

CITY OF CORAL GABLES
BOARD OF ADJUSTMENT MEETING
VERBATIM TRANSCRIPT
CORAL GABLES CITY HALL
405 BILTMORE WAY, COMMISSION CHAMBERS
CORAL GABLES, FLORIDA
MONDAY, APRIL 7, 2014, COMMENCING AT 8:02 A.M.

Board Members Present:

Jorge E. Otero, Chairperson
Susan Fuhrman
Alex Galvez
Oscar Hidalgo
Gustave Perez
Michael Sotelo
John M. Thomson

City Staff Present:

Elizabeth Gonzalez, Zoning Tech Lead
Charles Wu, Assistant Development Services Director
Craig E. Leen, City Attorney
Yaneris Figueroa, Assistant City Attorney

Case No. BA-14-01-2930

6855 Sunrise Drive
Lot: 99, Blk: 2
Sunrise Harbour Rev. Pl., PB/PG; 65/22
Kirk Lofgren Ocean Consulting, LLC - Applicant
Sunrise 6855, Inc. - Owners
John Omslaer, P.E. - Engineer

Public Speakers:

Kirk Lofgren
Rosemarie Bacallao, Esq,
Zeke Guilford, Esq,



1 THEREUPON:

2 The following proceedings were had:

3 CHAIRMAN OTERO: Good morning. Welcome to
4 the regularly scheduled meeting of the City of
5 Coral Gables Board of Adjustment. We are
6 appointed members of the Board and are charged
7 with providing relief from hardships in the
8 application of the Code regulations.

9 The Board is comprised of seven members.
10 Four members of the Board shall constitute a
11 quorum, and the affirmative vote of four
12 members of the Board present shall be necessary
13 to authorize or deny a variance or grant an
14 appeal. A tie vote shall result in the
15 automatic continuance of the matter to the next
16 meeting, which shall be continued until a
17 majority vote is achieved. If only four
18 members of the Board are present, an applicant
19 shall be entitled to a postponement to the next
20 regularly scheduled meeting of the Board.
21 Today we have a full Board. We have seven
22 Board members present.

23 Any person who acts as a lobbyist, pursuant
24 to the City of Coral Gables Ordinance Number
25 2006-11, must register with the City Clerk

1 prior to engaging in lobbying activities or
2 presentations before City Staff, boards,
3 committees and/or the City Commission. A copy
4 of the ordinance is available at the Office of
5 the City Clerk. Failure to register and
6 provide proof of registration shall prohibit
7 your ability to present to the Board of
8 Adjustment on applications under consideration
9 this morning.

10 A lobbyist is defined as, quote, an
11 individual, corporation, partnership or other
12 legal entity employed or retained, whether paid
13 or not, by a principal, who seeks to encourage
14 the approval, disapproval, adoption, repeal,
15 passage, defeat or modifications of, A, any
16 ordinance, resolution, action or decision of
17 any City Commission, or B, any action, decision
18 or recommendation of the City Manager, any City
19 board or committee, included but not limited to
20 quasi-judicial advisory boards, trusts,
21 authorities or counsel, or C, any action,
22 decision or recommendation of City personnel
23 during the time period of the entire
24 decision-making process on the action, decision
25 or recommendation, which foreseeably will be

1 heard or reviewed by the City Commission or a
2 City board or committee, including but not
3 limited to quasi-judicial advisory boards,
4 trusts, authorities or counsel.

5 I now call the City of Coral Gables Board
6 of Adjustment meeting of April 7th, 2014 to
7 order. The time is 8:02 a.m.

8 We have one person present.

9 Liz, could you call the roll, please?

10 MS. GONZALEZ: Yes. Good morning.

11 Mr. Hidalgo?

12 MR. HIDALGO: Here.

13 MS. GONZALEZ: Ms. Fuhrman?

14 MS. FUHRMAN: Here.

15 MS. GONZALEZ: Mr. Galvez?

16 MR. GALVEZ: Here.

17 MS. GONZALEZ: Mr. Perez?

18 MR. PEREZ: Here.

19 MS. GONZALEZ: Mr. Thomson?

20 MR. THOMSON: Here.

21 MS. GONZALEZ: Mr. Sotelo?

22 MR. SOTELO: Here.

23 MS. GONZALEZ: Mr. Otero?

24 CHAIRMAN OTERO: Present.

25 Notice regarding ex parte communications.

1 Please be advised that this Board is a
2 quasi-judicial Board and the items on the
3 agenda are quasi-judicial in nature, which
4 requires Board members to disclose all ex parte
5 communications and site visits.

6 An ex parte communication is defined as any
7 contact, communication, conversation,
8 correspondence, memorandum or other written or
9 verbal communication that takes place outside a
10 public hearing between a member of the public
11 and a member of the quasi-judicial Board,
12 regarding matters to be heard by the Board. If
13 anyone made any contact with a Board member
14 regarding an issue before the Board, the Board
15 member must state on the record the existence
16 of the ex parte communication and the party who
17 originated the communication.

18 Also, if a Board member conducted a site
19 visit expressly related to the case before the
20 Board, the Board member must also disclose such
21 visit. In either case, the Board member must
22 state on the record whether the ex parte
23 communication and/or site visit will affect the
24 Board member's ability to impartially consider
25 the evidence to be presented regarding this

1 matter. The Board member should also state
2 that his or her decision will be based on
3 substantial competent evidence and the
4 testimony presented on the record today.

5 Does any member of the Board have such a
6 communication and/or site visit to disclose at
7 this time?

8 MR. SOTELO: I actually ran into the
9 applicant's representative the day of our
10 meeting last week in our office, and it was
11 just a discussion, "Hey," "Hi," "How are you,"
12 and that's it.

13 CHAIRMAN OTERO: Will your decision today
14 be based on substantial competent evidence and
15 testimony presented on the record today?

16 MR. SOTELO: Yes.

17 CHAIRMAN OTERO: Anyone else?

18 Let the record show no one else.

19 Everyone who speaks this morning must
20 complete the roster on the podium. We ask that
21 you print clearly so the official records of
22 your name and address will be correct.

