

1 CITY OF CORAL GABLES
2 BOARD OF ADJUSTMENT
3 VERBATIM TRANSCRIPT
4 CORAL GABLES CITY HALL
5 405 BILTMORE WAY, COMMISSION CHAMBERS
6 CORAL GABLES, FLORIDA
7 MONDAY, NOVEMBER 9, 2015, COMMENCING AT 8:00 A.M.

8 Board Members Present:

9 Jorge E. Otero, Chairperson
10 Oscar Hidalgo, Vice Chairperson
11 Eibi Aizenstat
12 Alejandro E. Galvez
13 Joe Greenberg

14 City Staff:

15 Yaneris Figueroa, Assistant City Attorney
16 Charles K. Wu, Assistant Development Services Director

17 Also Participating:

18 F.W. Zeke Guilford, Esq.
19 Javier Vazquez, Esq.
20 Carlos Tosca
21 Michael Perez
22 David Dainer-Best
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Case_No._BA-14-10-2567

(9440 Old Cutler Lane)
JOURNEY'S END ESTATES, PB/PG: 100/40, LOTS: 14 & PORT. OF
LOT 15, BLK: 1
F.W. Zeke Guilford, Esq. - Applicant
Juwana A. Howard TRS JAH Revocable Trust - Owner
Kobi Karp AIA, ASID, NCARB - Architect

Case_No._BA-15-09-4833

(95 Merrick Way)
ALHAMBRA CENTER CONDO UNIT STADLER CENTER
UNDIV 10% INT IN COMMON
ELEMENTS OFF REC 17811-4709
F.W. Zeke Guilford, Esq. - Applicant
South Florida Equities Reit Inc. - Owner

Case_No._BA-15-08-5439

(1320 San Benito Avenue)
TAMIAMI PLACE PLAN NO 2 PB 6-89 LOT 18 AND THAT PORT OF
SAN BENITO AVE EXCLUDING N 7 FT LYG N & ADJ CLOSED PER
ORD-3307
El Rado LLC - Owner
El Rado LLC - Applicant
Rafael Padilla, RA - Architect

1 Thereupon, the following proceedings were had:

2 CHAIRMAN OTERO: Good morning. The Board of
3 Adjustment is comprised of seven members. Four
4 members will constitute a quorum and the affirmative
5 vote of four members of the Board present shall be
6 necessary to authorize or deny a variance or grant an
7 appeal.

8 A tie vote shall result in the automatic
9 continuance of the matter to the next meeting, which
10 shall be continued until a majority vote is achieved.
11 If only four members are present, an applicant shall
12 be entitled to a postponement to the next regularly
13 scheduled meeting of the Board.

14 As you can see, we have four members present.
15 We expected six members; one we knew wouldn't show
16 up, but we have four members present. Just to stall
17 a bit, hoping the fifth or sixth come in, why don't
18 we take roll.

19 MR. WU: Mr. Hidalgo.

20 MR. HIDALGO: (No verbal response.)

21 MR. WU: Mr. Hidalgo?

22 CHAIRMAN OTERO: I'm sorry?

23 MR. WU: Mr. Hidalgo.

24 MR. HIDALGO: Hidalgo?

25 MR. WU: Yes.

1 MR. HIDALGO: Here.

2 MR. WU: Mr. Aizenstat.

3 (No response.)

4 MR. WU: Mr. Galvez.

5 MR. GALVEZ: Here.

6 MR. WU: Mr. Greenberg.

7 MR. GREENBERG: Here.

8 MR. WU: Mr. Thompson.

9 (No response.)

10 MR. WU: Mr. Otero.

11 CHAIRMAN OTERO: Present.

12 When your turn comes up, if you choose to
13 postpone your hearing until the next meeting you have
14 the right to do so since we only have four members.
15 But I will keep reading the preamble; hoping someone
16 else shows up.

17 Any person who acts as a lobbyist, pursuant to
18 the City of Coral Gables Ordinance No. 2006-11, must
19 register with the City Clerk prior to engaging in
20 lobbying activities or presentations before City
21 Staff, Boards, Committees and/or the City Commission.
22 A copy of the ordinance is available in the office of
23 the City Clerk. Failure to register and provide
24 proof of registration shall prohibit your ability to
25 present to the Board.

1 I now officially call the City of Coral Gables
2 Board of Adjustment Board Meeting of November 9th,
3 2015 to order. The time is 8:05 A.M.

4 (Thereupon, Mr. Aizenstat entered the Commission
5 Chambers and the proceedings continued as follows:)

6 CHAIRMAN OTERO: Good morning.

7 MR. AIZENSTAT: Good morning.

8 CHAIRMAN OTERO: Have the record show that Mr.
9 Aizenstat is now present. We now have five.

10 MR. AIZENSTAT: Excuse me.

11 CHAIRMAN OTERO: Regarding ex parte
12 communications, please be advised that the items on
13 the agenda are quasi-judicial in nature, which
14 requires Board members to disclose all ex parte
15 communications and site visits. An ex parte
16 communication is defined as any contact,
17 communication, conversation, correspondence,
18 memorandum or other written or verbal communication
19 that takes place outside a public hearing between a
20 member of the public and a member of a quasi-judicial
21 board regarding matters to be heard by the Board.

22 If anyone made any contact with a Board member
23 regarding an issue before the Board, the Board member
24 must state on the record the existence of the ex
25 parte communication and the party who originated the

1 communication. Also, if a Board member conducted a
2 site visit specifically related to the case before
3 the Board, the Board member must also disclose such
4 visit. In either case, the Board member must state
5 on the record whether the ex parte communication
6 and/or site visit will affect the Board member's
7 ability to impartially consider the evidence to be
8 presented regarding the matter. The Board member
9 should also state that his or her decision will be
10 based on substantial, competent evidence and
11 testimony presented on the record today.

12 Does any member of the Board have such a
13 communication and/or site visit to disclose at this
14 time?

15 MR. GREENBERG: No.

16 MR. HIDALGO: No.

17 CHAIRMAN OTERO: Let the record show none of the
18 five members present have any communication to
19 disclose.

20 Everyone who speaks this morning must complete
21 the roster on the podium. We ask that you print
22 clearly so the official record of your name and
23 address will be correct. Now with the exception of
24 attorneys, all persons who will speak on agenda items
25 before us this morning please rise to be sworn in.

1 With the exception of attorneys, please rise to
2 be sworn in.

3 (Thereupon, said participants were duly sworn.)

4 CHAIRMAN OTERO: In deference to those present,
5 we ask that all cell phones, pagers and other devices
6 that beep or ring be turned off at this time.

7 Now we will proceed with the agenda.

8 As far as I can see there are no changes to the
9 agenda and we have three matters before the Board
10 today. The first one is regarding property located
11 at 9440 Old Cutler Lane, Case BA-14-10-2567.

12 Mr. Wu, would you.

13 MR. WU: Yes, sir.

14 This variance concerns a basketball court and a
15 stone paver patio at the proposed residence on the
16 subject property. The Applicant requests the
17 following variances pursuant to the provisions of
18 Ordinance Number 2007-10 as amended and known as the
19 Zoning Code.

20 The first variance: Grant a variance to allow
21 the proposed basketball court to be located in the
22 area between the street and the main residential
23 building or any part thereof versus no accessory or
24 auxiliary building or structures may be located in
25 the area between the street and the main residential

1 building or any part thereof pursuant to Sections
2 4-101 (D) (5) (a) and 5-101(B) of the Coral Gables
3 Zoning Codes.

4 Second variance: Grant a variance to allow the
5 proposed basketball court to maintain a ten-foot rear
6 setback at Old Cutler Road versus a minimum rear
7 setback of fifty feet from Old Cutler Road shall be
8 maintained and required on building sites for main or
9 principal building, including auxiliary, accessory
10 buildings and/or structures as required by Sections
11 4-101(D) (4), 4-101(D) (5), Appendix A, A-62 (D) (3) of
12 the Coral Gables Zoning Code.

13 The third variance: Grant a variance to allow
14 the stone paver patio to maintain thirty-five feet
15 eight inches rear setback of Old Cutler Road versus a
16 minimum rear setback of fifty feet of Old Cutler Road
17 shall be maintained and required on building sites
18 for main or principal building, including auxiliary,
19 accessory buildings and/or structures as required by
20 Sections 4-101(D) (4), 4-101(D) (5), Appendix A,
21 A-62(D) (3) of the Coral Gables Zoning Code.

22 These are the variances. Staff recommends that
23 if you make a motion to make three separate motions.

24 CHAIRMAN OTERO: Thank you.

25 So we have on this matter on the agenda requests

1 for three different variances. As Mr. Wu mentioned,
2 the Staff recommends approval of all three.

