

City of Coral Gables City Commission Meeting

Agenda Item F-1

November 10, 2015

City Commission Chambers

405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Jim Cason

Commissioner Pat Keon

Commissioner Vince Lago

Vice Mayor Frank Quesada

Commissioner Jeannett Slesnick

City Staff

City Manager, Cathy Swanson-Rivenbark

City Attorney, Craig E. Leen

City Clerk, Walter J. Foeman

Deputy City Clerk, Billy Urquia

Planning and Zoning Director, Ramon Trias

Public Speaker(s)

Andres Alos

Leonardo Cornide

Paul Savage

Agenda Item F-1 [0:00:00 p.m.]

Board of Adjustment Appeal - Application No. BA 12-12-3657 (4635 Granada Boulevard).

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Mr. Leonardo L. Cornide, applicant, has filed an appeal to the Coral Gables City Commission from a decision of the Board of Adjustment at its regular meeting of Monday, September 14, 2015, wherein it denied a variance request as outlined under the applicant's proposal.

Mayor Cason: We're going to do the appeal now. And at 1 o'clock, we're going to have a break and do the executive session. We can eat downstairs, then come back...

Vice Mayor Quesada: Yes.

Mayor Cason: And then come back and conclude any business.

Commissioner Keon: Okay.

Mayor Cason: If the appeal finishes before, we'll try to do a few other items before lunch.

City Attorney Leen: Thank you, Mr. Mayor.

Mayor Cason: So Mr. City Attorney.

City Attorney Leen: Yes. This is a Board of Adjustment appeal, Application number BA-12-12-3657, 4635 Granada Boulevard. Mr. Leonardo L. Cornide, applicant, has filed an appeal to the Coral Gables City Commission from a decision of the Board of Adjustment at its regular meeting on Monday, September 14, 2015, wherein it denied a variance request as outlined under the applicant's proposal. I'm just going to read briefly from part of the cover memo, which will tell you what the appeal's about. The board denied a variance request from Sections 4-101 (D) (4) (d) and 4-101 (D) (5) of the City of Coral Gables Zoning Code to allow the proposed gazebo to

maintain 23 feet 8 inches rear setback distance from the waterway where a 35-foot setback is required. This matter came before the Commission at the last meeting and it was continued because part of the record was missing. The entire record is now before you. Let me just briefly go over the legal standard. Today's hearing is an appeal from a decision of the Board of Adjustment. It's an appeal of a variance decision. Now, first let me tell you what the standard was before the Board of Adjustment. The Board of Adjustment had to have a public hearing and a quasi-judicial hearing, and they heard evidence and they made a determination -- their duty was to make a determination whether the standard for a variance was met. This is the standard, and I'll just read it into the record. Under Section 3-806 of the Zoning Code, the Board of Adjustment, in order to grant a variance, had to find the following: One, the special conditions and circumstances exist, which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district. Two, that the special conditions and circumstances do not result from the actions of the applicant. Three, that granting the variance requested will not confer on the applicant any special privilege as denied by these regulations to other lands, buildings or structures in the same zoning district. Four, that literal interpretation of the provisions of these regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these regulations and would work unnecessary and undue hardship on the applicant (see also definition of "necessary hardship"). Five, that the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure. Six, that granting the variance will not change the use to one that is not permitted in the zoning district or different from other land in the same district. Seven, that the granting of the variance will be in harmony with the general intent and purpose of these regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare. And eight, the granting of the variance is appropriate for the continued preservation of an historic landmark or historic landmark district. The Board of Adjustment heard evidence and determined not to grant the variance. Now before you is an appeal today. Here's what the City Commission shall do on an appeal. You shall conduct a review of the decision of the Board of Adjustment. The appeal should be based on the record of the hearing before the Board, shall not be a de novo hearing,