23 With the exception of attorneys, all
24 persons who will be speak on agenda items
25 before us this morning, please rise to be sworn

1 in.

2 (Thereupon, Mr. Lofgren was duly sworn by
3 the court reporter.)

4 MR. LOFGREN: Yes, I do.

5 CHAIRMAN OTERO: Thank you.

6 In deference to those present, we ask that
7 cell phones, pagers and other tablets, whatever
8 you guys have, please be turned off.

9 Now we will proceed with the agenda. Any
10 changes to the agenda, Liz?

11 MS. GONZALEZ: No, sir.

12 CHAIRMAN OTERO: The next item is approval
13 of the minutes. Have the Board members had a
14 chance to review them? Any changes,
15 corrections or motions?

16 Is there a motion to approve the minutes?

17 MR. PEREZ: I make a motion the minutes be
18 approved.

19 MR. HIDALGO: Second.

20 CHAIRMAN OTERO: Any discussion? All those
21 in favor, say aye.

22 (Thereupon, all members voted aye.)

23 CHAIRMAN OTERO: Opposed?

24 The motion carries. I think we have one
25 case today, Liz, if you could read it into the

1 record?

2 MS. GONZALEZ: That is correct.

3 The variance request is for the property
4 address located at 6855 Sunrise Drive. This is
5 a variance request for a dock to be constructed
6 and extend outward from the property line
7 forty-four feet, nine inches, along with
8 mooring piles to be located at fifteen feet
9 from the dock line. This on your screen here
10 is an aerial view of the property. North is
11 up. Directly to the east is Biscayne Bay.

12 This is an actual drawing of the proposed
13 dock. You'll see that it meets the required
14 side setbacks by the dashed blue lines, and you
15 will see that the 25 feet maximum allowed by
16 Code is also outlined. So the portion that
17 extends beyond the 25 feet is in the strong
18 blue line, beyond.

19 It is an "L" shaped dock consisting of four
20 feet in width by thirty-eight feet in length
21 access walkway and five feet in width by thirty
22 feet in length terminal platform. The
23 waterward edge of the proposed dock will be
24 located at a maximum of forty-four feet, nine
25 inches from the property line along with

1 mooring piles to be installed at fifteen feet
2 from the dock.

3 This design was necessary and recommended
4 by DERM due to the presence of benthic
5 resources between the property boundary and the
6 waterward distance of 38 feet. There are
7 physical and biological features of the project
8 site. In order to minimize the potential and
9 cumulative adverse environmental impact, it is
10 necessary pursuant to the Code of Miami-Dade
11 County in obtaining the required water depth
12 for the placement of mooring structures.
13 Dredging at the site is not recommended. And
14 it also complied with our requirement of 75
15 feet of unobstructed navigable waterway.

16 It has received, as I said, County DERM
17 approval, to avoid and minimize the impact and
18 to meet the required water depth. It has
19 received Board of Architects approval. It has
20 received -- Coral Gables Marine Patrol and
21 Public Works have no objection. It does meet
22 all of the seven required variance standards
23 pursuant to Section 3-806 of the Zoning Code.

24 In your packet, you will find a letter of
25 no objection from the property owner, Ms. Elsie

1 Spiegel, located at 6855 Sunrise Drive (sic).

2 You will also find in your packet a letter
3 from Mr. Zeke Guilford, who is here today
4 representing the owners located at 6825 Sunrise
5 Drive, and Mr. Jeffrey Samas, at 6825 Sunrise
6 Drive. I believe he has some concerns.

7 Due to all of these requirements and
8 necessary -- due to avoiding impact to the
9 sources, Staff recommends approval of the
10 applicant's request.

11 CHAIRMAN OTERO: Before we hear from the
12 applicant, would counsel, City counsel, like to
13 read into the record the opinion?

14 MS. FIGUEROA: This is an opinion that was
15 issued by the City Attorney's Office in this
16 case. I'm going to read the e-mail.

17 "Good Evening, Liz. As we discussed this
18 afternoon, I agree with your interpretation
19 related to the dock application for the
20 property located at 6855 Sunrise. More
21 specifically, and as we discussed, because DERM
22 already approved the application and the City's
23 Zoning Code does not have any provisions
24 limiting the length of the dock to 20 feet or
25 the size of the vessel to be moored at the

1 dock, it is my view that the City does not have
2 a legal basis to restrict the length of the
3 dock to 20 feet or to restrict the size of a
4 vessel to be moored at the dock."

5 Basically, what that means is that it is at
6 your discretion if you would like to limit the
7 size. There's no legal requirement in the Code
8 that it be limited.

9 CHAIRMAN OTERO: Thank you.

10 Any questions at this moment? We may have
11 questions later, Liz. Any questions at this
12 moment from the Board members to Staff?

13 Yes, sir. Would you state your name --
14 names?

15 MR. LOFGREN: good morning. Kirk Lofgren.
16 I'm the environmental consultant on the
17 project, from Ocean Consulting, LLC, 340
18 Minorca Avenue, Suite 7. Here with me today is
19 the client's attorney, Rosemarie Bacallao, as
20 well.

21 MS. BACALLAO: Good morning. Rosemarie
22 Bacallao, and I represent the property owner.

23 CHAIRMAN OTERO: Thank you.

24 MR. LOFGREN: At issue today are really
25 three main points that I'd like to discuss

1 briefly today. I know you've heard this last
2 month, but I'd like to go through it briefly
3 again, if that's possible.

4 The first issue is the extension out into
5 the waterway, and that extension out into the
6 waterway is not something that you can
7 negotiate with the County, it's not something I
8 can negotiate with the State or with the
9 Federal Government. They are all requiring
10 that I be located in an area that avoids and
11 minimizes the impacts to resources. So, as a
12 result, we are extending this dock out 38 feet
13 because we're required to. We're not allowed
14 to -- If we had a choice, we would not be here
15 for a variance. We would extend that -- limit
16 the extension of that dock down to 25 feet.