3 Is the applicant present?

4 MR. WU: We do have a brief PowerPoint.

5 CHAIRMAN OTERO: I'm sorry?

6 MR. WU: We do have a brief PowerPoint, at your
7 discretion.

8 CHAIRMAN OTERO: Do you want a PowerPoint?

9 MR. GUILFORD: No. I don't need a PowerPoint.

10 CHAIRMAN OTERO: Okay.

11 MR. GUILFORD: I'm old-fashioned; I still use
12 boards.

13 MR. WU: The Staff has a visual that gives
14 some... just a one-page slide as part of my
15 PowerPoint, which shows the relevant dimensions.

16 It is a color slide.

17 It looks like this (indicating). Yes.

18 The first page is a synopsis of the variance
19 request.

20 CHAIRMAN OTERO: Mr. Guilford, you are here on
21 two matters today.

22 MR. GUILFORD: Yes, I am.

23 Good morning, Mr. Otero and Members of the
24 Board. For the record, my name is Zeke Guilford with
25 offices at 400 University Drive. It gives me great

1 pleasure to be here today representing Mr. and Mrs.
2 Juwan Howard, the owners of the property at 9440 Old
3 Cutler Lane.

4 Now as Staff has mentioned, we are asking for
5 three variances; one to have the basketball court
6 between the main principal building and the street;
7 and the other two regarding the setbacks.

8 Now what I want to do is just kind of move to
9 the Zoning Code a little bit. The Zoning Code does
10 not have a specific regulation regarding basketball
11 courts; they have it for tennis courts, they have it
12 for swimming pools, but there is no specific
13 regulation for a basketball court. So we fall under
14 the general provisions for setbacks.

15 And what it says is, it says no building or
16 structure, or any part thereof, including porches,
17 projections, or terraces, but not including uncovered
18 steps, shall be erected in the setback. A porch by
19 definition is a covered structure; a terrace would be
20 the terrace of the Biltmore Hotel.

21 So these are things you actually see that - a
22 mass - that will be in front of you. A pool patio
23 can go five foot to the setback; also excluded are
24 steps. So things you really cannot see at ground
25 level are excluded from that type of provision. But

1 it is a structure by definition and, therefore, must
2 comply.

3 Also what is important is - I don't know if you
4 can read it, but I will say it anyway - there is a
5 site-specific regulation for setbacks for this piece
6 of property. It's 50 feet from Old Cutler Road. Now
7 Staff used the property line, which is not Old Cutler
8 Road, but that is where they have interpreted it
9 throughout this section. But it says Old Cutler
10 Road. So how do you define Old Cutler Road?

11 Is it the right-of-way. If it is the
12 right-of-way, then we have a 25-foot setback. If you
13 say it is the edge of the payment, then we only need
14 a two-foot variance. If you say center line of the
15 road, we don't need any variances. But there is no
16 definition of how you measure to Old Cutler Road.
17 And I have looked at a couple of them where they have
18 done it; it really depends on who is doing the
19 interpretation at the time for the City. Some use
20 the right-of-way; some use the actual street.

21 But what is really important here is the
22 interpretation of the code. And this is what you
23 have in front of you. And that is, you don't want to
24 put an auxiliary structure or use that is up against
25 a neighbor; either noise, sight, whatever the case

1 is. You're trying to protect the neighbor.

2 In our particular case, we have the basketball
3 court, we have an easement, we have Old Cutler Road
4 and then we have the neighbor across Old Cutler Road.
5 So the neighbor who this is trying to protect is over
6 a hundred feet away from this basketball court. It
7 is also heavily landscaped. So you will not see the
8 basketball court. Actually, it's kind of
9 interesting; there's actually a couple of steps so
10 that the basketball court is actually down a few
11 feet.

12 So what we are asking you today is to approve
13 the three variances; I'm also going to add an
14 additional condition. I've met with the neighbor to
15 the south who is actually the most directly affected
16 neighbor; it's only a thirty-foot setback there. He
17 has asked that that property line, the south property
18 line, be heavily landscaped and such landscaping be
19 approved by Development Services as well as Public
20 Service. And we are proffering that condition as
21 well as the other one from the Staff.

22 We have the approval of the homeowners
23 association; we also have Staff's recommendation of
24 approval. If you have any questions, I'm more than
25 happy to answer them at this time.

1 CHAIRMAN OTERO: I do. You mentioned a
2 distinction between tennis courts and basketball
3 courts.

4 MR. GUILFORD: Yes.

5 CHAIRMAN OTERO: Which one is more stringent?

6 MR. GUILFORD: Tennis courts, and I think
7 because they have the ten-foot screening around it.

8 CHAIRMAN OTERO: So if this is converted to be
9 used as a tennis court; that would not be an
10 allowable use if the Board granted this variance?

11 MR. GUILFORD: Correct. We would have to come
12 back for a variance.

13 CHAIRMAN OTERO: The Staff also made a mention
14 about lighting.

15 MR. GUILFORD: There's no lights on this court.

16 CHAIRMAN OTERO: Would your client be okay with
17 a covenant stating that there will be no lighting?

18 MR. GUILFORD: Yes. We do not have a problem
19 having that as a condition of approval as well.

20 CHAIRMAN OTERO: Any other Board members have
21 questions for the applicant?

22 MR. AIZENSTAT: Just one question, if I may, Mr.
23 Chair. If down the road this property is sold and
24 the owners wish to have lighting, Charles, how does
25 it work once they proffer to the covenant that there

1 will be no lighting?

2 MR. WU: They would have to release, the City
3 would have to release the covenant.

4 MR. AIZENSTAT: And what would be the steps for
5 that? Would the City automatically say, you have to
6 go before a certain board?

7 MR. WU: Not necessarily.

8 MR. AIZENSTAT: Not necessarily.

9 I would ask the city attorney to chime in.
10 What would be the legal process?

11 MS. FIGUEROA: If the covenant is approved, it
12 would run with the land; it would bind any
13 successors --

14 THE COURT REPORTER: I'm sorry. I can't hear
15 you.

16 MS. FIGUEROA: It would run with the land.

17 CHAIRMAN OTERO: Use the microphone.

18 MS. FIGUEROA: It would run with the land. So
19 any subsequent purchasers or someone were to inherit
20 that property, it would also be subject to that
21 requirement.

22 MR. AIZENSTAT: Right. But what happened if
23 they wanted to put lighting in there? What would be
24 their process?

25 MS. FIGUEROA: They would be able to put

1 lighting; the requirement is that it doesn't go in
2 contravention to --

3 MR. GUILFORD: Mr. Aizenstat, I can answer that.

4 There was a similar one where there was an area
5 that was in Dade County; they proffered at the time
6 no lights and then when it got incorporated in the
7 City of Coral Gables, they wanted to put up lights
8 and actually had to come back before the Board of
9 Adjustment to remove that condition.

10 MR. AIZENSTAT: So it comes back before the
11 Board of Adjustment to remove it.

12 CHAIRMAN OTERO: I think my understanding of any
13 covenant is it's released, depending on the terms of
14 the covenant. And some covenants could be for a time
15 certain; some covenants, as I'm sure this one would
16 be if it is put as a condition, to eliminate that
17 condition, it would have to come before the Board
18 that established that condition, I would think. But
19 if counsel can make sure it is drafted in that
20 manner.

21 MS. FIGUEROA: Right. And whatever statute of
22 limitation was that any lighting would go into other
23 properties, that is something that would be a Board
24 enforcement. Now if it had no lighting at all, then
25 it would come back here and we would have to have

1 your permission to amend it. In other words, release
2 the covenant to it.

3 MR. WU: Mr. Chair, if I may. The Staff
4 condition does not incorporate a covenant approval;
5 the Staff condition is a little bit more flexible.
6 But in case they want to put up a light, they would
7 just have to follow the Zoning Code provision of
8 screening it.

9 So that would be an option, another option, in
10 lieu of the covenant.

11 MR. GUILFORD: Mr. Chair, really, usually the
12 way it works is less of a covenant but becomes a
13 condition of approval here. And I do not have a
14 problem making a condition of approval that there
15 will be no lights, period; not flexibility, just no
16 lights.

17 CHAIRMAN OTERO: Are there any such basketball
18 courts on properties similarly situated on Old
19 Cutler, close to Old Cutler, whether it is a 50-foot
20 setback or two-foot setback, depending on how you
21 start measuring this thing?

22 MR. GUILFORD: I am not aware. There is a half
23 basketball court in Journey's End.

24 CHAIRMAN OTERO: Any other comments or
25 questions?

1 Mr. Greenberg, you have no questions? Okay.

2 There were two letters, I believe, on the file.

3 MR. GUILFORD: Yes.

4 CHAIRMAN OTERO: Will you state on the record
5 where those owners live.

6 MR. GUILFORD: The one owner lives directly to
7 the south, here (indicating), and I believe the other
8 owner was, I believe was directly across the street
9 (indicating).

10 MR. HIDALGO: Do you happen to have the names?
11 Because there's only a signature on the letters.

12 MR. GUILFORD: I know the one who I have been
13 talking to is Mr. Laiba, Erbon Laiba (phonetic), who
14 is the south; and I do not remember the one across
15 the street.

