quote, and a, quote, copper
23 roof, end quote?

24 MR. FINE: Copper is just a metal.
25 You can have aluminum roofs, you can have

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1 steel roofs, various metals. Most metals
2 deviate per patterns.

3 Standing seam is, if you go to the
4 (unintelligable) metal roofs, you see it there,
5 you see those lines coming down, those rings
6 come up, for installation, because they also
7 increase stiffness in the roof. So you can
8 have that in copper and you can have that in
9 aluminum, just like you can go to, if you
10 wanted to do (unintelligable) metal style
11 tiles, not in Coral Gables, you could have them
12 made out of copper or lead or aluminum. So the
13 use of copper is just a material.

14 CHAIRMAN LUKACS: What type of roofing
15 are you seeking to have approved?

16 MR. FINE: I'm seeking to have an aluminum
17 or galvalume painted metal roof.

18 CHAIRMAN LUKACS: Okay. Does the Code
19 provide for that type of roof?

20 MR. FINE: The Code does not, but it's our
21 position that that -- the fact that it wasn't
22 provide for is arbitrary, because of the
23 positions I just stated.

24 CHAIRMAN LUKACS: Let me ask you this,
25 though, what relief, if any, would you be

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1 seeking from this Board based upon the
2 argument that the regulations for the
3 provisions of the Code are arbitrary?
4 That's outside the purview, the
5 jurisdiction of this Board, which is really
6 charged with the responsibility for
7 providing relief from hardships, and I have
8 yet to hear any testimony as to the issue
9 of hardship, but I don't know that our
10 Board is empowered to make a determination
11 that a particular provision or lack
12 thereof, you know, is defective or
13 inefficient in any way based upon the
14 arbitrary nature of the Code. Would you
15 agree with that?

16 MR. FINE: The answer is, I don't know the
17 answer.

18 CHAIRMAN LUKACS: Okay.

19 MR. FINE: I mean, that's one of those
20 issues where you pick the lines of
21 constitutionality and the case law, and because
22 they changed the Zoning Code, which required
23 all of this to be on the record, if I don't
24 raise it now, I haven't raised it.

25 CHAIRMAN LUKACS: Okay. So let's

1 consider it raised and move on to the issue
2 of hardship, which is clearly within the
3 purview of this Board.

4 MR. FINE: Okay. This house, and this
5 application is similarly situated to other
6 applications and other homes in the City. That
7 is, in fact, within the purview of this Board,
8 and there's case law that variances can be
9 granted based on that, and this an equal
10 protection argument, that's what it is, but
11 there is case law to that effect, and although
12 my original variance application a couple of
13 years ago, when -- when it came to this Board,
14 Staff represented to you that the City Attorney
15 said there was no law similarly situated. At
16 the City Commission meeting, the City Attorney
17 conceded that, in fact, there was, okay, but.
18 the facts have changed from then to now.

19 Now there are three homes with metal roofs
20 in my neighborhood. You have the pictures of
21 them. That -- this is Old Cutler Bay. That
22 home with the "F," that's my residence right
23 there. Directly across the water, that is a
24 metal roof, right across Solano Prado, here,
25 there's a metal roof, and right over here, on

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1 Solano Prado, again, another metal roof. You
2 have photographs of those metal roofs in your
3 packages.

4 So we're not looking at the same situation,
5 as to whether or not I'm similarly situated.
6 There are other -- you know, we've talked about
7 this as a metal roof variance, but it's not.
8 It really is a variance of the ordinance
9 covering pitched roof covering materials, and
10 in this case, I filed a material that's metal,
11 but there have been other applications where
12 people have asked for other materials and have
13 been granted them.

14 At 165 Solano Prado, which is right there,
15 right there, right there, there's a home with
16 Cedar Shingles. That's clearly not allowed in
17 the Zoning Code. It wasn't, when it was put
18 up. There was a variance granted, and the City
19 records show a variance that was, in fact,
20 granted by the City -- hopefully by the City
21 Commission, for a Cedar Shake roof, and you've
22 got photographs in your packages.