17 So, right off the gate -- right out of the
18 gate, we're already extending to the minimum
19 necessary, not the maximum we're allowed, but
20 the minimum necessary to get outside of that
21 boundary of seagrass resources.

22 The other two points are points that are
23 brought up by the opposing counsel here, about
24 the two neighbors, and the first is an
25 extension of the actual terminal platform

1 itself and limiting that extension to 20 feet.
2 The second is trying to limit the size of the
3 vessel. Both of those issues, I think, will
4 substantially limit the value of this property.
5 And just to give you an idea, I just did a
6 quick poll on the neighboring properties,
7 immediately to the south and to the north, and
8 the example I'd like to use is immediately to
9 the south, which is one of the properties that
10 the opposing counsel actually represents.

11 If you look at the design of their dock,
12 their dock is 50 feet in length for a terminal
13 platform. We're asking for 30. If you move
14 south one property, they also have a 50-foot
15 dock. We're asking for 30. If you move north,
16 you see dock extensions -- and we're talking
17 about the terminal platforms, here. We're
18 talking about this length from here. If you
19 move north and south, the minimum I saw was 30
20 feet. The maximum I saw was 50 plus feet. So
21 we're already severely restricted at this
22 property.

23 The third point that I'd like to point out
24 is that what they're trying to do is limit the
25 size of the vessel at this location to 30 feet.

1 I would never ask any of my clients to limit
2 the size of their vessel. I think what that
3 does is severely restricts the property from
4 here and into the future. It also is going to
5 limit the value of the property. It's also not
6 in the Code that I actually have to prevent it,
7 and if you ask Elizabeth, who has been working
8 with the County to get some of these points
9 cleared up, you will notice that there is
10 correspondence in the file from the County
11 which says that we are not limited to a 30-foot
12 boat; we are limited to a draft of four and a
13 half feet, and that draft of four and a half
14 feet is required to avoid impacts to the bay
15 bottom at this extension waterward. So,
16 provided we have a draft of four and a half
17 feet or less, that size of a boat can fit in
18 this location.

19 Up to a hundred feet, am I correct in that
20 interpretation? A vessel up to a hundred feet
21 could go in there, or do we need to meet our
22 side setbacks?

23 MS. GONZALEZ: As long as you don't
24 traverse those property lines on the adjacent
25 properties.

1 MR. LOFGREN: Okay, so --

2 MS. GONZALEZ: There is something in our
3 City Code that says, however, if they do agree
4 to it, you may, but that's the only
5 restriction, in our City Code.

6 MR. LOFGREN: Correct. So, by Code, we can
7 have a vessel that's a hundred feet in length.
8 This is a hundred feet of property, by Code.
9 We can have a dock extension that also is not
10 limited by the City, but rather by the
11 potential for impacts to resources and a
12 potential for the safety of a vessel that's
13 parked here, and what I'm talking about is that
14 when you have a boat here that's 30 feet or
15 greater, it's much more difficult to get to
16 that boat to wash the boat, to actually get
17 around the boat, when you're this far offshore.
18 In my opinion, it's an unsafe condition if you
19 try to limit the length of the terminal
20 platform. I would not do that. I would try to
21 make that length as long as possible. And you
22 can see that evidenced by the neighboring lot,
23 which the opposing counsel represents. They
24 have a 50 -- It's a 56-foot dock.

25 And the other point is, at one point we

1 approached the neighbors for their consent. We
2 did not get them. If you look at the dock,
3 again, at the south property line -- and I have
4 a photo of that here, if we need this into the
5 record -- they exceed their D5 boundary, as
6 well, on the south side, and they were able to
7 get a letter of consent from their south
8 neighbor. So it's not something that is
9 unusual that we're asking for here. They also
10 had to ask and obtain, which I have a copy of,
11 a letter from their south neighbor.

12 So, in my opinion, we're asking for the
13 minimum necessary, required to park a boat here
14 safely. We're not trying to restrict the size
15 of the boat. I think that limits the value of
16 the property, as I've explained before. I
17 think that's unnecessary in this particular
18 case. The only issue today is our extension
19 into the waterway, in my opinion.

20 Thank you.

21 CHAIRMAN OTERO: I have a question --

22 MR. LOFGREN: Of course.

23 CHAIRMAN OTERO: -- for you or counsel.

24 MR. LOFGREN: Yes.

25 CHAIRMAN OTERO: Does the Board care about

1 the value of the property? Is there anything
2 in the seven criteria that addresses value of
3 property? Is that a relevant argument? I
4 understand the other arguments. The value of
5 the property?

6 MS. BACALLAO: Well, I don't think, as far
7 as -- It's not one of the seven criteria, but
8 it's something that the Board should take into
9 consideration. I think it does affect the
10 property owners to an extent, and it should be
11 substantial equality across the board, to all
12 property owners. I mean, when you take that
13 coupled with the fact that all the other
14 property owners have a 30-foot dock or larger,
15 limiting one property owner to a much smaller
16 dock would detrimentally affect the value of
17 the property and establish a system of
18 inequality among the property owners.

19 MR. LEEN: Mr. Chairman, may I?

20 Yes, there's one area where you should
21 consider that, and that's where, if you're
22 going to impose a condition on the size of the
23 boat, the condition needs to tie into something
24 that you're trying to correct and needs to be
25 roughly proportional to what you're doing.

1 So, if you, for example, made the boat so
2 small that it would substantially affect their
3 value and there was no real need for it, that
4 could cause problems down the line for the
5 City. But you do have discretion, if you see a
6 harm, to address it. So, for example, if
7 you're giving an extension to the dock and you
8 believe that the size of the boat will cause
9 some sort of problem -- it has to be a clear
10 problem in the record -- you could compose a
11 condition that is proportional to whatever the
12 problem is caused, but -- So, yes, you can
13 consider it in that respect.