16 CHAIRMAN OTERO: And both letters show ...

17 MR. HIDALGO: It is signed.

18 CHAIRMAN OTERO: Thank you.

19 MR. GUILFORD: Thank you.

20 CHAIRMAN OTERO: Is there anyone in the audience
21 who wishes to speak in favor of this case? Please
22 come forward.

23 Let the record show no one has.

24 Is there anyone in the audience who wishes to
25 speak in opposition of this case? Please come

1 forward.

2 Let the record show no one has.

3 This now closes the public hearing. The members
4 of the Board know that motions must be read and made
5 in conformity with the language in their packets. We
6 will address each one separately.

7 Do we have a motion?

8 MR. HIDALGO: I have a motion on Item 1.

9 I move that the Board of Adjustment grant
10 Application BA-14-10-2567, a request by Zeke
11 Guilford, on behalf of Juwan A. Howard TRS JAH
12 Revocable Trust, for Variance, for the residence at
13 9440 Old Cutler Lane to allow the proposed basketball
14 court to be located between the street and the main
15 residential building. The motion is based upon the
16 testimony presented along with the application
17 submitted and Staff report, which constitute
18 competent, substantial evidence. The Board hereby
19 makes findings of fact that each of the standards in
20 Section 3-806 of the Zoning Code has been met.

21 MR. WU: Mr. Chair, if I may. When you make a
22 motion, consider the two options.

23 MR. HIDALGO: Yes. I need to add the condition
24 of the landscaping barrier on the south side.

25 MR. AIZENSTAT: And with respect to the

1 covenant, the covenant that there should be no
2 lighting, is that part of your motion?

3 MR. HIDALGO: Would that be a covenant with
4 regard to the property?

5 So the landscaping item as well as the
6 no-lighting condition would be part of the covenant
7 for the record; correct?

8 MS. FIGUEROA: You can make it as a condition of
9 approval or you can do it as a covenant that our
10 office could draft, and then it would be recorded and
11 it would be in a public record.

12 MR. HIDALGO: My motion would be to be part of
13 the covenant for the landscaping and the no-lighting
14 restriction.

15 MR. WU: And actually to make it part of the
16 condition also, both covenant and condition.

17 MR. HIDALGO: Yes. Correct.

18 CHAIRMAN OTERO: Is there a second?

19 MR. GREENBERG: I second.

20 CHAIRMAN OTERO: Motion made and seconded.

21 Any discussion on the motion?

22 Roll call on the motion, please.

23 MR. WU: Mr. Greenberg?

24 MR. GREENBERG: Yes.

25 MR. WU: Mr. Sotelo? Absent.

1 CHAIRMAN OTERO: Absent.

2 MR. WU: Mr. Hidalgo?

3 MR. HIDALGO: Yes.

4 MR. WU: Mr. Galvez?

5 MR. GALVEZ: Yes.

6 MR. WU: Mr. Aizenstat?

7 MR. AIZENSTAT: Yes.

8 MR. WU: Mr. Thompson? Absent.

9 Mr. Otero?

10 CHAIRMAN OTERO: Yes.

11 The first motion granting variance passes by
12 five to zero vote.

13 Item Number 2.

14 MR. WU: This is the ten-foot basketball setback
15 variance.

16 And I recommend that the conditions we placed
17 on the first one just mirror that on the second one.

18 CHAIRMAN OTERO: Thank you. Is there a motion
19 on Item Number 2 on Case Number BA-14-10-2567?

20 I move that the Board of Adjustment grant
21 Application BA-14-10-2567, a request by Zeke
22 Guilford, on behalf of Juwan A. Howard, Trustee of
23 the JAH Revocable Trust, for the Variance for the
24 residence at 9440 Old Cutler Lane to allow the
25 proposed basketball court to maintain ten feet rear

1 setback of Old Cutler Road. The motion is made upon
2 the testimony presented along with the application
3 submitted and Staff report, which constitute
4 competent, substantial evidence. The Board hereby
5 makes findings of fact that each of the standards in
6 Section 3-806 of the Zoning Code has been met. As an
7 additional item in this motion, I would reiterate the
8 same conditions placed on the first motion regarding
9 the covenant for landscaping and for prohibition of
10 lighting.

11 MS. FIGUEROA: Mr. Chair. As the Chair, you
12 can't make the motion; if one of the other members
13 could adopt the motion.

14 MR. HIDALGO: I will adopt the motion.

15 MR. GREENBERG: I will second.

16 CHAIRMAN OTERO: Any discussion?

17 Roll call, please.

18 MR. WU: Mr. Aizenstat?

19 MR. AIZENSTAT: Yes.

20 MR. WU: Mr. Greenberg?

21 MR. GREENBERG: Yes.

22 MR. WU: Mr. Galvez?

23 MR. GALVEZ: Yes.

24 MR. WU: Mr. Sotelo? Let the record show Mr.
25 Sotelo is absent.

1 Mr. Thompson? Let the record show Mr. Thompson
2 is absent.

3 Mr. Hidalgo?

4 MR. HIDALGO: Yes.

5 MR. WU: Mr. Otero?

6 CHAIRMAN OTERO: Yes.

7 We have one more request for variance on this
8 property.

9 MR. WU: This is a stone paver patio setback to
10 allow it at thirty-five feet eight inches from Old
11 Cutler Road.

12 MR. HIDALGO: I have a question, Mr. Guilford,
13 on Item Number 3. Is this an existing condition or
14 is this --

15 MR. GUILFORD: No.

16 MR. HIDALGO: -- something that is being
17 proposed?

18 MR. GUILFORD: This is being proposed. Again,
19 it is actually right here (indicating), outdoor
20 dining area. And again, it's 35 feet if you measure
21 to the property line; it doesn't need a variance if
22 you actually measure to Old Cutler Road.

23 MR. HIDALGO: Is it a paver condition on sand or
24 concrete slab?

25 MR. GUILFORD: On sand.

1 MR. HIDALGO: Pavers on sand.

2 MR. GUILFORD: Yes.

3 MR. HIDALGO: Thank you.

4 CHAIRMAN OTERO: And the applicant is willing to
5 go with the same lighting condition --

6 MR. GUILFORD: Correct.

7 MR. AIZENSTAT: Just one question. If you do
8 that with the lighting condition; this is a dining
9 area, just as an example, if they want to put a fan
10 with a light, how does that affect the condition?

11 MR. GUILFORD: You know, I'm more looking at it
12 like a tennis court lighting versus a sconce on the
13 wall. And I think that is really --

14 MR. AIZENSTAT: I understand. So it only
15 affects ... the lighting is a certain magnitude,
16 certain candlelight, as it would to a basketball
17 (sic); correct? He could put lighting in the dining
18 area, so forth. I just want to be clear on that.
19 Okay.

20 MR. GALVEZ: You would call it a stadium
21 lighting or something?

22 CHAIRMAN OTERO: Well, the first two variances
23 were approved subject to no lighting.

24 MR. AIZENSTAT: Correct.

25 CHAIRMAN OTERO: Period.

1 MR. AIZENSTAT: That's why I'm asking, just this
2 one.

3 CHAIRMAN OTERO: If Staff is absent in this one,
4 by inference, I think we're stating you can put
5 reasonable lighting.

6 Am I correct?

7 MR. HIDALGO: Yes, sir.

8 MR. AIZENSTAT: Charles, for Staff?

9 CHAIRMAN OTERO: Mr. Greenberg, if you would
10 like to make a motion.

11 MR. GREENBERG: Well, I wouldn't think that the
12 lighting issue is relevant to this particular
13 situation, and I would basically move that we grant
14 the variance without any condition. And I would so
15 move.

16 CHAIRMAN OTERO: Yes, sir. Please.

17 MR. GREENBERG: I move that the Board of
18 Adjustment grant Application BA-14-10-2567, a request
19 by Zeke Guilford, on behalf of Juwan A. Howard TRS
20 JAH Revocable Trust, for Variance for the residence
21 at 9440 Old Cutler Lane to allow the proposed stone
22 paver patio to maintain thirty-five feet eight inches
23 rear setback (Old Cutler Road). The motion is based
24 upon the testimony presented along with the
25 application submitted and Staff report, which

1 constitute competent, substantial evidence. The
2 Board hereby makes findings of fact that each of the
3 standards in Section 3-806 of the Zoning Code has
4 been met.

5 CHAIRMAN OTERO: Is there a second?

6 MR. AIZENSTAT: I'll second that.

7 CHAIRMAN OTERO: Any discussion?

8 Take a vote, please.

9 MR. WU: Mr. Thompson?

10 (No response.)

11 MR. WU: Mr. Galvez?

12 MR. GALVEZ: Yes.

13 MR. WU: Mr. Aizenstat?

14 MR. AIZENSTAT: Yes.

15 MR. WU: Mr. Hidalgo?

16 MR. HIDALGO: Yes.

17 MR. WU: Mr. Greenberg?

18 MR. GREENBERG: Yes.

19 MR. WU: Mr. Sotelo? Let the record show

20 absent.