which means you do not hear new evidence, and no new additional testimony shall be taken. A full verbatim transcript of all proceedings which are the subject of the appeal shall be provided by the party filing the petition. The transcript shall be provided seven days prior to the City Commission meeting at which the appeal will be heard with sufficient number of copies for the City Commission, City Attorney, City Manager and affected departments. Here's what you're authorized to do. The City Commission is authorized to affirm, affirm with conditions, override the decision of the Board of Adjustment or remand for further proceedings to the applicable board. Also, under your rules of procedure and under Robert's Rules of Order, you are able to continue the matter as well, if you deem it appropriate. Any decision by the Board of Adjustment can only be reversed by a majority vote of the City Commission. The granting of any appeal by the City Commission shall be by resolution. Lastly, before you today will be the two parties. They're each going to -- staff's going to speak briefly, I think for a minute or two, just to give you a brief overview. Then you're going to hear from the appealing party, who is also the applicant. They're going to speak for 15 minutes. They're not allowed to present new evidence. They can just present to you. You will then hear for 15 minutes from a potentially aggrieved party, depending on what the outcome is, but a party that has an interest in the proceeding who prevailed below. They will be the appellee. They will speak for 15 minutes, and then the matter will be decided by you. Also, you can reserve your time, but you have to ask that at the beginning. You get 15 minutes, so you can reserve a portion of your time. And then the Mayor has already indicated that he would like the matter to be finished by 1 o'clock. So, with that, I would turn it over to City staff.

Commissioner Keon: Who decides what is new material? You were there present so, I mean, how do we...

Vice Mayor Quesada: Anything that's not in the previous transcript. Anything that wasn't submitted or said...

Commissioner Keon: Well, I know that.

Vice Mayor Quesada: At the Board of Adjustment hearing.

Commissioner Keon: But who makes that determination? I mean, we just know that? We just assume...

City Attorney Leen: The Mayor...

Vice Mayor Quesada: Well, actually, we make that determination, you know. If they're saying something new that wasn't in the original transcript or was not in the original application, then you can't base your decision today on that information. Yes, you yourself.

Commissioner Keon: No, I know, but I read the transcript, but didn't see the presentation. So, I couldn't tell you what took -- to what extent is new or what was in the old presentation. Somebody will tell us, I'm assuming.

City Attorney Leen: Well, what will happen is, if there is an objection, the Mayor would rule on that and then the Commission...

Commissioner Keon: Oh, okay.

City Attorney Leen: Has the ability, by a majority vote, to...

Commissioner Keon: Okay.

City Attorney Leen: Make a final determination...

Commissioner Keon: Oh, so the opposing attorney will.

City Attorney Leen: If they disagree.

Commissioner Keon: Okay, okay. Thank you.

Mayor Cason: Mr. Trias.

Planning and Zoning Director Trias: Mayor, very quickly, staff recommended denial for the reasons that the City Attorney has described. The request by the applicant is very simple. It's a gazebo. The gazebo encroaches into the required 35-foot setback. The backyard is a large backyard. There could have been many alternative designs that don't encroach into the setback. So, the applicant has chosen this design. This is what they intend to build, and that's why they're here today appealing the decision, the denial by the Board of Adjustment.

Mayor Cason: How far into the prohibited area does the gazebo go?

Planning and Zoning Director Trias: The required setback is 35, and what they're proposing is 23 feet and 8 inches.

Commissioner Lago: Ramon, let me ask you a quick question. I mean, I guess -- should we save our questions for after and discussion until after?

Mayor Cason: Yeah, why don't we hear from both sides...

Commissioner Lago: Yeah, that's fine.

Mayor Cason: And then we can ask them questions.

Commissioner Lago: Thank you, sir.

Planning and Zoning Director Trias: Thank you.

City Attorney Leen: And I will watch the time for you, Mr. Mayor.

Mayor Cason: Okay. And please let us know, do you plan to reserve any time?

Andres Alos: Well, I was just going to ask, can I just reserve whatever it is I don't use because I'm going to be timing myself as well (INAUDIBLE).

Mayor Cason: Yeah, anything you don't use, you can...

Mr. Alos: Right, so I formally reserve whatever I don't use.

Mayor Cason: Okay. And why don't you state your name for the record.

Mr. Alos: Good morning, Mayor, Council Members and City Attorney. My name is Andres Alos. I reside at 4950 Riviera Drive. I'm actually right down the waterway from Mr. Cornide. My office, my law practice, is at 814 Ponce de Leon. I represent Leo Cornide, and if you don't mind, he's going to say a couple quick words, and then I'm going to take it from there.

Leonardo Cornide: Good morning. My name is Leo Cornide. I come before you today because I think there are two questions that I would like to share with you. Number one, I want to tell you who I am, and number two, I want to tell you what I would like, both of which are covered in the transcripts. I've lived in Coral Gables...

Commissioner Keon: So don't embellish.

Mr. Cornide: I'm sorry?

Commissioner Keon: So don't embellish. Okay.