23 At 13014 San Jose Street, in Gables by the
24 Sea, there's a home with a metal roof. You
25 have a photograph of that, as well.

1 These are all areas of the City that are
2 not in the annexed areas, that we're talking
3 about these metal roofs, standing seam metal,
4 but you can see that we have, you know --
5 where -- when I applied, I was the only one.
6 That's not the case any longer.

7 Now I live in a neighborhood that has three
8 other homes, mostly surrounding, because
9 they're not touching, except the one directly
10 behind the water, but within a few hundred
11 feet, we've got three metal roofs.

12 CHAIRMAN LUKACS: May I interrupt you
13 for one moment?

14 MR. FINE: Yes.

15 CHAIRMAN LUKACS: Ms. Gonzalez, what
16 change in circumstances, if any, occurred
17 since Mr. Fine's first application for a
18 metal roof and today, that would have
19 allowed for metal roofs to be installed in
20 his neighborhood?

21 MS. GONZALEZ: There was an ordinance
22 that was adopted for a 90-day interim
23 period, and that's how those roofs were
24 approved.

25 MS. LANGER: Now, we're going around and

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1 around. When are we going to reach a point
2 where we can speak? Are we getting close?

3 CHAIRMAN LUKACS: I don't see --

4 MS. LANGER: Because I feel that Mr. Fine
5 has adequately established hardship,
6 repeatedly. I don't think he realizes he has,
7 maybe, but maybe if we could get into our
8 discussion, we can finish this up.

9 CHAIRMAN LUKACS: Mr. Fine, is there
10 anything else that you wish to add to make
11 your record?

12 MR. FINE: I just want to add that there's
13 one other metal roof ordinance -- I mean,
14 variance, actual variance granted by this
15 Board, that I wanted to bring to the Board's
16 attention, in terms of how the City -- and it
17 goes back, in fact, in my opinion, to how the
18 City has dealt with this in an arbitrary
19 manner.

20 219 Ridgewood is a home that is just north
21 of the Gables Waterway Canal, east of LeJeune.
22 That's a home where somebody applied for a
23 building permit for a metal roof, and advanced
24 through the issue of permit, and during the
25 construction, an inspector flagged it, and then

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1 ultimately it was brought to this Board.

2 Staff wrote a recommendation, recommending
3 the metal roof. They came and they recommended
4 it, based on the fact that the City Engineer
5 came out and said, "It can't withstand barrel
6 tile to weigh it down," and that's all good,
7 except that as recognized in their Staff
8 report, you could have, as of right, the same
9 material a home was built with when it was
10 originally built, whatever it was, whenever it
11 was, if it was the first time.

12 The material that was on that house, which
13 the City records show were wood shingles,
14 clearly were available and are available, and
15 so because the City made a mistake on their own
16 and wanted to sort of fix it, they find it
17 within their boundaries to recommend a
18 variance, and by the way, they did it in a
19 special meeting that they called for this
20 Board. They had no other items on their
21 calendar. They duly noticed it, but not the
22 way they normally do it, so you had a very
23 empty room, and so I take it --

24 CHAIRMAN LUKACS: Finish your story,
25 put your information on the record, and

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1 the --

2 MR. FINE: Okay. So I just want to say
3 that, you know, the City and the Administration
4 and Staff, when they chose to have a reason
5 that they want, they -- you know, they take
6 some opportunity to, you know, deal with how
7 they recommend in a way -- I should say,
8 inconsistently and I'll leave it at that.

9 CHAIRMAN LUKACS: Okay. Very good.

10 Is there anyone who wishes to speak in
11 favor of this part of the application?

12 Anyone wishes to speak in opposition
13 to it?

14 There being none, the public hearing
15 portion is closed.

16 Members of the Board, Ms. Langer.

17 MS. LANGER: Well, what I'd like to state
18 for my fellow Board Members is, we all went
19 through this process with Mr. Fine. He went to
20 the City Commission. The City Commission, it's
21 my understanding, opened a window of
22 opportunity for persons who had these
23 applications for metal roofs in the pipe, and
24 they granted a small number of them.