21 Mr. Otero?

22 CHAIRMAN OTERO: Yes.

23 MR. GUILFORD: Thank you.

24 CHAIRMAN OTERO: Thank you; thank you for the
25 presentation.

1 Now we'll on to the second item, Mr. Guilford.

2 MR. GUILFORD: Okay. I'm not going anywhere.

3 MR. WU: Mr. Chair, would you like me to read
4 the case?

5 CHAIRMAN OTERO: Yes. The second case regarding
6 property located at 95 Merrick Way, Case Number
7 BA-15-09-4833.

8 MR. WU: This is a proposed sign for the tenant
9 "Pipeline Inspired Workspaces" for the existing
10 commercial building at the subject property. The
11 Applicant requests the following variance pursuant to
12 provisions of Ordinance 2007-01 as amended and known
13 as the Zoning Code.

14 Number 1. Grant a variance to allow proposed
15 tenant sign to be installed at a minimum height of
16 twenty feet from adjacent grade versus a wall-mounted
17 sign for buildings at 97.1 feet or more in height
18 must be installed at a minimum height of ninety-seven
19 feet as required by Section 5-1904 of the Coral
20 Gables Zoning Code.

21 MR. GUILFORD: Good morning again Mr. Chair,
22 Members of the Board. For the record, Zeke Guilford,
23 offices at 400 University Drive, representing
24 Pipeline, Coral Gables, relevant to this sign
25 variance at 95 Merrick Way.

1 This is an interesting case because this
2 building is part of a condominium that includes the
3 Hyatt Hotel as well as the office building located
4 next to it. And because those two structures are
5 significantly higher it means that the sign needs to
6 put at 97 feet. Well, this building is only 90 feet.
7 So essentially you cannot put the sign where the code
8 tells you to put the sign.

9 What we are doing - and I don't know if you can
10 really see it; there's an existing, who just moved
11 out, it says Abood Wood-Fay, which was a third-floor
12 tenant - and what we are doing is putting it in the
13 same location as that tenant had. So we're just
14 replacing one tenant with the new tenant at the same
15 location.

16 Staff has recommended approval. If you have any
17 questions, I'll be more than happy to answer them at
18 this time.

19 CHAIRMAN OTERO: The prior sign was placed
20 without a variance?

21 MR. WU: No. That was done prior to the code --

22 MR. GUILFORD: Yes. What happened is - oh, I'm
23 sorry, Charles, if I may - what happened is at the
24 time that sign came in, signage location was done by
25 the Board of Architects. When you look at a facade

1 you pick the place where a sign should be located.
2 When the new code came in, it then started moving the
3 sign around. Now it's my understanding - and Charles
4 can better -- my understanding is that now the City
5 is reviewing their sign code again.

6 CHAIRMAN OTERO: So this is basically a result
7 of a change in the Zoning Code.

8 MR. GUILFORD: Correct.

9 CHAIRMAN OTERO: Any questions for the
10 applicant?

11 MR. HIDALGO: As far as the height of letters,
12 et cetera, is it more in keeping with the prior sign
13 that was there?

14 MR. GUILFORD: Correct. Yes.

15 CHAIRMAN OTERO: This is a tenant; right?

16 MR. GUILFORD: Correct.

17 CHAIRMAN OTERO: If this tenant leaves and
18 Tenant XYZ comes in, do we need to come back for
19 another variance?

20 MR. GUILFORD: Yes.

21 MR. WU: Yes, sir. Because any change of sign
22 requires building code compliance.

23 CHAIRMAN OTERO: Granting a variance does not
24 have any value to the subsequent applicants.

25 MR. WU: Correct. Because the other tenant

1 might have a different location.

2 CHAIRMAN OTERO: Okay.

3 Thank you.

4 MR. GUILFORD: Thank you.

5 CHAIRMAN OTERO: Any questions by any Board
6 members, the Staff or applicant?

7 Is there anyone in the audience who wishes to
8 speak in favor of this case? Please step up.

9 Let the record show no one has.

10 Anyone in the audience who wishes to speak in
11 opposition to this case, please step up.

12 Let the record show no one has.

13 This closes the public hearing. Do we have a
14 motion?

15 MR. GREENBERG: Mr. Chair, I would like to move.

16 I move that the Board of Adjustment grant
17 Application BA-15-09-4833, a request by Zeke Guilford
18 on behalf of South Florida Equities Reit, Inc., for
19 variance for the commercial building at 95 Merrick
20 Way to allow the proposed wall-mounted sign "Pipeline
21 Inspired Workspaces" to be installed at a minimum
22 height of twenty feet. The motion is based upon
23 testimony presented along with the application
24 submitted and Staff report, which constitute
25 competent, substantial evidence. The Board hereby

1 makes findings of fact that each of the standards in
2 Section 3-806 of the Zoning Code has been met.

3 CHAIRMAN OTERO: Is there a second to that
4 motion?

5 MR. HIDALGO: I second.

6 CHAIRMAN OTERO: Any discussion?

7 No discussion.

8 Vote, please.

9 MR. WU: Mr. Aizenstat?

10 MR. AIZENSTAT: Yes.

11 MR. WU: Mr. Thompson? Let the record show Mr.
12 Thompson is absent.

13 Mr. Galvez?

14 MR. GALVEZ: Yes.

15 MR. WU: Mr. Sotelo? Let the record show Mr.
16 Sotelo is absent.

17 Mr. Hidalgo?

18 MR. HIDALGO: Yes.

19 MR. WU: Mr. Greenberg?

20 MR. GREENBERG: Yes.

21 MR. WU: Mr. Otero?

22 CHAIRMAN OTERO: Yes.

23 MR. GUILFORD: Thank you very much.

24 CHAIRMAN OTERO: Thank you, Mr. Guilford; two
25 for two today.

1 MR. GUILFORD: And I'd better go home.

2 CHAIRMAN OTERO: Okay, we have a third case:
3 Property located at 1320 San Benito Avenue; Case
4 BA-15-08-5439, to consider a variance request in
5 regard to the side street setback for the proposed
6 two-story residence located at 1320 San Benito
7 Avenue, Coral Gables, Florida.

8 MR. WU: Mr. Chair, this is in relation to a
9 side street setback for the proposed two-story
10 residence at the subject property. The Applicant
11 requests the following variances pursuant to
12 provisions of Ordinance 2007-01 as amended and known
13 as the Zoning Code.

14 Number 1. To grant a variance to maintain a
15 side street setback of fifteen feet versus
16 maintaining twenty-five feet as required by Section
17 4-101(D) (4) (b) of the Coral Gables Zoning Code. A
18 minimum side street setback of fifteen feet shall be
19 required and maintained from any side line of a
20 property that abuts upon a street, provided, however,
21 that buildings on corner lots which have one side
22 abutting upon a street on which other lots in the
23 same block face, shall setback a minimum distance
24 from such side street as is provided herein as the
25 minimum front setback for buildings facing side

1 street.

2 CHAIRMAN OTERO: Does anybody on the Board have
3 questions of Staff regarding this application?

4 No.

5 Yes, sir?

6 MR. VAZQUEZ: Good morning Mr. Chair, Board
7 Members. My name is Javier Vazquez, with law offices
8 at 1450 Brickell Avenue; the Law Firm of Berger
9 Singerman. I'm here this morning on behalf of El
10 Rado LLC, the applicant; Tony Mutanite (sic) from El
11 Rado - are my clients - Mr. Carlos Tosca, Mr. Gustavo
12 Deribeaux and Emmanuel Valiano.

13 This is a vacant lot, as you heard, located at
14 1320 San Benito Avenue; it is at the southeast corner
15 of San Benito and El Rado Street. This a variance of
16 a side street setback requirement to allow a 15-foot
17 setback where 25 feet would otherwise be required.

18 Staff has done an outstanding job of explaining
19 this situation. I would be delighted to get into the
20 details of it, but I think the best summary in the
21 Staff report is on the second page where it says that
22 strict application of the Zoning Code's parameters
23 would render the construction envelope an
24 unreasonable size considering the average size of a
25 home.

1 In essence, a strict application of the Zoning
2 Codes' requirements would render the end result being
3 a 25-foot front setback and a 25-foot side setback
4 and it would result in a 26-foot envelope for the
5 construction of a home.

6 That is why your professional staff is
7 supporting this application; it is a very unique
8 application situation, and this is a classic example
9 of what the variance process exists for; for a
10 situation where a strict application renders an
11 undesirable result.

12 This is before you with a recommendation of
13 approval. Staff has gone item by item on the
14 variance requirements, and we do comply with each
15 requirement of your code as far as variance is
16 concerned.

17 As I said, I'm happy to go into more detail in
18 the analysis, but I think Staff has done a great job,
19 I would hate to be redundant; and we are here to
20 answer any questions you may have. And in keeping
21 with Staff recommendations, we respectfully request
22 your approval today.

23 CHAIRMAN OTERO: I have a question. When an
24 applicant purchases this property, I would think the
25 applicant is aware of the existing constraints.