14 CHAIRMAN OTERO: Thank you.

15 Any questions from Board members?

16 MS. FUHRMAN: I have a question. I don't
17 know who this gentleman is and --

18 CHAIRMAN OTERO: Oh, the City Attorney.

19 MS. FUHRMAN: Oh, okay, thank you.

20 MR. LEEN: I'm sorry. Forgive me. I'm the
21 City Attorney.

22 MS. FUHRMAN: Thank you very much.

23 MR. LEEN: Yaneris Figueroa is our Assistant
24 City Attorney --

25 MS. FUHRMAN: Right.

1 MR. LEEN: She's your counsel today. I'm
2 just here, but you got into economic value and I just
3 wanted to make that one point for the record. Thank
4 you.

5 MR. SOTELO: I had the same question. You
6 just beat me to it.

7 CHAIRMAN OTERO: Any other questions?
8 Anyone else present who would like to speak for
9 or against?

10 MR. GUILFORD: Yes.

11 Good morning, Mr. Chairman, Members of the
12 Board. For the record, my name is Zeke
13 Guilford with offices at 400 University Drive.
14 I'm here today representing Mr. Jeffrey Samas
15 and Mr. Michael Griffin, the trustee for
16 properties located at 6825 and 6875 Sunrise
17 Drive, the two properties that abut the
18 property in question here that's requesting the
19 variance.

20 Now, Mr. Chairman, last month this Board
21 granted a continuance in order for myself and
22 my clients to go meet with Staff, meet with
23 DERM, and actually have a chance to review the
24 file. We have done that. We met with DERM.
25 And the issue here is seagrass, so we

1 understand the issue that the dock has to go
2 out. However, in doing so, they violate the D5
3 triangle, and what the D5 triangle is, is this
4 dotted line right here, and what it does is --
5 what it's trying to do is protect people's
6 sight lines. So, basically, what happens is,
7 the dock extends here and it extends over here
8 a minimal amount.

9 So, we understand that there is a hardship
10 here by DERM, but we don't think this is a
11 minimal variance, because essentially they
12 could take off 10 feet of this dock, which is,
13 by DERM's requirement -- 20 feet of the
14 terminal platform is acceptable to DERM. They
15 did not say it has to be 20 feet, it could be
16 longer. Their issue was in protecting the
17 seagrass underneath it.

18 Also, when the applicant filed their
19 application with DERM, they said the boat dock
20 would be between 25 and 30 feet, and what we're
21 asking you to do is to condition this variance
22 on a dock -- on a boat being no larger than 30
23 feet, because what happens is -- Let's just,
24 for an example, use the applicant's suggesting
25 it could be a hundred feet. It would be over

1 here. Can you imagine what my clients' vision
2 is going to be? It's going to be blocked by
3 potentially a large boat. So I believe it is
4 related, that you can limit the size of the
5 boat, and the only thing we're asking you to do
6 is limit it to what the applicant said was
7 going to be there.

8 . So, Mr. Chairman, as a matter of fact,
9 under Section 3-806(D), this Board, not -- The
10 City can't do the restrictions, but this Board
11 has the right to impose reasonable conditions
12 on the variance in order to protect the
13 surrounding properties and what I'm asking
14 today is that these two conditions I'm asking
15 you to put on the dock will protect the
16 abutting property owners.

17 If you have any questions, I'd be more than
18 happy to answer them at this time.

19 CHAIRMAN OTERO: I have a question. The
20 subject property boundary lines are where?

21 MR. GUILFORD: Basically, the whole thing,
22 going out.

23 CHAIRMAN OTERO: The whole thing, right?

24 Mr. Guilford, just for the record, the
25 letter we received may have a typo in it.

1 MR. GUILFORD: Oh, sorry about that.

2 CHAIRMAN OTERO: Only, the addresses are
3 the same.

4 MR. GUILFORD: Oh, okay. Sorry.

5 CHAIRMAN OTERO: The second 6825 should be
6 6875 --

7 MR. GUILFORD: Correct.

8 CHAIRMAN OTERO: -- from what you stated to
9 us.

10 MR. GUILFORD: Correct.

11 CHAIRMAN OTERO: If you could stay up
12 there, I have a question to you, regarding
13 Mr. Guilford's statement as to the application.
14 Was the application for a 25 to 30-foot dock?

15 MR. GUILFORD: Boat. I'm sorry, boat.

16 CHAIRMAN OTERO: Boat.

17 MR. LOFGREN: That's correct, and that was
18 back in 2012, when the dock designed was much
19 closer in to the property. That was before.
20 So in other words, we had a much more shallow
21 water depth in that area. Now we're being
22 forced offshore, where we have six feet of
23 water, and they have the ability to put a
24 larger boat.

25 I brought a copy of that original

1 configuration. Although it's cut off,
2 unfortunately, it shows you that it extended --
3 what's our total -- 15 feet offshore. Now
4 we're 40 feet plus. So we, by gaining, going
5 out that far, get additional water depth. The
6 original design stayed within D5 and stayed
7 within our property area.

8 CHAIRMAN OTERO: The seagrass helped you
9 out?

10 MR. LOFGREN: The seagrass allowed us to
11 extend offshore. I'm not sure it helped us,
12 because actually --

13 CHAIRMAN OTERO: You could get a bigger
14 boat.

15 MR. LOFGREN: A bigger boat, right, but
16 then we also have to get a variance, so it's a
17 balance, always.

18 So our original concept, yes, did show a 25
19 to 30-foot vessel. We're further offshore.
20 And again, DERM doesn't restrict the size of
21 the boat here. It's sort of a standard
22 condition we put in these applications. They
23 don't restrict the size of the boat. They
24 restrict what you can do based on the water
25 depth. And we have four and a half feet of

1 water offshore, which means we can have a
2 vessel that has four and a half feet
3 of water -- sorry, six feet of water. We can
4 have a vessel that has four and a half feet of
5 draft, which is documented by DERM in their
6 correspondence, and City Staff has a copy of
7 that correspondence.