25 Mr. Fine was able to get the golden ticket.

1 He got one of them, and but for the calamity of
2 his pipes breaking, this City expected a metal
3 roof on the Fine house, on that street, but for
4 the pipes breaking, there would be a metal roof
5 on that house.

6 I think it would be justly unfair,
7 completely unfair, for all of a sudden, because
8 of this hardship, that he would not now be
9 allowed to use that golden ticket and have a
10 metal roof on his house, and I don't think the
11 fact that it's a different house, because he
12 didn't have a choice, takes away from the fact
13 that the City expected a metal roof on the Fine
14 house, in that section of town, and they gave
15 him the opportunity to do it, and I just don't
16 see how that is anything but a hardship, and we
17 would have to twist the facts to somehow not
18 let this gentleman have a metal roof on this
19 house, because the City anticipated it, and
20 they gave him the green light, and so I think
21 that's clearly a hardship, and that we should
22 approve it.

23 CHAIRMAN LUKACS: Ms. Gonzalez, but
24 for the calamity that Mr. Fine has
25 explained this morning, would he have been

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1 entitled to install a standing seam metal
2 roof on his pre-existing home?

3 MS. GONZALEZ: If he had applied
4 during the 90-day interim ordinance, he
5 would have gotten it approved. I believe
6 he did get it improved.

7 CHAIRMAN LUKACS: Did you apply during
8 the 90-day --

9 MR. FINE: I applied. In fact, I was the
10 first application, and it was approved on that
11 date, yes.

12 MR. ARTIGUES: I'd like to add something.
13 I think your pipes busting under the home were
14 actually a blessing, because that's a much more
15 beautiful home, and as an architect, I think
16 that the metal roof on that home is very
17 appropriate. It will look better than anything
18 else you can have.

19 MS. LANGER: I'm prepared to move that we
20 approve this application.

21 CHAIRMAN LUKACS: There's no further
22 Board discussions? Then state your motion
23 please.

24 MS. LANGER: I move that we approve
25 the variance for a standing tin --

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1 CHAIRMAN LUKACS: Standing seam.

2 MS. LANGER: -- standing seam metal
3 roof.

4 MR. ARTIGUES: I second it.

5 CHAIRMAN LUKACS: Any further
6 discussion?

7 Okay.

8 MS. GONZALEZ: Dr. Briggie?

9 DR. BRIGGLE: Yes.

10 MS. GONZALEZ: Ms. Langer?

11 MS. LANGER: Yes.

12 MS. GONZALEZ: Mr. Artigues?

13 MR. ARTIGUES: Yes.

14 MS. GONZALEZ: Mr. Bello?

15 MR. BELLO: Yes.

16 MS. GONZALEZ: Mr. Lukacs?

17 CHAIRMAN LUKACS: No.

18 And I will just qualify, I'm simply looking
19 at the issue of hardship with regard to our
20 jurisdiction, and the question of vested right
21 or non-vested right, I have difficulty
22 reconciling, but be that as it may, we'll move
23 on to Item Number 5.

24 MS. GONZALEZ: Item Number 5 is a
25 variance to allow the use of Hardy Plank

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1 siding. After review by City Staff and
2 approval from the Board of Architects,
3 Staff has determined that this is a
4 compatible material, as the wood facings
5 that are outlined in the Zoning Code, and
6 Staff recommends approval of Item Number 5.

7 CHAIRMAN LUKACS: Mr. Fine, do you
8 wish to add anything?

9 MR. FINE: Substantial competent evidence.

10 CHAIRMAN LUKACS: Members of the
11 Board, any questions for Mr. Fine?

12 I just have one question for Staff. What's
13 the difference between the Hardy Plank and the
14 other wood facings that we have in the Code?