1 MR. VAZQUEZ: That is correct.

2 CHAIRMAN OTERO: Was there any effort made prior
3 to acquisition to determine whether or not a variance
4 such as this would be granted?

5 MR. VAZQUEZ: I'm going to let my client answer.

6 CHAIRMAN OTERO: Sure.

7 MR. VAZQUEZ: He did that before.

8 MR. TOSCA: It was actually an oversight --

9 MR. VAZQUEZ: State your name.

10 MR. TOSCA: Carlos Tosca, 6544 Sunrise Court.

11 It was actually an oversight on our part. Our
12 planning director did her due diligence and somehow
13 either on an oversight of the Zoning Code or with
14 whoever she consulted (indecipherable) --

15 THE COURT REPORTER: I'm sorry, sir. I can
16 barely hear you.

17 CHAIRMAN OTERO: You have to slow down because
18 sometimes it's hard for --

19 MR. TOSCA: Sure.

20 It was an oversight of some kind.

21 CHAIRMAN OTERO: Thank you.

22 Yes, Mr. Greenberg.

23 MR. GREENBERG: I have a question. Is this lot
24 a result of a lot split, what was lot 17 and 18,
25 basically subdivided; or these are existing platted

1 lots?

2 MR. TOSCA: Existing lot.

3 MR. VAZQUEZ: No - as a matter of fact, it
4 mentions that in the Staff recommendation - it is
5 not.

6 MR. WU: It is stated as a separate building
7 side by side.

8 MR. GREENBERG: Okay.

9 CHAIRMAN OTERO: I'm showing this is not a lot
10 split; this is zoned as one lot.

11 MR. WU: Correct. It is not a lot split.

12 MR. GREENBERG: Okay.

13 MR. VAZQUEZ: Which would have obviously changed
14 the entire analysis.

15 MR. WU: Mr. Chair, the color slides, the first
16 slide pertains to this property, if you would like
17 to... this is the handout I gave you this morning,
18 the first slide is this case.

19 CHAIRMAN OTERO: The Board always tries to
20 accommodate the citizens and the applicants; but we
21 also try to be consistent. And when one acquires a
22 lot like this, there are restrictions embedded, which
23 can be modified, but we are not inflexible. I just
24 don't know what other situations have come before the
25 Board, to get some historical perspective as to how

1 many of these have been granted or denied. And I
2 don't know if Mr. Wu has that information. Perhaps
3 Mr. Greenberg --

4 MR. GREENBERG: Well, there's a list in the
5 report, I believe, of over a dozen lots in which this
6 issue seems to have been addressed. I suspect that
7 this situation arises from the change in our Zoning
8 Code. I know that the prior old code, before this
9 one was adopted, had a 15-foot side setback required
10 when it was a corner lot. And I think when the new
11 code was written, they added additional conditions,
12 which proposed a 25-foot setback on this lot; which
13 prior to this code being adopted didn't exist.

14 MR. VAZQUEZ: And if I could add to Mr.
15 Greenberg's comment. He is right, it is a result of
16 a change in code. Because in the section of Staff
17 analysis where the over 12 or 13 examples are given
18 of similar approvals, it indicates that those were
19 approvals that were given pursuant to either variance
20 or prior to the code.

21 CHAIRMAN OTERO: Prior to the code. I was
22 focusing on the prior code.

23 MR. VAZQUEZ: That's your indicator. And this
24 is a very unique situation. I'm going to just
25 briefly touch on it, since the Board is talking about

1 this.

2 It is a platted lot, and the code, if you read
3 the code strictly, it requires a front street setback
4 of 25 feet and a side street setback of 15 feet
5 unless - and this is where this property gets caught
6 with the code change - unless there are buildings
7 which face the side street, and in that case, the
8 side street setbacks shall be a setback -- a minimum
9 distance from such side street as is provided for
10 those buildings facing the side street.

11 So that is the portion, because there are houses
12 facing El Rado, that basically triggers a 25-foot
13 setback on El Rado side and a 25-foot setback on the
14 San Benito side, in essence reducing that envelope to
15 26 feet.

16 And I'm very confident to be able to say that is
17 obviously why Staff is recommending approval.

18 CHAIRMAN OTERO: Does Staff have any ... does
19 this changed, before area ratio, does this change how
20 big a house you can build?

21 MR. WU: No.

22 CHAIRMAN OTERO: This does not; right?

23 MR. WU: It does not. They still have to follow
24 the Zoning Code.

25 CHAIRMAN OTERO: The rest of the code?

1 MR. WU: Yes.

2 CHAIRMAN OTERO: All right.

3 MR. VAZQUEZ: Thank you.

4 MR. AIZENSTAT: If I may, Mr. Chair.

5 Looking at the pictures, it looks like
6 construction has started?

7 MR. VAZQUEZ: No.

8 MR. WU: No. That has not.

9 MR. AIZENSTAT: Is that a different property?

10 MR. WU: That is the next-door property that
11 construction has started.

12 MR. AIZENSTAT: Okay. Because I was just
13 looking at what is here and it seemed like this
14 fencing was fencing in the property. So this fencing
15 is not this property?

16 MR. WU: The fencing is this property but the
17 construction is the neighboring.

18 MR. AIZENSTAT: So the neighboring property has
19 no fencing to protect it from this property?

20 MR. TOSCA: The two properties are under one
21 fence. So we fenced both properties from the
22 outside.

23 MR. WU: It is owned by the same developer.

24 MR. TOSCA: Right. We own both of them.

25 MR. AIZENSTAT: And it is allowed by code? Each

1 individual project doesn't have to have their own
2 fencing?

3 MR. WU: I don't see a problem, but this is
4 really an operational --

5 MR. AIZENSTAT: Okay. It just looked like it
6 was started. Okay.

7 CHAIRMAN OTERO: I guess the question is - and
8 I'm following up - there's no unity of title.

9 MR. TOSCA: No.

10 CHAIRMAN OTERO: Just the fact that you are the
11 same owner doesn't matter. That is today; that can
12 change tomorrow.

13 MR. TOSCA: Yes.

14 CHAIRMAN OTERO: Correct?

15 MR. VAZQUEZ: That is correct.

16 CHAIRMAN OTERO: Okay.

17 MR. HIDALGO: That is just temporary fencing for
18 construction.

19 MR. VAZQUEZ: Right.

20 CHAIRMAN OTERO: That is temporary for
21 construction; this is not permanent fencing. Is that
22 correct?

23 MR. TOSCA: Just temporary fencing.

24 MR. VAZQUEZ: Right.

25 CHAIRMAN OTERO: Okay. Thank you.

1 Any other questions?

2 Thank you, sir.

3 Mr. Wu, do you have any letters of support or in
4 opposition to?

5 MR. WU: I believe it is in the packet if we did
6 receive any.

7 CHAIRMAN OTERO: Did not receive any; right?
8 Thank you.

9 MR. TOSCA: We do ...

10 CHAIRMAN OTERO: Yes, sir. The applicant wants
11 to... go ahead.

12 MR. TOSCA: Yes. We do have some letters of
13 support, yes.

14 MR. WU: There's a letter from 911 El Rado; a
15 letter from 1222 El Rado. We have two letters in the
16 file.

17 CHAIRMAN OTERO: And those letters are in
18 support of the application?

19 MR. WU: Yes, sir.

20 CHAIRMAN OTERO: Thank you.

21 Is there anyone in the audience who wishes to
22 speak in favor of this case? If so please, come
23 forward.

24 Let the record show no one has.

25 Is there anyone in the audience who wishes to

1 speak in opposition of this case?

2 Please step up, one at a time. And could you
3 please make sure your name is on the roll.

4 MR. PEREZ: Sure.

5 CHAIRMAN OTERO: And state your name and address
6 for the record.

7 THE COURT REPORTER: Would they need to be
8 sworn?

9 CHAIRMAN OTERO: Were you sworn? Were you
10 before --

11 MR. PEREZ: No.

12 CHAIRMAN OTERO: Okay. Could you both stand to
13 be sworn in if you wish to speak, please.

14 (Thereupon, said participants were duly sworn.)

15 CHAIRMAN OTERO: Yes, sir.

16 Name and address for the record.

17 MR. PEREZ: My name is Michael Perez and I live
18 at 1322 San Benito, which is directly across the
19 street from the proposed 15-foot setback. So let me
20 give you guys these.

21 CHAIRMAN OTERO: Let the record show that Mr.
22 Perez is handing to the Board members ... and if you
23 could also hand one to Mr. Vazquez.

24 MR. PEREZ: Yes.

25 MR. VAZQUEZ: Thank you.

1 CHAIRMAN OTERO: ... a schematic.

2 MR. PEREZ: So El Rado is really a unique
3 street. Most streets in Coral Gables, as you can see
4 on the left, are 50-feet wide from property line to
5 property line. Which is a 20-foot ... yeah, 20-foot
6 street, a ten-foot swale and then five-foot
7 sidewalks.