8 MR. HIDALGO: I just have some
9 clarification, also, about that, because it
10 seems like in the application, it's one of the
11 standard questions, but I guess what you're
12 saying is that DERM has no -- they don't take
13 that into consideration for the approval of a
14 dock, other than it's part of the protocol of
15 the standard form, but in essence, it has
16 nothing to do with how they determine the
17 approval of a length of --

18 MR. LOFGREN: The extension offshore is
19 dictated by what you need, right, for water
20 depth, but also seagrass.

21 MR. HIDALGO: Right, but it's still --

22 MR. LOFGREN: If there was no seagrass
23 here, and I only had four feet of water at that
24 location, I could only have a boat that has a
25 draft of three feet. I'm not allowed to have a

1 boat that has a draft bigger than that, because
2 I'm not allowed to prop dredge with a vessel
3 that comes in.

4 MR. HIDALGO: But there's no length
5 limitation, it's only a draft limitation,
6 because of the resources that might exist?

7 MR. GUILFORD: That's correct. Basically,
8 you could have a 200-foot boat, so long as you
9 don't mess up the bottom of the grass.

10 MR. LOFGREN: Right, provided that you
11 don't pass the property boundary.

12 MS. BACALLAO: Within the private property
13 boundary.

14 MS. GONZALEZ: Excuse me, Mr. Otero. I
15 have correspondence from DERM, if I can read it
16 into the record.

17 CHAIRMAN OTERO: Please do.

18 MS. GONZALEZ: I did discuss this with
19 Christine Hopps from DERM, and this was her
20 response in relationship to the application and
21 the size of the vessel.

22 "I included the vessel information that was
23 provided because it was discussed during the
24 meeting with Mr. Guilford. Our recommendation
25 is based on the benthic resources and it would

1 be the same even if a different boat were being
2 proposed. The applicant is not limited to the
3 vessel specified on the application in this
4 case, because the slip area has greater than
5 six feet of clearance at mean low tide.
6 Therefore, they could moor a boat with an
7 approximately 4.5 draft and still maintain
8 adequate clearance from the bottom."

9 MR. GUILFORD: Which is essentially what we
10 just said. He can have -- As long as you have
11 the draft, you could have a 200, 300-foot boat.
12 DERM doesn't care. They care about the
13 seagrass. But again, this Board has the right,
14 under 3-806(D), to impose reasonable
15 restrictions, and when you start buying the
16 property, as they bought it, which actually
17 they really can't talk about value, because
18 they're not an appraiser, so they don't have
19 the expert knowledge to quote something like
20 that, but the fact of the matter is, you're now
21 affecting -- clearly, by being outside the D5
22 triangle, you're affecting my clients' view,
23 and these people paid millions and millions of
24 dollars for their property. You don't want to,
25 by granting this variance, ruin two people's

1 view.

2 MR. LOFGREN: I just keep coming back to --
3 If I could just add, I keep coming back to the
4 south neighbor's dock, who's one of the ones
5 who's objecting, and if you look at the design
6 of their dock, we're just asking for equality
7 here. If you look at the design of their dock,
8 their dock extends out 25 feet total, which
9 meets the Code. However, their terminal
10 platform is 56 feet long. We're asking for 30
11 feet. They're almost double in size, and they
12 cross their D5 boundary to the south. We're
13 not asking for something that's actually
14 unreasonable here. We're asking for something
15 that's minimum.

16 MR. GALVEZ: I have a question for opposing
17 counsel.

18 MR. GUILFORD: Yes.

19 MR. GALVEZ: Would your clients be willing
20 to abide by the same restrictions that you're
21 asking?

22 MR. GUILFORD: To be honest with you, it's
23 really -- To us, it's more of an issue of the
24 size of the boat, because the dock, when you
25 look out, it's going to be flat with the

1 property --

2 MR. GALVEZ: Do your clients carry a
3 restriction on the size of their boats?

4 MR. GUILFORD: No, they don't, but they
5 also didn't request a variance.

6 MS. BACALLAO: But they didn't have to
7 request a variance, because they were able to
8 obtain consent from the neighboring property
9 owners.

10 MR. LOFGREN: Well, it's more than that.
11 Their condition is different on their property.
12 We have seagrass out to 30 feet. I brought a
13 copy of their biological assessment, if you'd
14 like to see it, for the record. Essentially,
15 they have very little seagrass on their
16 property. They didn't have to go out that far.
17 That's the bottom line.

18 If you look at DERM's -- This did DERM's
19 biological assessment. These patches here are
20 the patches of seagrass. There's four small
21 patches. Now, compare that -- Sorry this is so
22 small, guys. Compare that to ours. This
23 entire solid line is seagrass, that entire
24 solid line across my entire property there.
25 Compare that to the neighbor to the south. We

1 don't have a choice. We're out there not
2 because we want to, because we're required to.

3 CHAIRMAN OTERO: Let me ask you a couple of
4 questions. We have a balancing act here, all
5 right?

6 MR. LOFGREN: Of course.

7 CHAIRMAN OTERO: The balance -- But for the
8 seagrass, obviously, we wouldn't be here.

9 MR. LOFGREN: Right.

10 CHAIRMAN OTERO: Let's take this further.
11 We wouldn't be here. You don't have seagrass.
12 How big a boat would you have on your client's
13 property?

14 MR. LOFGREN: I would tell you that they
15 would like the biggest boat they possibly can
16 have.

17 CHAIRMAN OTERO: Would they be able to do
18 that without a variance, such as Mr. Guilford's
19 neighbor?

20 MR. LOFGREN: Provided they meet the water
21 depth. That's the condition.

22 CHAIRMAN OTERO: But they don't meet the
23 water depth because of the seagrass.

24 MR. LOFGREN: Let me just look here. Right
25 now, they get four feet at 20 feet waterward.

1 We get six feet at 29 feet waterward.

2 CHAIRMAN OTERO: We don't exist. This
3 Board doesn't exist.

4 MR. LOFGREN: No, I know. I'm looking at
5 the condition.

6 CHAIRMAN OTERO: How big a boat could your
7 client put on there if there was no seagrass?

8 MR. LOFGREN: We get five feet -- Let me
9 just go through this --

10 CHAIRMAN OTERO: Sure.

11 MR. LOFGREN: -- because this is how I'm
12 going to go through it in my head, okay? We
13 get five feet at 23 -- At 22 feet waterward,
14 you can see, we get five feet of water depth at
15 22. That's five feet of mean low water, okay?
16 So, if we go out another couple of feet, let's
17 call it five and a quarter, five and a half,
18 let's say, so if you look at draft of vessels,
19 we're required to maintain one foot of
20 clearance. As you go up to larger boats,
21 you're required to maintain a foot and a half.
22 So let's split the difference and let's just
23 say a foot and a quarter. So, if we're at five
24 and a quarter, we can have a vessel that's four
25 feet in draft, which is probably going to limit

1 them to -- call it a 60 to 80-foot vessel,
2 depending on the style. That would be the
3 limitation, depending on the style.