Mr. Cornide. I will not. But I've lived in Coral Gables for 30 years. I attended UM. I got married at St. Augustin's Church, and Commissioner Slesnick sold me my first home, the one that I currently live in right now. I have four children that were born at South Miami Hospital -- nobody's perfect. They currently attend St. Teresa school. And let me tell you what I've been doing over the last ten years. Over the last ten years, I created an international insurance business that currently employs 35 people in downtown Coral Gables. I purchased the building in 1901 Ponce and 1919 Ponce, and I invested a few dollars renovating both buildings and bringing them up to today's code. Three years ago, I was afforded the luxury of buying my dream house, which is 4635 Granada Boulevard, and so this process begins. To answer the second question, what I want, all I ask for is a little bit of common sense as you hear what is being presented to you, and I just want what everybody around me has. I don't want anything more, anything less; I want the same exact thing. When I walk out of my home and I look around me to the north, to the east, to the west, I see structures and gazebos and trellises and things that are out there and everybody has them. And I'm not being afforded the same privilege, if you will, that everyone else has. That is all I wanted to say.

Mr. Alos: I just want to add something real quick, actually, just a thought that occurred to me. You know, Leo and I have known each other since high school, for like 30 years, believe it or not. And -- so we've been friends all that time. And when we were outside, we were actually like laughing before we came in here because we were saying, wow, Leo, did we ever expect to be here before a board 30 years ago. I mean, Leo and I weren't exactly, you know, Mensa members or anything like that. So, you know, we were tough teenaged kids, whatever, and we were just outside and we were kind of laughing because we were like we would never have thought that we'd be here before the board, you know, 30 years later, with his dream house on the water asking for a variance, with two commercial buildings that he owns on Ponce de Leon. He has an international insurance company. He has 40-odd employees. And you know,

we were laughing because we really didn't think we'd be here. Me, myself, I live on the Gables waterway. He lives right down the canal from me. I'm the office where I practice. I'm all in as well. My kids go to St. Teresa with his kids. And when we're thinking about how far we've come, we mentioned that we were kind of surprised because last time we were here, a gentleman by the name of Mauricio Quirch appeared before you all, and Mauri went to high school with us and we were great friends with Mauri, and Mauri was being awarded accolades and key to the city and taking pictures and just being received very warmly by the City because he was moving his corporate offices to Coral Gables. And we were laughing because we were like, again, Mauri, and we know him very well so he was no valedictorian. And we were saying, you know, it occurred two things to me. Number one, I'm very proud of Mauri, Leo, myself. I mean, we've come a long way. But the second thing that occurred to me was, you know, it's a little ironic that the last time we were here Mauri is doing the same things Leo and I are doing and he's here with this Commission and receiving the key to the city and he's taking pictures, he's shaking hands, but yet, Leo and I are here before the City and we're just trying to get a variance for a gazebo that when you go out of Mr. Cornide's home, there are untold amounts of similarly situated properties that have a variance with a gazebo. And I guess the moral of the story is, the theme with which I'm going to continue to present my argument is, we just want what everybody else has. We don't want anything special. We just want the same laws being afforded uniformly to other people to be afforded to us. And heck, hopefully in the future, we're up there and we're shaking your hands and we're getting a key to the city, and hopefully, we'll get a variance just like Leo's neighbors. That's all we want. And with that, I'm going to really be real specific and I'm going to keep looking at my time here. I'm going to break everything down real simple so when the Commissioner was asking are we going to go deep into any of the history of -- we're not. I'm going to make this real simple. The issue is this: Leo Cornide has an irregular lot; that's it. It is uncontested. It is undisputed. It is part of the record. He has an irregular lot. I would challenge any Commissioner here to look at his lot and tell me what type of angle it is. Is it hexagon, octagon, pentagon? Is it a trapezoid? Is it a stop sign? Is it -- it's a crazy lot. I would also challenge the Commission to look at other homes or similar homes that have -- abutting two main streets, Granada and Orduna. If you start to apply all the setbacks from

