

**360 SOLANO PRADO
APPLICATION FOR VARIANCES**

**EXCERPT OF TRANSCRIPT OF
BOARD OF ADJUSTMENT
MEETING INDICATING PRIOR
STAFF RECOMMENDATION FOR
LANDSCAPE OPEN SPACE
VARIANCE BASED ON SAME
RATIONALE**

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IN THE CITY OF CORAL GABLES
BOARD OF ADJUSTMENT
BUILDING AND ZONING DEPARTMENT

CASE NO.: 8574-2

RE:

360 Solano Prado
Old Cutler Bay

Robert S. Fine - Applicant
Robert S. and Isabel Fine - Owners
David Johnson - Architect

Commission Chambers
405 Biltmore Way
Coral Gables, Florida
Monday, 8:00 a.m.
April 3, 2006

1 BOARD MEMBERS PRESENT:

- 2 CATHERINE FAHRINGER, CHAIRWOMAN
- 3 SERGIO ARTIGUES
- 4 DR. JOE BRIGGLE
- 5 SHARON LANGER
- 6 TONY BELLO

7 FROM THE CITY:

- 8 DENNIS SMITH,
- 9 ASSISTANT BUILDING & ZONING DIRECTOR
- 10 MARTHA SALAZAR-BLANCO,
- 11 BOARD SECRETARY

12 OTHERS PARTICIPATING:

- 13 GREENBERG TRAURIG
- 14 BY: ROBERT S. FINE, ESQ.
- 15 On behalf of the Owners.
- 16 DAVID JOHNSON, ARCHITECT

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1 THEREUPON:

2 The following proceedings were had:

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4 (Thereupon, all who were to speak were duly
5 sworn.)

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7 MS. FAHRINGER: 8574-2, 360 Solano Prado.

8 MR. FINE: Good morning, Members of the
9 Board. My name is Robert Fine, with offices at 1221
10 Brickell Avenue, and this morning I'm representing me,
11 and my wife, in requests for variances at our residence
12 at 360 Solano Prado.

13 The book I handed out is intended to be like
14 this. Basically, as far as my presentation, this
15 isn't, as you know, the best room for PowerPoint, so I
16 thought it best just to give you what's up there. I'm
17 basically going to be talking through this book, and
18 this lets you follow along with me.

19 After the table of contents, under tab one,
20 start in and -- The variances that I've requested --

21 Now, I've taken the liberty of changing the
22 order of the variances I'm going to go through, from
23 what's put in the notice, to deal with the setback and
24 the landscaped open space first, and then the roof
25 issue last.

1 MS. FAHRINGER: Mr. Fine, did Mr. Smith get
2 a copy of this?

3 MR. FINE: Yes, he did.

4 MS. SALAZAR-BLANCO: Yes, he did.

5 MR. FINE: Also, before I get started, I'd
6 like to just introduce my architect, David Johnson.
7 David's been practicing architecture in South Florida,
8 I believe, for 30 years.

9 MR. JOHNSON: Thirty-three years.

10 MR. FINE: Thirty-three years, a lot of it
11 in Coral Gables, this part of the County. He's going
12 to be part of our presentation.

13 Note, for the record, since I'm presenting,
14 but I'm also putting in evidence, I had myself sworn in
15 at the beginning of the meeting. I guess I'm doing a
16 little of both here.

17 MS. FAHRINGER: We need you to sign in.

18 MR. JOHNSON: I did sign in, yes, ma'am.

19 MS. FAHRINGER: Thank you.

20 THE WITNESS: Under tab two we've got the
21 project drawings, two of which are shown up here, right
22 now. Right now, this residence exists with this line
23 coming straight across. This garage comes straight out
24 to here. There's an addition. That up here would be
25 the guest room. This gets stretched back a little bit

1 for additional bedroom space, in the existing bedrooms.

2 And then, one of the issues we had was, the
3 seawall is at four, and they get to be redone at five,
4 but I'm at ten feet elevation. So one of the issues
5 that'll affect one of the variances is an elevation
6 change of five to three feet in a very short distance.
7 And instead of ending up with a project that had a
8 30-degree slope in the backyard, making it pretty much
9 unusable, we created a retaining wall here, with steps
10 that go down and creates a walkway on the water. And
11 it's being covered with a wood deck, with grooves, so
12 rain falls through. That's down here.

13 This is the pool patio, swimming pool. The
14 swimming pool, by the way, is right here now. This
15 house was a late '60s Jennings house on Old Cutler Bay,
16 where they built the house on pilings, and the pool is
17 not. The pool is slowly moving down. You can't fix
18 it, so the pool is being relocated out here.

19 The first variance we're requesting is, I'm
20 requesting that you grant a variance allowing the
21 proposed building have a front setback of 24 feet,
22 versus the front setback of 25 feet that the Zoning
23 Code requires. This is tab three. And it only occurs
24 at one location, which is right here.

25 In this neighborhood, the property line is

1 15 feet from the edge of the street, which is the
2 continuous defining line. And this existing line is
3 there at a 25-foot setback, that's fine. But in
4 pulling this forward, to line it up with this part of
5 the house, and continue across, because Solano Prado
6 curves like this, at that point it measures out at
7 24 feet. The issue regarding the land, the street
8 turns, none of my doing. And in order to make this
9 work out, to get some extra space, bedroom space for my
10 daughters, I'm requesting a one-foot variance here.