15 MS. GONZALEZ: The wood facings are a
16 natural material. Hardy Plank siding is a
17 composite, which is very similar.

18 MR. FINE: This is Hardy Plank siding.

19 CHAIRMAN LUKACS: Which one is the
20 Harding Plank siding?

21 MR. FINE: This is Hardy Plank siding.
22 This is basically some fiber cement board and
23 the benefit of it, besides that you don't get
24 rotting wood, for me, the benefit is that you
25 don't get termites.

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1 CHAIRMAN LUKACS: Okay. I just have
2 another silly question. In that case, how
3 does this application justify the basis of
4 a hardship?

5 To Staff, how does Staff recommend
6 that this variance be granted on the basis
7 of a hardship?

8 MS. GONZALEZ: This siding has been
9 used before in the past and it's approved
10 by the Board of Architects. Currently
11 we're going to do it as a text change
12 amendment in the Code.

13 CHAIRMAN LUKACS: The text change
14 amendment has not been proposed yet to the
15 City Commission?

16 MS. GONZALEZ: It's being worked on
17 right now.

18 MR. FINE: Mr. Chairman, if I may.

19 CHAIRMAN LUKACS: Sure.

20 MR. FINE: There are two homes in Old
21 Cutler Bay with Hardy Plank siding, approved by
22 the City. There are a number of others in the
23 City. So I would say, in terms of hardship,
24 again, equal protection as similarly situated
25 to other approvals.

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1 The one thing I would ask for is that Hardy
2 Plank siding is -- it's like Kleenex, it's a
3 brand name, Hardy Plank siding and there's the
4 material by other manufacturers. I would ask
5 that you approve me the generic, subject to the
6 approval of the final product by the City
7 Architect and by the Board of Architects, just
8 because there are different manufacturers, and
9 ultimately they look at it, in any way, for the
10 various characteristics, but I would ask that
11 if you are going to grant this variance -- and
12 it's spelled the same way, when you do it --
13 that it's done in the generic fashion, and then
14 I'm happy to work with the Board of Architects,
15 the City Architect.

16 There are a couple of -- you know, other
17 various material options available. It just
18 gives me a little more flexibility.

19 CHAIRMAN LUKACS: Just to verify,
20 other materials not otherwise expressly
21 approved in the Code?

22 MR. FINE: No, other materials that fall
23 within the generic of Hardy Plank siding.

24 (Unintelligable.)

25 CHAIRMAN LUKACS: Anything further?

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1 MS. LANGER: I move we approve this
2 variance.

3 DR. BRIGGLE: I second it.

4 MS. GONZALEZ: Ms. Langer?

5 MS. LANGER: Yes.

6 MS. GONZALEZ: Mr. Artigues?

7 MR. ARTIGUES: Yes.

8 MS. GONZALEZ: Mr. Bello?

9 MR. BELLO: Yes.

10 MS. GONZALEZ: Dr. Briggie?

11 DR. BRIGGLE: Yes.

12 MS. GONZALEZ: Mr. Lukacs?

13 CHAIRMAN LUKACS: No.

14 MR. FINE: Two out of five.

15 CHAIRMAN LUKACS: Nice to see you
16 again, Mr. Fine.

17 MR. FINE: Thank you very much. I
18 appreciate your time this morning.

19 CHAIRMAN LUKACS: You bet.

20 Madam Court Reporter, do you have a copy of
21 Mr. Fine's submittal package?

22 THE REPORTER: Yes.

23 DR. BRIGGLE: Mr. Fine, here's your
24 samples.

25 * * * * *

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1 (Thereupon, the hearing was concluded at 10:20
2 a.m.)
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C E R T I F I C A T E


STATE OF FLORIDA:

SS.

COUNTY OF MIAMI-DADE:

I, NIEVES SANCHEZ, Court Reporter, and a Notary Public for the State of Florida at Large, do hereby certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 15th day of September, 2008.


NIEVES SANCHEZ