Granada, you have a 35-foot setback; Orduna, a 25-foot setback; the water, a 35-foot setback, and then an aggregate 20 that has to go all the way around the property with no minimum of 5 at any particular angle. Honestly, this lot, when you apply all the setbacks, it reminds me of -- you know those Sir Pizza pizzas, how they cut the like -- they don't cut them conventionally. They cut them all the way down and all the way across and you end up getting little pieces. I submit to you, that's what Leo's lot is like. And again, I would refer to the prior transcripts. When we first appeared before the Board in May, we had two variances; one for pavers, one for a gazebo. The pavers was granted. De facto the Board found an irregular lot and they voted by 5-1. So, it's undisputed that Leo has an irregular lot. So, here's my simple argument with my little nostalgic little memories of Mauri, Leo and myself. We just want what everybody else is getting. We don't want anything special. And it's our position, because of this irregular lot, that Leo should be granted a variance. He should not have to meet the 35-foot setback. Because if Leo does not get a variance, it's our position he's suffering a hardship. So, now we get into the nebulous world of hardship. Well, what's a hardship? Is it really a hardship? Does he really need a gazebo? Does he not need a gazebo? Well, this is what I would argue. There are an untold amount of similarly situated properties right in Leo's backyard that have received a variance for gazebos. In fact -- and I'm not trying to make a joke nor am I trying to jest -- if Leo goes out the back door of his home and into his backyard, he's going to get hit in the head by two or three gazebos. I'm talking in the immediate waterway behind his house. So, it's my position that if all these other similarly situated properties are getting a variance, then what I would pray this Commission do, what I would be requesting is that you simply apply the law uniformly. That's all we're asking for. We just want what the other people are getting. Because if Leo doesn't get a variance, then it's our position, respectfully, that he's being deprived of the same rights and benefits that other people are getting. So, to that end, I'm going to try to wrap it up because I want to leave some for rebuttal. But, I want to take you back a little bit. In the first May hearing, we went for two variances; one for pavers and one for the gazebo. The pavers was granted; the gazebo was deferred for a later point in time. And the Board of Adjustment said, listen, why don't you go back, go to the drawing board. See if you can go ahead and maybe give us another design that maybe fits into the setbacks a little better. And Mr. Alos, since you

continuously said “like or similar properties in the City,” could you give us some examples. No problem. We can back. We went ahead and gave a different site plan. We moved it back another three or four feet to the back and another couple feet to the north to get it out of the sight -- line of sight of the neighbor. And then we gave four examples. And honestly, I think this is where the slippery slope starts. This is where I think that, frankly, the law was misapplied in the lower court, if you will. Because when we gave the court examples, we gave four examples of four properties that were granted gazebos or Chickee huts or trellises, which all require the 35-foot setback, and frankly and respectfully, I disagree with the staff report in that it is my humble and professional opinion that whoever prepared that staff report bent over backwards to try to differentiate the examples that we cited with the subject plot, which is Leo’s. So, in other words, the standard that was applied to our examples are not the standard that should be applied uniformly. If I can just give you two examples, 12500 Ramiro Street, granted. The staff report said, yes, a variance was provided, but the difference is that the lot was extremely irregular. Extremely? I mean, is that the standard, extremely? Another one is 282 Carabella Court. Again, the staff report says that the property was extremely irregular. And this is what I will submit to the Commission, do we have a sliding scale of what is irregular? Is it irregular? Is it really irregular? Is it really, really irregular? Is it very irregular? Is it extremely irregular? See what I’m saying. Once you open it up to that, it almost becomes subjective. And you almost -- by its very nature, you open the door -- you can’t apply it uniformly. Because then I’m going to say, Lago, irregular; Mayor, more irregular; Quesada, really, really irregular. So, you get it, you don’t and you do. That’s the pitfalls I see in starting to give a sliding scale to the amount of irregularity. So, again, I would end by saying, we just want what these four examples got. And then I’m really going to end on this, my fifth example that was cited -- and I think this one’s really, really, really germane and relevant to what’s going on. The neighbor to the north who is the gentleman who is objecting to this variance, he himself received a variance for a gazebo. So, the very gentleman that’s objecting to this gazebo, he himself had the pleasure of receiving the rights and benefits afforded to him by this law. So, think about that a second. The person who received a variance for his gazebo is now trying to prevent Leo Cornide from getting his gazebo. Last words, we just want what everybody else has. We just want to be treated the

same, and we just want the law to be applied uniformly. Thank you. I'll reserve the remaining time.

Mayor Cason: Mr. Savage.

City Attorney Leen: It was 11 minutes and 30 seconds.

Mayor Cason: Mr. Savage.

Mr. Alos: How much again?

City Attorney Leen: You have 3 minutes and 30 seconds left.