8 So between property and property, there's about
9 50 feet. On El Rado we don't have that. We have
10 thirty feet. We have a six-foot sidewalk and an
11 18-foot street and then another six-foot sidewalk.
12 So the total distance between the properties across
13 the street from each other is thirty feet.

14 So if you look at the left, most of the homes,
15 in the north Gables sit about 40 feet from this road
16 back. The setback is the 25, then the five, then the
17 ten. So you end up having a house 40 feet away from
18 the road, which has landscaping and it has a swale in
19 front of it, which divides the house from the road.

20 In this case, it's going to be 21 feet, which is
21 almost half of most of the conditions that you have
22 in Coral Gables. And there is no city-maintained or
23 City-required landscaping. It's up to the owner to
24 put in some kind of landscaping.

25 What you're going to have is basically a

1 thirty-foot peak right at the corner of El Rado and
2 San Benito, which is the tallest point of their
3 design; and it is going to be 15 feet away from the
4 road. So you are going to have a thirty-foot tower
5 15 feet away from the road; it is going to tower the
6 road and tower the neighborhood.

7 If this variance is approved, we are basically
8 going to have a two-story 3,000-square-foot house 15
9 feet away from the property line, instead of the
10 average home on El Rado which has a thousand four
11 hundred and seventy-five square feet of living space
12 and 25 feet away from the edge of the property. That
13 is more than double the size of the usual home in El
14 Rado and almost twice as close to the road as any
15 other street.

16 So in conclusion, I don't think you should do
17 this; it doesn't really fit into the neighborhood.
18 And as being the neighbor across the street, this
19 house is going to be right up against my house and it
20 is basically a huge shear wall towering over my
21 house. If it were a normal street you would have
22 trees and all that breaking that up, but we don't
23 have that.

24 CHAIRMAN OTERO: Mr. Perez, in this schematic
25 you gave us, which one is your house?

1 MR. PEREZ: I live (indicating). Yes.
2 That's it.

3 CHAIRMAN OTERO: Okay. Thank you.

4 MR. PEREZ: Thank you.

5 CHAIRMAN OTERO: And what is the size of your
6 lot?

7 MR. PEREZ: My lot was actually an original ...
8 it was two platted lots like this, and we built one
9 home on the two lots. So it's 110 by 107 or
10 something like that. It is a ten thousand plus
11 square foot lot. And we put the sites together to
12 make one building site rather than two two-story
13 houses.

14 CHAIRMAN OTERO: Thank you. Is there anyone
15 else?

16 Would you please come up.

17 Mr. Vazquez, you will have time to address --

18 MR. VAZQUEZ: Thank you.

19 CHAIRMAN OTERO: -- the objections.

20 MR. VAZQUEZ: Good.

21 MR. DAINERDAINER-BEST: Good morning Chairperson
22 and fellow Board Members. My name is David
23 Dainer-Best and I live at 1100 El Rado Street,
24 adjacent to Mr. Perez's house across from the
25 development.

1 I did make photographs, but unfortunately I only
2 made one copy so I would like to have those passed
3 through, if I might.

4 CHAIRMAN OTERO: You are more than welcome to
5 have it; give it to the lady and she will pass it on
6 to us.

7 MR. DAINER-BEST: As Mr. Perez articulated, the
8 street is comprised of, in this area particularly,
9 one-story houses; they're much smaller than the one
10 that is being built there on the back lot on San
11 Benito and now they are looking to put the second
12 house on the adjacent lot much closer to the street
13 than the code allows.

14 I recognize that this is an investment; the
15 intent is for profit. And I think when the property
16 was built there was an alternative, and that was
17 probably the change in providing these lots to build
18 one house. Obviously the result is less profit. But
19 after this is done and completed, those of who live
20 on El Rado Street will be seeing this home that is
21 out of line with the balance of the houses on the
22 street.

23 And I did, you know, offer the photograph there
24 that does show the properties going along there,
25 along the street that are 25 foot plus, and they're a

1 distance from the street. And in fact having the
2 swale, it does make the appearance of all the homes
3 much closer than they otherwise would be.

4 So my recommendation is that this application be
5 denied. I think the alternative is it could have
6 been done to have it in compliance.

7 CHAIRMAN OTERO: I'm just curious. I think the
8 focus seems to be that the same owner owns both lots.
9 In other words, if you had purchased the lot in
10 question today, do you agree that you would be
11 limited in the size of construction due to the
12 different setback requirements?

13 MR. DAINER-BEST: Yes.

14 CHAIRMAN OTERO: You would be?

15 MR. DAINER-BEST: I believe so. I think that
16 would be the intent of buying the property, knowing
17 that the existing purchase has ... specified about
18 the building code on the property, how much, you
19 know, structure could be constructed.

20 CHAIRMAN OTERO: Okay. Mr. Perez, you are
21 stepping up.

22 MR. PEREZ: Yes. I actually put an offer in on
23 this property before --

24 MR. WU: Sir, you have to speak for the record.

25 CHAIRMAN OTERO: Please step up and speak into

1 the microphone. And one at a time.

2 MR. PEREZ: Okay. I'm sorry.

3 I put an offer on this property when it was up
4 for sale, and I didn't end up getting the property
5 because the numbers didn't work if you built what is
6 required in the area. If you were to go for a
7 variance and all that, yes, you can make money, but
8 it is not ... being a neighbor and being a developer,
9 it just doesn't, it doesn't fit into the area. It
10 doesn't work.

11 CHAIRMAN OTERO: Okay. Thank you.

12 MR. PEREZ: Thank you.

13 CHAIRMAN OTERO: Thank you both.

14 MR. DAINER-BEST: Thank you.

15 CHAIRMAN OTERO: You can stay and talk some more
16 when Mr. Vazquez here addresses your concerns.

17 MR. VAZQUEZ: Thank you.

18 First of all to Mr. Perez's comments. He didn't
19 mention, and I think he failed to mention, we're
20 dealing with a corner parcel. And whenever you have
21 a corner parcel, he is saying that the houses on El
22 Rado face El Rado; this is a house on the corner of
23 El Rado and San Benito; it is going to face San
24 Benito. So it's obviously the side we're talking
25 about, not the front of the property. So we're not

1 trying to build a house with a 15-foot front setback
2 on El Rado. So that is one thing.

3 I didn't get David's last name.

4 MR. DAINER-BEST: Dainer-Best.

5 CHAIRMAN OTERO: Dainer-Best.

6 Mr. Dainer-Best's comment with regards to the
7 size of our home compared it to the 1400-square-foot
8 A/C homes. If we are going to talk A/C, let's talk
9 A/C. Our home is 2200 A/C. Our house is not a
10 3,000-square-foot home; it is a 2200. If we are
11 comparing to 1400 A/C, let's talk A/C. I just want
12 to be consistent.

13 And last but not least, I think if we are
14 talking about compatibility, if we are talking about
15 what is good or bad for the neighborhood, the end
16 result of the envelope, a 26-foot envelope, which is
17 what Staff mentioned - and I will say it one more
18 time for the record - that strict application would
19 result in the construction envelope of an
20 unreasonable size. Not only would it be
21 unreasonable, but it would result in a property that
22 if I lived across the street I would not want that
23 property across from me; that is going to hurt the
24 value of my home.

25 So that's another thing we're going to look at.

1 Compatibility is something that is very important to
2 be thinking about. So. I think the record speaks
3 for itself. We see a situation that results from a
4 code change, and that is before you for the
5 recommendation of approval for all of the mentioned
6 reasons.

7 So I will close with that; and I thank you for
8 the rebuttal opportunity.

9 CHAIRMAN OTERO: Thank you.

10 MR. AIZENSTAT: Mr. Chair, if I may ask a
11 question.

12 CHAIRMAN OTERO: Please.

13 MR. AIZENSTAT: On El Rado Street. Are you
14 asking for any variances to the part of the house
15 that faces El Rado Street? Do you need a side
16 setback?

17 MR. VAZQUEZ: That is the variance before you.

18 MR. AIZENSTAT: Yes, sir.

19 MR. VAZQUEZ: The variance before you, but
20 for --

21 MR. AIZENSTAT: I understand.

22 MR. VAZQUEZ: I'm sorry?

23 MR. AIZENSTAT: Is it not in the front of the
24 house, the setback for the variance?

25 Oh. I'm sorry. I'm looking at it backwards.

1 Okay.

2 MR. VAZQUEZ: Yes. But for this variance, sir,
3 we would have to provide 25 foot to El Rado and 25
4 foot to San Benito.

5 MR. AIZENSTAT: I was looking at it backward.

6 MR. VAZQUEZ: But it will be facing San Benito.

7 MR. AIZENSTAT: All right.

8 Okay. And when you went ahead and purchased
9 this property, you purchased the other lots that you
10 are building on together at the same time?