4 CHAIRMAN OTERO: Would that violate the
5 D5 --

6 MR. LOFGREN: We would not be violating the
7 D5 based on staying within the 25 feet and
8 being in the center of the property, which is
9 what we are. The vessel can go outside the D5.
10 There is no restriction on a vessel extending
11 beyond the D5. It's just the dock structure
12 itself. So, like I said, we'd be somewhere in
13 the 60 to 80-foot range.

14 MR. GUILFORD: But obviously, the closer
15 you're in to the seawall, the view is not --
16 you don't block the view as much as if -- As
17 you go out, obviously, you then have -- You
18 block a bigger portion of the view.

19 CHAIRMAN OTERO: Does your client's vessel
20 block anyone's view?

21 MR. GUILFORD: No, not as far as I know.

22 MR. LOFGREN: Let's be careful here,
23 because again, they cross the D5 to the south.

24 MS. BACALLAO: Which is south of our line.
25 So whether it does or doesn't, it has the

1 possibility that it can --

2 MR. LOFGREN: Of course.

3 MS. BACALLAO: -- depending on what vessel
4 they choose to put up, but they're not limited
5 as to what vessel they can put on. So the
6 point is that it might not right now, but
7 tomorrow they could go and buy a vessel that
8 will.

9 MR. LOFGREN: But if we're defining --
10 Let's be clear here. If we're defining
11 blocking view by crossing the D5, do they cross
12 the D5? Yes, they do. So do they block the
13 view? Yes, they do, just like we will.

14 MS. BACALLAO: If I understand correctly,
15 any vessel will block the D5.

16 MR. LOFGREN: Well, it depends on the size.

17 MS. BACALLAO: No, I know, but any vessel
18 that's allowed would block the D5, per se.

19 MR. HIDALGO: I guess one comment for
20 Mr. Guilford, and I don't know how the
21 neighboring lot -- how it sits on the property,
22 but if you would have an 80-foot boat in back
23 of the house, and assuming it was granted under
24 the original provision, I would imagine that
25 based on the amount of volume of boat that

1 would exist above the water, it would tend to
2 block your view even more. If that boat became
3 further offshore, you could probably get a
4 sight line behind the boat, as opposed to the
5 boat being -- having so much volume of boat up
6 against the property.

7 MR. GUILFORD: No, because actually, here's
8 the -- It's basically a 45-degree angle.

9 MR. HIDALGO: Correct.

10 MR. GUILFORD: The more you bring it in,
11 the less area you block. The more you come out
12 here as you go, it's going to block more.

13 MR. HIDALGO: But I'm concerned with -- My
14 question is more where the house sits, based on
15 their setback and their sight lines from their
16 property, the neighboring property. If the
17 boat would be further offshore, you might be
18 able to get a view behind the boat, as opposed
19 to if the boat was closer to the property, the
20 boat might block the view of your neighbors. I
21 don't think we know that.

22 MS. BACALLAO: Well, that's just a matter
23 of how your vision works. You see more when
24 you see farther, so if we're --

25 MR. SOTELO: Well, according to that

1 diagram, the property in the back of -- I think
2 your -- The family you're representing, the
3 home you're representing, they are actually
4 seeing on the back of the boat, as you were
5 explaining. It looks to me that that's the
6 way, from their backyard. So they actually
7 have a sight line from behind the boat, due to
8 the fact that they're so far out.

9 CHAIRMAN OTERO: The precise variance you
10 are requesting is to build out more than 25
11 feet, the mooring piles. That's the variance
12 you're requesting.

13 MR. LOFGREN: The dock structure, not the
14 mooring piles.

15 CHAIRMAN OTERO: Mr. Guilford is not
16 objecting to that, but would like a restriction
17 on the size of the boat.

18 MR. GUILFORD: Correct.

19 CHAIRMAN OTERO: You're not objecting to
20 the variance itself?

21 MR. GUILFORD: No, we fully recognize that
22 DERM's goal is to protect the seagrass.

23 CHAIRMAN OTERO: Okay. So the issue before
24 the Board is not whether to grant the variance,
25 but whether to attach conditions to that

1 granting of the variance. Am I correct?

2 MR. SOTELO: Yeah, based on the
3 applicant -- based on the neighbors' request.

4 CHAIRMAN OTERO: Based on the objection of
5 the two neighbors, and one neighbor did not
6 object, right? One neighbor agreed?

7 MR. LOFGREN: Around the corner, yeah.

8 CHAIRMAN OTERO: Around the corner.

9 MR. LOFGREN: And just, if you look at the
10 aerial again, I don't believe the dock -- I
11 don't believe there is a dock constructed to
12 the north of us yet, but the same thing could
13 happen to this property owner. We didn't dive
14 the water depths there. In other words, they
15 could have to extend a dock, if they ever
16 decide to go that way, that blocks our
17 extension out, too. We can't -- We can't
18 control that, based on what the County is
19 requiring.

20 CHAIRMAN OTERO: Can I see your diagram
21 again for the D5?

22 What size vessel do you propose that would
23 not block the view?

24 MR. SOTELO: Thirty.

25 MR. GUILFORD: Well, what we were proposing

1 is what they put in their application, which is
2 30 feet. So what we were saying is, you made a
3 representation that you're not going to be
4 bigger than 30 feet. Just, you know, live by
5 the representation you made.