Paul Savage: Thank you very much, Honorable Mayor and members of the Commission. It's good to see you again. My name is Paul Savage. I have law offices at 100 Almeria Avenue, in Suite 220. I represent the property owner to the north, Janet Gavarrete, at 4615 Granada Boulevard, who has the property immediately to the north of this gentleman's property. The applicants have been at this effort since early in the year. And in my opinion, their application and process and methodology has suffered from the same problem all along, which is a misunderstanding and underappreciation for what the law and the code standards require of them. They labor under one of the hardest burdens in all of Florida law, which is a variance. They have to demonstrate hardship. They have to demonstrate that they are being treated in a disparate manner. And when all the other so-called examples of precedent that shows that they're being treated unfairly, your professional staff and the Board of Adjustment, who work on these issues all the time, were correct in identifying that those examples were not in fact good examples; that those examples had to do with trellises, that they were not buildings like this gazebo. Also, the evidence about my client's property is not in this record. This record is closed. My client's property is not one of the items, and we don't know what those facts are and it's closed. And just in the record items that were presented of those other so-called analogous

properties, those files could be two inches thick. They just identified them and maybe a few slips of papers from those files. We don't know if those were grandfathered in historically. We don't know what the circumstances were of those other properties. So, when you look at starting early in the year, there's an application process, maybe a pre-application meeting with staff in advance of the May 4. The May 4 hearing in front of the Board was continued several times. Then we had a May 4 hearing that went on for an hour and a half dedicated to this item and 80 pages of transcript. The staff and the Board went through each and every one of the enumerated factors under the Code and gave a negative answer to each and every one of them, as a matter of fact and law. So, these applicants were unable to convince your professional staff in advance of May 4. They were, during a long hearing, unable to convince the Board on May 4. And by the way, the way that went down is we will give you your pavers, but this gazebo is just -- it's not going to happen. So, we're going to give you the benefit of educating you of what you need to do and what kind of evidence you need to bring back. Then it was continued several times, all the way to September 14. That's not the next -- from May to September is not the next meeting, so they had all this time, still returned with a negative staff recommendation, unable to convince the staff. Still had inadequate examples and record evidence to meet the standard, and there they had a very long hearing -- I don't know exactly, but it was -- out of 110 pages of all of the variances that day, they got 75 pages of that transcript. And this was a board that rolled up their sleeves and dug into all of the -- each of the addresses in the examples. They found trellises. They found other Chickee huts and other dissimilar situations. One of the factors was, was it a problem of their own creation. And they admitted on the record that, in fact, instead of - they went forward with their general house rehab plans. Instead of doing a unified site plan, which could have incorporated the gazebo at that time and brought it within the Code or brought it within the awareness of staff, but admitted that they wanted to move forward on the rest of the house and they'll do the gazebo later and admitted that that was going to be a potential "wildfire issue." Under questioning from the Board, they admitted that. Also, admitted that they were able to move the gazebo if it was required, and that pretty much shot a hole right through the idea of hardship. We're under an appeal, as Mr. Leen can teach classes on, I'm sure, or does and explain to all of us. This is an appellate. This is not a do-over. There's a lot of characterizations

about personalities and people are good people and the like or characterizations of other gazebos hitting him in the head. The problem is, look, this is a formal process. This is a real jurisdiction. We have a real city attorney. We have a real code. We have professional staff. There are enumerated factors, and they simply have not met them. And coming in and telling anecdotal general recitations is just not -- it hasn't gotten it all this time, and it still doesn't -- I've heard nothing today that would compel this tribunal to say, yes, my staff and my - - in two long, over hour hearings at the Board of Adjustment and 100-page transcripts each, they got it wrong, clearly. No, quite the opposite. I'm hearing nothing that they erred, that they didn't give adequate hearing, that they didn't give adequate time, that they didn't give every chance. So, I know that I -- traditionally, I don't get a chance to reply. I will like to reserve if something is said about my client or anything like that, I would like the opportunity. But on the merits, I listed all of the factors. Your staff has listed them. We've heard all -- the evidence that was presented was inadequate. We're not allowed to rehear it. I've heard no legal lack of notice or improper hearing. The staff has worked very hard. We've worked hard. And in conclusion, I'd like to request that you deny this appeal.

Mayor Cason: Could you discuss the relevance, from your client's point of view, of irregular or not lot.