11 MR. TOSCA: Yes, we did.

12 MR. AIZENSTAT: So you purchased it at the same
13 time, one time. From one owner that had all
14 properties?

15 MR. TOSCA: One owner. Yes, we did.

16 And like I said, we did not know this nuance of
17 the code. In fact, we submitted the plans for both
18 houses. And we were almost finished writing the
19 plans for this house, and Zoning came up, and when we
20 went for clarification from Mr. Diaz, Mr. Diaz ...

21 I just wanted to point one thing out. We're
22 going to put up some sort of fencing or wall on that
23 side anyway, which we would be allowed to do. And
24 we're going to put landscape up; all our houses have
25 very significant landscape up; it looks a lot nicer

1 on the side of the house. So from the standpoint of
2 what you are going to see from El Rado, to me, it's
3 not going to be much of a difference; you are not
4 going to see much of the house.

5 You are going to see whatever is up there in
6 terms of the fence or wall, and with our landscape
7 design, whatever you guys would require as a
8 condition, and then really nice, normal side of the
9 house facing El Rado. The Gables have pretty
10 landscaping anyway, so I don't think it is that much
11 impact on El Rado, to be honest with you.

12 CHAIRMAN OTERO: Just so I understand, to
13 quantify what you were asking, you are asking to
14 reduce the setback from 25 to 15 feet. You are
15 asking for a gap of ten feet.

16 MR. VAZQUEZ: That is correct, on the side.

17 CHAIRMAN OTERO: On the side. Nothing on the...

18 MR. VAZQUEZ: On the front.

19 MR. HIDALGO: Nothing on San Benito.

20 CHAIRMAN OTERO: I'm sorry?

21 MR. HIDALGO: Nothing on San Benito side.

22 CHAIRMAN OTERO: Nothing on San Benito. You are
23 asking for ten feet on one side.

24 MR. VAZQUEZ: On the El Rado side of the fence.

25 CHAIRMAN OTERO: Okay.

1 MR. AIZENSTAT: If I may. Charles, what
2 determines the street address of a home in
3 construction? Whether it faces, you know, a certain
4 street? How is that determined with the City?

5 MR. WU: It's the narrow portion of, if it is a
6 corner lot, the narrow portion of the lot.

7 MR. AIZENSTAT: The narrow portion becomes its
8 address.

9 MR. WU: Right. So San Benito becomes the
10 front. And I think because of that situation on El
11 Rado, which is the front for other homes, becomes the
12 side street for this home.

13 MR. AIZENSTAT: Right.

14 MR. VAZQUEZ: Fifty-six by one hundred thirteen
15 feet.

16 CHAIRMAN OTERO: How large is the house you are
17 building on the other side -- on the other lot?

18 MR. TOSCA: It's similar, 2200
19 (unintelligible)--

20 THE COURT REPORTER: Sir. I cannot understand
21 you at all.

22 MR. TOSCA: It's similar. Twenty-two hundred
23 square feet.

24 CHAIRMAN OTERO: Okay. Thank you.

25 Anybody else have questions? Comments for or

1 against? Thank you.

2 The public hearing is now closed.

3 I would like the Board to focus, since in this
4 case we have some objections, on the eight criteria
5 before us that the Board can - and should - look at.
6 The first criteria is that special conditions and
7 circumstances exist which are peculiar to the land,
8 structure or building which are not applicable to
9 other lands, structures or buildings in the same
10 zoning district.

11 Staff opines that it does meet the standard.
12 Item one of eight. Is there any discussion,
13 agreement or disagreement with that conclusion from
14 Staff?

15 MR. GREENBERG: I agree with Staff. Clearly
16 that if the 25-foot setback were imposed on the side
17 yard as required by the code, you would have an
18 unbuildable lot. The issue of whether or not there
19 should have been unity of title on both of those lots
20 is a different issue. And because these are two
21 buildable lots, they have to be addressed
22 accordingly.

23 CHAIRMAN OTERO: And we will get to a standard
24 of reasonableness in a minute.

25 The second item is that the special conditions

1 and circumstances do not result from the actions of
2 the applicant.

3 Staff opines that it does meet that standard;
4 and the condition of the site was not created by the
5 actions of the applicant. It is an existing platted
6 lot.

7 Any disagreement with that conclusion, or
8 comment?

9 Let the record show no.

10 The third item: That granting the variance
11 requested will not confer on the applicant a special
12 privilege that is denied by these regulations to
13 other lands, buildings or structures in the same
14 zoning district.

15 Staff opines it does meet that standard. That
16 was the nature of my prior question as to whether or
17 not there is historical perspective on these issues.

18 MR. VAZQUEZ: That's right.

19 CHAIRMAN OTERO: And it appears from the record
20 that there is.

21 Any comments or questions?

22 MR. HIDALGO: No.

23 CHAIRMAN OTERO: Number four: That literal
24 interpretation of the provisions of these regulations
25 would deprive the applicant of rights commonly

1 enjoyed by other properties in the same zoning
2 district under the terms of these regulations, and
3 would work unnecessary and undue hardship on the
4 applicant.

5 Staff opines it does meet that standard.

6 I guess the rationale is you could not build a
7 reasonably sized home - and that is where we get the
8 standard of reasonableness - you end up building a
9 very narrow house, which cannot be compatible with
10 the neighborhood. Not everybody would agree, not
11 everybody would agree, I understand, Mr. Perez.

12 MR. PEREZ: I think the home is about 26 feet --

13 CHAIRMAN OTERO: Okay. One second.

14 MR. PEREZ: I'm sorry.

15 CHAIRMAN OTERO: Say what you need to say.

16 MR. PEREZ: How wide is the home --

17 MR. WU: You have to speak into the record.

18 MR. PEREZ: Oh. I'm sorry.

19 How wide is the home at the point where it is
20 abutting against the street? Because it seems like
21 the whole home is shifted over to allow for a pool.
22 It doesn't -- the whole home is maybe still about 26
23 feet wide.

24 CHAIRMAN OTERO: I cannot answer that. Maybe
25 Mr. Vazquez can, or Staff can. My point in this, Mr.

1 Perez, is that they're asking for ten feet.

2 (Further discussion off the record between Mr.
3 Vazquez and Mr. Tosca.)

4 MR. PEREZ: Okay. I'm sorry.

5 CHAIRMAN OTERO: Okay. Thank you.

6 The fifth criteria is -- I think we've covered
7 the fourth; correct?

8 MR. VAZQUEZ: Yes.

9 CHAIRMAN OTERO: The fifth criteria is that the
10 variance granted is the minimum variance that will
11 make possible the reasonable use of the land,
12 building or structure.

13 Again we get back to reasonableness. They are
14 asking for ten feet, on one side.

15 MR. VAZQUEZ: The type of variance which would
16 result in a 15-foot setback.

17 MR. OTERO: Correct.

18 MR. VAZQUEZ: What we're asking would result in
19 a --

20 CHAIRMAN OTERO: Right. But it is a ten-foot
21 difference.

22 MR. VAZQUEZ: Right.

23 CHAIRMAN OTERO: Any discussion?

24 MR. GREENBERG: I would just like to state I
25 think this is the proper standard, predicated on the

1 history of variance granted for similar sites and
2 basically puts it in line with the standard, which
3 until the code evolved was the standard for side
4 setbacks.

5 CHAIRMAN OTERO: Thank you.

6 Number six: That granting the variance will not
7 change the use to one that is not permitted in the
8 zoning district or different from other land in the
9 same district. And Staff agrees.

10 My point in the prior questioning was, we don't
11 want a meg mansion here; we don't want a huge 5,000
12 6,000 -- and the Zoning Code will not allow that.
13 Because you still have to comply with other sections
14 of the Zoning Code.

15 MR. VAZQUEZ: Absolutely.

16 CHAIRMAN OTERO: Number seven: The granting of
17 the variance will be in harmony with the general
18 intent and purpose of these regulations and that such
19 variance will not be injurious to the area involved
20 or otherwise detrimental to the public welfare.

21 And here I take Mr. Greenberg's prior comment,
22 that the prior Zoning Code would've allowed this. So
23 I think it is somewhat in harmony and I think the
24 Board agrees with Staff in that area.

25 The eighth one is irrelevant; it's historic.

1 MR. VAZQUEZ: Right.

2 CHAIRMAN OTERO: So we have gone over the seven
3 or eight. We've heard from applicant; we have heard
4 from opponents.

5 Yes?

6 MR. DAINER-BEST: Just one additional comment
7 with respect to this. Other than the setback, what
8 makes this house unique is it is the only two-story
9 house along there. So the photographs I did take of
10 the other houses are all single-story homes. And
11 this being closer to the road is huge. You will see
12 single-story homes all the way along in line and then
13 you will see a two-story house is much closer to the
14 road.

15 CHAIRMAN OTERO: I understand. It seems to me,
16 being an amateur in construction, that if you don't
17 grant this setback, you may have a three-story home.
18 Because you can only go up.