11 Under tab four we go to variance number two.
12 And for that I'm requesting that you grant the variance
13 to allow the landscaped open space provided, an amount
14 of 6,726 square feet, which is 34 percent, versus the
15 6,926 square feet provided, which is 35 percent, as
16 required by Section 31-0 of the Zoning Code.

17 I already mentioned to you that I have this
18 problem with the level change here, and that this
19 elevation -- And when I move my house out here, this
20 part moves out about another seven or eight feet, I
21 still have a five-foot elevation difference to deal
22 with. We're doing what we can to put in the retaining
23 wall to make the transition. But when I go down the
24 stairs there's a 30-inch level change, it is very hard
25 to put in water equipment. Staff said, "If you put a

1 lawn down there, then you don't need to get a variance,
2 It's over, it's all good." But when you're 30 feet
3 down in this area, there's a view of the water, I have
4 neighbors around there, maintenance -- if I decide to
5 put planters in there, maintaining, that would be very
6 difficult.

7 Now, another thing to note, which I think is
8 very important, when you go in and talk to Staff about
9 landscaped open space, and my (inaudible), they like to
10 call it "green space." They say, "You don't have
11 enough green space." Well, there's nothing in the
12 Zoning Code that says "green space." The Code says,
13 for single-family residences, landscaped open space,
14 "Landscaped open space for single-family use residence
15 shall be provided as follows: Single-family use
16 building shall provide landscaped open space of about
17 35 percent of the area of such building."

18 But how does the Code define landscaped open
19 space? In section 2-68 of the Code it says,
20 "Landscaped open space: Ground level outdoor area
21 which is open and unobstructed from its lowest level to
22 the sky, except for a roof and building overhang, not
23 in excess of five feet. Arcades, corridors, parking
24 and other service areas shall not be used in computing
25 the landscaped open space." Nothing in that definition

1 tells me that that's not landscapable open space.

2 Staff says, "Well, we really intended the
3 definition" -- "We really intended the definition of
4 landscaped open space to be for commercial buildings,"
5 but it doesn't say that here. And under the
6 definitions for our districts -- In the definition for
7 our district it says, "Landscaped open space," it
8 doesn't say "green space." It's a different definition
9 that excludes that.

10 That wood deck has grooves between it
11 because the seawall now, under DERM, has to be higher
12 than the area next to it, so water won't go out, so any
13 drainage benefit you would get under landscaped space,
14 would be provided by that wood decked area there.

15 And so I had the choice of coming up and, as
16 part of this, asking for an interpretation, making this
17 an even more confused hearing on the provision. If in
18 the general rule Staff prefers to interpret it that
19 way, that's fine, but the plain reading of the Code
20 says that that should not be excluded from landscaped
21 open space. So to the extent that I need a variance
22 because of that, I'm requesting this variance. And,
23 again, it takes me from -- Assuming it didn't count for
24 landscaped open space, it would be minimal, if you're
25 going from 35 percent to 34 percent.

1 which all say the same thing, but they're all in there.

2 And then, just following up on the memo, as
3 I said before, the City has granted at least four -- at
4 least four times relief from this provision of the
5 Zoning Code. One of them, the grounds were, "I don't
6 like tiles on my roof. I'm going to put something else
7 instead for hurricanes." Four times.

8 To the extent Staff wants to say I'm not
9 similarly situated to the annexed areas, I certainly am
10 similarly situated to a different -- Old Cutler Bay and
11 Gables-by-the-Sea.

12 The case law says to grant that and not to
13 grant this would be improper. Although, I think and I
14 hope I conveyed enough on the variance, without that,
15 to support my request for these variances.

16 With that, I've spoken enough. Thank you.

17 MS. FAHRINGER: Thank you, Mr. Fine.

18 Is there anyone who wishes to speak in favor
19 of this application? Is there anyone who wishes to
20 speak in opposition to this application? Hearing none,
21 unless you have something further, Mr. Fine, I will
22 close the public hearing and ask for Staff's report.

23 Mr. Smith.

24 MR. SMITH: Good morning. Forgive me. My
25 allergies are just all over the place today.

1 In regards to the setback variance and the
2 landscaping variance, we're recommending approval of
3 those. Those are both, given the shape of the lot,
4 what he has there on the front, it's a very minimal
5 request, so we're recommending approval of those two
6 items.

7 In terms of the metal roofs, number one,
8 Mr. Fine has given us a memorandum of law this morning,
9 that I would like to have the City Attorney review.
10 And he's given us a lot of information in this book,
11 this morning, which we've just received, so I'm going
12 through and trying to understand some of that.

13 The other thing is, I don't know that we've
14 been presented with anything here that specifically
15 says, and I haven't had the opportunity to really study
16 it and look at it, that metal roofs are more hurricane
17 resistant than the tile roofs. I don't have that kind
18 of evidence here. I'd like to take a look at that. So
19 we'd like to defer the metal roof issue until next
20 month.

21 And I don't think it's going to slow down
22 your project. I mean, you've given us a memorandum of
23 law this morning, which we don't have counsel here to
24 get advice on.

25 And the other thing is, what the memorandum