Mr. Savage: Well, I thought that was interesting because I heard it first from your Planning Director, and he said they have this big -- the irregularity is that it's big in the back, providing for additional room. So, I was not moved by the trapezoid discussion because it cuts my way. They have extra room to move the gazebo within the law. And to me, it is -- maybe it's not a perfect rectangle shape, but it doesn't -- I think that factor of irregularity has to go to the idea that it's -- we're pinched. We're in an unusual situation. We can't do -- but, in this case, it goes -- cuts the other way. It gets bigger back there. And it's -- to me, it's like having too much money. It's not a problem. You have extra room. I wish I had this irregularly large lot to have these wonderful things. So, I don't see it as a factor of hardship. So, with that -- I did have a handout that I meant to hand out in the beginning, but maybe I can...

Mayor Cason: Is that allowed?

Mr. Savage: I'm not...

City Attorney Leen: It depends.

Mayor Cason: Is that allowed?

City Attorney Leen: What is the handout?

Mr. Savage: The handout is -- well, the handout is a description of Florida law that we can't hear new evidence.

City Attorney Leen: You're allowed to hand that out.

Mr. Savage: And an attachment of three pages of transcript.

City Attorney Leen: You're allowed to hand that out. That's within the record, and that's Florida law. He's allowed to hand that out.

Mr. Alos: Hold on a second. I'm allowed to object, so I'd like to object to something. Well, I haven't seen that yet. (INAUDIBLE).

City Manager Swanson-Rivenbark: I'm sorry, Mr....

City Attorney Leen: Well, what you can't do -- You should show the other side.

Mr. Savage: I'll tell you what, I...

City Manager Swanson-Rivenbark: Doesn't he need to say that on the record when the...

City Attorney Leen: Yes. You can say on the record -- technically, what our Code says is you can't introduce new factual material.

Mr. Savage: Right.

City Attorney Leen: A legal brief or argument, which that doesn't even sound like, it just sounds like it's, from what you told me...

Mayor Cason: Do you...

City Attorney Leen: Portions of the transcript and...

Mayor Cason: Is that something you feel you need to introduce for your argument or is that supplementary?

Mr. Savage: You know, I don't.

Commissioner Keon: Well, why doesn't he show us the (INAUDIBLE)...

Mr. Savage: The main thing is the transcript, and that's in the record. So, Mayor, I'm going to -
- you're...

Vice Mayor Quesada: What page of the transcript are you referring to?

Mr. Savage: Your point is well taken, so I would just direct in the record the second hearing, which is the September 14, 2015 hearing, page 65, 66, 67, where the applicant was answering questions of the Board.

Mayor Cason: Okay. So, in other words, you don't feel it's necessary to introduce this now and...

Mr. Savage: Your Honor -- I'm sorry. I'm used to being in regular court. Your Honorable Mayor, thank you, and I think you're right, so I'm just not going to introduce anything. Basically, the transcript, page 65 of the August -- I'm sorry, September 15...

Mayor Cason: Got it.

Commissioner Keon: Okay.

Mayor Cason: I have a question.

Mr. Alos: Sure.

Mayor Cason: Could you build the gazebo physically within the setback, not going into the setback area? Is it possible?

Mr. Alos: Anything's possible, Mr. Mayor. Anything is possible. You could put this gazebo anywhere, but truly...

Mayor Cason: Okay.

Mr. Alos: The spirit and intent of a gazebo -- I don't know. Is this my time when I respond?

City Attorney Leen: You can respond.

Mr. Alos: (INAUDIBLE) my clock.

City Attorney Leen: That's not your time.

Mr. Alos: Okay. Conceivably, you can do anything, but then does it become practical? I mean, we all, I think, labor under the understanding that a gazebo is an auxiliary structure to the pool. You put it somewhere else any further than it is right now, and now it's no longer an auxiliary structure to the pool. It's a, I don't know, outside bath. So, to answer your question directly, yes, sir, you can. Is it practical and would you even want it at that point? No, sir, you wouldn't.

Mayor Cason: Okay.

City Attorney Leen: All right, he has three -- I believe I said three minutes and thirty seconds remaining.

Commissioner Lago: Yeah.

Mayor Cason: Okay.

Mr. Alos: You said like ten minutes.

City Attorney Leen: No, you used eleven thirty.

Mayor Cason: Let me ask my colleagues...

Mr. Alos: Oh, how do I talk for ten minutes.

Mayor Cason: Any...

Commissioner Lago: Well, let's wait...

Mayor Cason: Questions? Do you want to -- something else you want to say in rebuttal?

Vice Mayor Quesada: I think we should let him...