6 CHAIRMAN OTERO: So 30 feet would come
7 out --

8 MR. GUILFORD: Would be exactly the length
9 of the dock.

10 CHAIRMAN OTERO: Which would still block
11 the D5 triangle.

12 MR. GUILFORD: Yeah, but wouldn't be the
13 same as an 80-foot boat blocking it.

14 MS. BACALLAO: That's the whole argument,
15 that anything, technically, would block that D5
16 triangle. And again, I want to reiterate that
17 regardless of whether a 30-foot boat was
18 proposed, even if the dock was closer in, if
19 there were no seagrass, a 40-foot boat would be
20 possible, as well, so the proposal was just a
21 proposal at that moment. Up to 80 feet, you
22 said, so --

23 MR. LOFGREN: With a different dock design,
24 obviously, we wouldn't be extending out this
25 far.

1 CHAIRMAN OTERO: What is your client
2 intending to do, in terms of the size of the
3 boat?

4 MR. LOFGREN: I don't think they want a
5 restriction. I think they want to be able --

6 CHAIRMAN OTERO: I understand that.

7 MR. LOFGREN: -- to have some flexibility.

8 CHAIRMAN OTERO: I understand that, but do
9 you know what they're intending to buy?

10 MS. BACALLAO: I -- No. I speak for the
11 client, but no, at the moment, no, she does not
12 know.

13 MR. THOMSON: I just have a couple of
14 questions. I'm really confused. This is the
15 first time I've looked at this D5 line. Just
16 how much is the view obscured? Is it just 20
17 percent of the view or 80 percent or what?

18 MR. GUILFORD: It's really -- To be honest
19 with you, on this side it's very little. It's
20 just that corner of the dock.

21 On this side, which is really -- What I was
22 trying to do was to go to 20 feet, again, so
23 it's only a minimal portion, but 30 feet --

24 MR. THOMSON: You're still not answering my
25 question.

1 MR. GUILFORD: I'm sorry.

2 MR. THOMSON: How much of the view -- If we
3 put an 80-foot boat there, how much of the view
4 of the bay is obscured for your client?

5 MR. LOFGREN: I think, if you look at the
6 angle in this particular case, the angle is
7 cutting in. I think this is north-south
8 orientation. The angle cuts in, so I do think
9 that if they are looking -- and I'm not sure
10 that their orientation is to the north, but if
11 they are looking, they are going to get a view
12 that way, because of the cut-back. I'm just
13 talking about angles. The angle of that north
14 is cut back, so their view is going to be here.
15 If they turn to look here, they're still going
16 to have this view. They have to go this way to
17 actually get blocked, just based on the angle.
18 That's all I'm talking about.

19 MR. THOMSON: Okay.

20 MR. GUILFORD: I think it's going to be
21 substantial, if you put an 80-foot boat there.

22 MR. THOMSON: Okay, and the next question
23 is -- and we had a case around the corner, a
24 few months ago, and I don't remember, but how
25 many -- We've got a lot of boats in this area

1 that are docked, whether they're in the canal
2 or on the bay side, and what's the average size
3 of a vessel that's docked in this area?

4 MR. LOFGREN: Well, I'm working on a couple
5 projects in the area by Tahiti Beach -- which
6 is to the north or south of here?

7 MS. GONZALEZ: Tahiti Beach is to the
8 south.

9 MR. LOFGREN: It's to the south, right, and
10 I can tell you that those boats are large.
11 These are -- These property owners tend to have
12 large vessels, and that's why I would not want
13 to restrict this property owner. If they sell
14 the property, I don't want that restriction to
15 come into perpetuity for the next property
16 owner, et cetera, et cetera. I really think
17 it's very, very restrictive.

18 MR. THOMSON: Yeah, that's what our --

19 MR. LOFGREN: When I say large, I say 80
20 feet, 75 feet.

21 MR. THOMSON: Yeah, I recall that the
22 average was 40 to 60 feet. Very few vessels
23 were less than 40 feet in that area.

24 MR. GUILFORD: You know, Mr. Thomson, 10
25 feet on a boat isn't going make any difference.

1 It's really, what we don't want is that
2 hundred-foot boat, that 80-foot boat, where it
3 just becomes so massive.

4 MR. THOMSON: Okay, well, what do you want?

5 MR. GUILFORD: Well, we wanted 30, but if
6 you said, you know, the average is 40, I'd want
7 to make a condition of 40; we could live with
8 40.

9 MR. THOMSON: Okay.

10 CHAIRMAN OTERO: Are there any other homes
11 with extended docks as far as this one, and if
12 so, what's the size of the boats on those
13 docks?

14 MR. LOFGREN: When I did some preliminary
15 research on extensions, I'm seeing an extension
16 right in the 25 to 30-foot range, but Elizabeth
17 might be able to address any variances that
18 have been issued recently in this area better
19 than I can.

20 MS. GONZALEZ: There was a variance issued
21 to a property just north of -- roughly about
22 four homes, to go beyond the 25 feet
23 requirement.

24 CHAIRMAN OTERO: Was there a limitation on
25 the boat size in that?

1 MS. GONZALEZ: No, sir.

2 MR. PEREZ: As I see it, there's never been
3 any limitation on both size for anyone, so --

4 CHAIRMAN OTERO: It's a balancing act
5 between the value of your property and the
6 perceived value of his clients' property,
7 right? But we don't have value experts here.

8 Any other questions?

9 Thank you very much.

10 MR. GUILFORD: Thank you.

11 CHAIRMAN OTERO: Anybody present in
12 addition to these gentlemen, in favor of or in
13 opposition to the request?

14 Let the record note --

15 Yes, Liz?

16 MS. GONZALEZ: For the record, I'd like to
17 read the address that did obtain the variance
18 that you asked. It's 6803 Sunrise Drive.

19 CHAIRMAN OTERO: There was also a letter
20 that we received of a neighbor not objecting?

21 MR. SOTELO: Right.

22 MS. GONZALEZ: You have in your packet Ms.
23 Elsie Spiegel, and she is to the south, roughly
24 about four homes, that did not object to the
25 proposed design.