19 MR. DAINER-BEST: Okay. Well, I don't know if
20 that is the Zoning Code in Coral Gables.

21 CHAIRMAN OTERO: Well, again, they must comply
22 with the - this is just one provision of the Zoning
23 Code, the setbacks. There are other provisions. Now
24 the other provisions could prevent this from being
25 out of harmony and in contravention of other

1 limitations. By the fact that is a smaller lot, you
2 are limited in the square footage of what you can
3 build.

4 MR. DAINER-BEST: Right.

5 CHAIRMAN OTERO: The limitations can be best
6 explained by Mr. Wu and his staff. I don't know what
7 they are.

8 MR. DAINER-BEST: Right.

9 MR. OTERO: But I would say you cannot build a
10 10,000 square-foot house.

11 MR. DAINER-BEST: Right. Absolutely not.

12 CHAIRMAN OTERO: But probably even five
13 thousand.

14 MR. DAINER-BEST: Correct.

15 MR. AIZENSTAT: There's also a height limitation
16 for single-family homes, and we understand, as to how
17 high you can build.

18 MR. GREENBERG: Mr. Chair, I would like to
19 address a point that Mr. Dainerpas ... is it?

20 MR. DAINER-BEST: Dainer-Best.

21 MR. GREENBERG: Dainer-Best.

22 MR. DAINER-BEST: Yes.

23 MR. GREENBERG: ... has made. The Item Number 7
24 regarding "will not be injurious to the area involved
25 or otherwise detrimental to the public welfare."

1 This proposed house has been approved by the Board of
2 Architects. They studied the mass of the house
3 relative to the setback, as well as the street gate.

4 While my personal opinion regarding whether it
5 should be a one- or two-story house may be at
6 variance with what the Board of Architects approves,
7 I don't believe it's our position to question their
8 judgment on this issue.

9 So while a one-story house conceivably would
10 have less of an impact on the street, according to
11 their diagram, presented by Mr. Perez, we are still
12 looking at approximately 67 feet between the side
13 wall of the two-story house and his front door, which
14 is more than two to one in terms of the separation of
15 the two-story house --

16 THE COURT REPORTER: I'm sorry, sir.

17 MR. GREENBERG: Where did I lose you?

18 THE COURT REPORTER: "... in terms of..."

19 MR. GREENBERG: ... the separation of the
20 two-story house and the one-story house in terms of
21 the total setback - or separation - is approximately
22 67 feet.

23 And so I don't believe that the impact of this -
24 as might be discussed by Item 7 - while not perfect,
25 is injurious or detrimental. So I think we have to

1 accept the fact that while it is a two-story house,
2 it has received the necessary approval by the Board
3 of Architects and we should just address the setback
4 issue.

5 CHAIRMAN OTERO: Another way of saying this is
6 that our scope is narrow. Our scope is not to
7 dictate height, the color of house, or anything like
8 that.

9 MR. DAINER-BEST: I understand.

10 CHAIRMAN OTERO: Our scope today was to address
11 the setback and whether it meets the seven or eight
12 criteria applicable for a variance.

13 I think it is wonderful that both of you showed
14 up and expressed your opinions. And they were very,
15 very valid opinions. What we tried to do with your
16 opinions - and that's why we took the time to go
17 through the seven and eight criteria - is to see how
18 they fit in in those criteria.

19 But we thank you for your comments.

20 MR. DAINER-BEST: Thank you.

21 CHAIRMAN OTERO: The public hearing is now
22 closed, again.

23 Do we have a motion?

24 MR. GALVEZ: I'm sorry. We never discussed the
25 possibility of imposing some type of conditions for

1 landscaping.

2 CHAIRMAN OTERO: Let's discuss it.

3 MR. GALVEZ: I know that it was one of the
4 issues that Mr. Mike Perez brought up.

5 MR. WU: Mr. Chair, if I may. The applicant is
6 proposing four live oaks on the El Rado side as part
7 of the building permit. So that is already in the
8 record, and just state that it is four live oaks. So
9 four live oaks have been proposed to screen the side
10 of the building on El Rado.

11 MR. GALVEZ: Now it is proposed but it doesn't
12 necessarily mean they have to put them in. Correct?

13 MR. WU: Well, I think there's no application
14 code for that.

15 MR. GALVEZ: I'll read the motion, then,
16 approving it.

17 THE COURT REPORTER: I'm sorry, sir?

18 MR. GALVEZ: I am going to read the motion.

19 I move that the Board of Adjustment grant
20 Application BA-15-08-5439, a request by Gustavo M.
21 Deribeaux and Carlos Toca, on behalf of El Rado, LLC
22 for variance for the proposed residence to maintain a
23 fifteen foot side street setback. The motion is
24 based upon the testimony presented along with the
25 application submitted and Staff report, which

1 constitute competent, substantial evidence. The
2 Board hereby makes findings of fact that each of the
3 standards in Section 3-806 of the Zoning Code has
4 been met.

5 I propose the condition of the four live oaks to
6 be made part of the covenant of granting this
7 variance.

8 MR. VAZQUEZ: Just as a clarification, no
9 covenant; just as a condition.

10 MR. GALVEZ: Sorry. The condition.

11 CHAIRMAN OTERO: Is there a second?

12 MR. VAZQUEZ: There's really no need for a
13 covenant. So.

14 MR. AIZENSTAT: I will second.

15 MS. FIGUEROA: They can make it as a condition
16 of approval.

17 MR. VAZQUEZ: Yes. And we have no opposition to
18 that, to plant those trees.

19 CHAIRMAN OTERO: Okay. We have a motion and a
20 second.

21 MR. HIDALGO: Yes.

22 CHAIRMAN OTERO: Any discussion?

23 Vote, please.

24 MR. WU: Mr. Galvez.

25 MR. GALVEZ: Yes.

1 CHAIRMAN OTERO: Mr. Greenberg?

2 MR. GREENBERG: Yes.

3 MR. WU: Mr. Aizenstat.

4 MR. AIZENSTAT: Yes.

5 MR. WU: Mr. Hidalgo.

6 MR. HIDALGO: Yes.

7 MR. WU: Mr. Sotelo. Let the record show that

8 Mr. Sotelo is absent. And Mr. Thompson is absent.

9 Mr. Otero.

10 CHAIRMAN OTERO: Yes.

11 Okay. So this passed as stated. Thank you very
12 much.

13 And thank you all for attending, again.

14 MR. VAZQUEZ: Thank you and have a good day.

15 CHAIRMAN OTERO: And before the Board leaves,
16 please.

17 I skipped over a couple of things on the agenda.

18 The first is the approval of the Minutes for

19 September 14, 2015. These were sent by e-mail. So

20 do we have a motion to approve?

21 MR. GREENBERG: I so move.

22 CHAIRMAN OTERO: Okay.

23 MR. HIDALGO: Second.

24 CHAIRMAN OTERO: Anybody opposed to the
25 approval?

1 Let the record show no one is opposed. That's
2 Item Number 5.

3 Item Number 6 is what we just did for an hour
4 and ten minutes; so is 7; so is 8.

5 Item 9. Election of Chairpersons. That's for
6 the next year. Correct?

7 MR. WU: You can do it now or do it in December.

8 CHAIRMAN OTERO: Let's do it now; move this
9 along.

10 Election of chair person.

11 Any discussion?

12 Motion?

13 MR. HIDALGO: I am going to make a motion to
14 reinstate again, or extend your leadership --

15 THE COURT REPORTER: I'm sorry. When you all
16 turn your head from me I can't hear you at all.

17 MR. HIDALGO: Oh. I'm sorry.

18 THE COURT REPORTER: I apologize.

19 MR. HIDALGO: To have Mr. Otero as chair person
20 again for another ... is it another two years? Mr.
21 Wu?

22 MR. WU: I believe it is every year.

23 MR. HIDALGO: It's every year? Okay. So for
24 one more year.

25 MR. GALVEZ: I second that motion.

1 MR. HIDALGO: He has done an excellent job, by
2 the way.

3 CHAIRMAN OTERO: I guess I say, all those in
4 favor?

5 MR. GREENBERG: Aye.

6 MR. HIDALGO: Aye.

7 MR. GALVEZ: Aye.

8 MR. AIZENSTAT: Aye.

9 CHAIRMAN OTERO: Election of vice chair person.
10 The current vice chairman is Mr. Hidalgo. And I
11 would move that he be again named the vice chair
12 person.

13 MR. GREENBERG: I second that.

14 MR. GALVEZ: I second that.

15 CHAIRMAN OTERO: All those in favor?

16 (Thereupon, a unanimous "aye" vote was voiced
17 by the Board Members.)

18 CHAIRMAN OTERO: Okay. That's it. We're
19 adjourned.

20 (Thereupon, the meeting was adjourned at 9:15.
21 A.M.)

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REPORTER'S CERTIFICATE

STATE OF FLORIDA :

SS:

COUNTY OF MIAMI-DADE :

I, JACKQULYN GIPSON HOLLAND, Registered Professional Reporter and Notary Public in and 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 17th day of November 2015.

JACKQULYN G. HOLLAND
Registered Professional Reporter