1 MS. FUHRMAN: She's on the same street?

2 MS. GONZALEZ: On the same street.

3 MS. FURHMAN: But she has an even number.

4 MS. GONZALEZ: She's on the opposite side
5 of the property, yes, the subject property.

6 CHAIRMAN OTERO: Her view is obstructed by
7 houses.

8 The public hearing is now closed. Any
9 discussion by Board members? Any motions?

10 I would also direct your attention to the
11 packet, about the language for such motions, to
12 grant, deny, grant with conditions.

13 MR. HIDALGO: I would like to make a
14 motion, to move that the Board of Adjustment
15 grant Application BA-14-01-2939, a request by
16 Kirk Lofgren, Ocean Consulting, LLC, on behalf
17 of Sunrise 6855, Inc., for a variance for the
18 existing residence at 6855 Sunrise Drive, to
19 allow the proposed dock to be constructed and
20 extend outward from the property line 44 feet
21 and 9 inches, along with mooring piles to be
22 located at 15 feet from the dock line. The
23 mooring piles will be located at 59 feet and 9
24 inches. The motion is based upon the testimony
25 presented along with the application submitted

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

6 MR. SOTELO: I second that motion without
7 any conditions.

8 CHAIRMAN OTERO: A motion made, seconded.
9 Discussion?

10 MR. GALVEZ: Do we have to state with or
11 without any restrictions?

12 CHAIRMAN OTERO: Well, the way the motion
13 has been read by Mr. Hidalgo, he did not impose
14 conditions. I don't think we need to clarify
15 that any further. His motion has no
16 conditions. Seconded was with no conditions.

17 MR. GALVEZ: Okay.

18 CHAIRMAN OTERO: So there's a motion --

19 MR. THOMSON: Okay, so can we amend the
20 motion, or can I suggest an amendment?

21 CHAIRMAN OTERO: You can move to amend the
22 motion, yes.

23 MR. THOMSON: I move to amend the motion by
24 adding a restriction that the vessel be limited
25 to 50 feet in length.

1 CHAIRMAN OTERO: Is there a second on the
2 amendment?

3 MS. FUHRMAN: I'm going to second.

4 CHAIRMAN OTERO: Discussion on the
5 amendment -- We vote on the amendment first,
6 right, Liz? I think we vote first on the
7 amendment and then on the underlying motion.

8 Okay, so first, any discussion on the
9 amendment of the imposition of conditions?

10 So we're ready to call the roll on the
11 amendment.

12 MS. GONZALEZ: Mr. Perez?

13 MR. PEREZ: No.

14 MS. GONZALEZ: Mr. Sotelo?

15 MR. SOTELO: No.

16 MS. GONZALEZ: Mr. Hidalgo?

17 MR. HIDALGO: No.

18 MS. GONZALEZ: Mr. Galvez?

19 MR. GALVEZ: No.

20 MS. GONZALEZ: Ms. Fuhrman?

21 MS. FUHRMAN: Yes.

22 MS. GONZALEZ: Mr. Thomson?

23 MR. THOMSON: Yes.

24 MS. GONZALEZ: Mr. Otero?

25 CHAIRMAN OTERO: Yes.

1 MS. GONZALEZ: The motion was denied.

2 CHAIRMAN OTERO: The motion to amend, to
3 impose restrictions, was denied.

4 Now, there's a motion to grant the
5 variance. Further discussion?

6 Call the roll, please.

7 MS. GONZALEZ: Mr. Sotelo?

8 MR. SOTELO: Yes.

9 MS. GONZALEZ: Mr. Perez?

10 MR. PEREZ: Yes.

11 MS. GONZALEZ: Mr. Hidalgo?

12 MR. HIDALGO: Yes.

13 MS. GONZALEZ: Mr. Galvez?

14 MR. GALVEZ: Yes.

15 MS. GONZALEZ: Mr. Thomson?

16 MR. THOMSON: Yes.

17 MS. GONZALEZ: Ms. Fuhrman?

18 MS. FUHRMAN: Yes.

19 MS. GONZALEZ: Mr. Otero?

20 CHAIRMAN OTERO: Yes.

21 MR. LOFGREN: Thank you.

22 CHAIRMAN OTERO: The motion carries. Thank
23 you all.

24 Liz, next meeting?

25 MS. GONZALEZ: May 5th.

1 CHAIRMAN OTERO: The next meeting is May
2 5th. If there's no more business, I will
3 entertain a motion to adjourn.

4 MR. HIDALGO: So moved.

5 MS. FUHRMAN: One thing --

6 CHAIRMAN OTERO: Just a second. I'm sorry.
7 Yes?

8 MS. GONZALEZ: I'm sorry?

9 MS. FUHRMAN: I'm going to be absent next
10 month. I don't know if you bring it up now
11 or --

12 MR. THOMSON: I just have a historical
13 comment to make, and that is that in this area,
14 the Sunrise street, going up into the bay, used
15 to be called Twin Palms, and that's where, in
16 the 1940s and 1950s, we went to neck and we
17 were out on dates. And one night I was -- I'll
18 confess to something else. One night I was in
19 a hurry to get there, and I went too fast on
20 this rock road, and when I saw the bay and
21 stepped on my brakes, I went right into the bay
22 with the car. And I was so lucky, because
23 another guy came along with a Jeep and pulled
24 me out.

25 MR. SOTELO: What did DERM think about

1 that?

2 CHAIRMAN OTERO: I don't know if we take
3 that into the record.

4 MR. PEREZ: Second.

5 CHAIRMAN OTERO: Moved to adjourn and
6 seconded. All those in favor?

7 (Thereupon, all members voted aye.)

8 CHAIRMAN OTERO: Opposed? None.

9 (Thereupon, the meeting was adjourned at
10 8:48 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, JOAN L. BAILEY, Registered Diplomat
Reporter, Florida Professional 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.

I further certify that all public speakers were
duly sworn by me.

DATED this 8th day of April, 2014.

JOAN L. BAILEY, RDR, FPR

Notary Commission Number EE 083192.
My Notary Commission expires 6/14/15.