Mr. Alos: Well, I have rebuttal.

City Attorney Leen: So he's going to do his rebuttal and then you can ask questions.

Mayor Cason: Do you want to have rebuttal now and then ask?

City Attorney Leen: Yes.

Mayor Cason: Okay, go ahead.

City Attorney Leen: And then open to questions. You have three minutes and thirty seconds.

Mr. Alos: Okay. Paul -- and I'm on a first-name basis, so I can say Paul -- he said that we didn't say something like they got it wrong. Well, okay, I'm saying it now. They got it wrong. The staff report got it wrong. And I'll give you a simple, basic, black and white example. Paul mentioned the trellis. I'm going to track his language. He mentioned the trellis. A trellis is a structure like any other that has to be back 35 feet. You can't pick and choose the trellis and make it different. This goes back to that slippery slope. Oh, well, that one's a trellis. Well, that one's a Chickee hut. That one's a gazebo. No. Under the Code, they have to be back 35 feet. So, I will go ahead and plant my flag here right now and say they got that wrong. They have a Chickee hut reference in the staff report and they have a trellis reference. And it says because

those two are not gazebos, well, we kind of looked at them a little differently. I say it again, they got it wrong.

Mayor Cason: Craig, let me ask you a legal question. Whether they got it wrong or not, that was not in the original evidence. The evidence whether there was a variance...

City Attorney Leen: It wasn't...

Mayor Cason: All of the circumstances that went into it, we don't know what they are. Were they...

City Attorney Leen: No.

Mayor Cason: Is that something they can introduce now or was that...

City Attorney Leen: It was mentioned in the record...

Mayor Cason: Yes.

City Attorney Leen: The residences, but the background material was not introduced. But you -- his argument he's making right now that a trellis should be treated the same as a gazebo is something you could consider. I mean, I have some thoughts on that..

Commissioner Keon: Well...

City Attorney Leen: If you'd like, but I would...

Commissioner Keon: What does the Code -- how does the Code treat a trellis as opposed to a gazebo?

Mr. Alos: Yeah.

City Attorney Leen: It's more -- the question is the variance requirements. You're looking at -- you're basically -- you're looking at these eight requirements. And you also have to look at, as part of this, the balancing of equity, so you're looking at the harm. So, I don't -- respectfully, I don't completely agree that any structure is treated the same. Some structures cause more harm than others because they may block the view more; they may take a more substantial portion of the setback. That's something for you to decide. You could decide that a gazebo is the same as a Tiki hut...

Commissioner Lago: Craig, let me ask you...

City Attorney Leen: Or as a trellis, but you don't have to.

Commissioner Lago: Craig, let me ask you a question.

City Attorney Leen: And you should hear the arguments. Yes.

Commissioner Keon: But does the Code...

Commissioner Lago: Did the neighbor have to apply for a variance?

City Attorney Leen: That I would defer to staff. I would defer to staff.

Commissioner Lago: Well, that's a...

City Attorney Leen: I've been told that they applied for a variance.

Commissioner Lago: Why don't we do this...

City Attorney Leen: Yes.

Commissioner Lago: Why don't we let them finish with his three-minute rebuttal. I have a bunch of questions that I want to run down. One of them being that, to Ramon, they mentioned on several occasions, I think three or four times they mentioned that there's four or five clear examples where individuals have been given variances for actual Chickee huts or -- what other name did you use? -- gazebos.

Mr. Alos: Chickee, gazebo and trellises.

Commissioner Lago: Whatever it is. I want staff to show me where they have provided variances for residences adjacent to this individual where they have afforded those individuals with a variance. So, can you finish your three minutes...

Mr. Alos: Sure.

Commissioner Lago: And then we'll get to that.

Mr. Alos: And Craig, just give me a -- we're only going to have one because now...

City Attorney Leen: You have two minutes and thirty seconds.

Mr. Alos: Okay, that's fine. Two minutes and thirty seconds, just tell me when I have a minute. Craig, you know I like you and we get along great. But I, again, respectfully say you're wrong on your statement that a trellis or a gazebo -- it is 35 feet, and I would respectfully challenge you on that. This is the exact problem, Commissioner, that I think -- it's when we start that slippery slope. It opens up the back door to subjective evaluation, and that's where, I'm sorry, you

cannot apply these laws harmoniously and reasonably to all the parties when you're picking and choosing really, really, really irregular. Oh, yours is trellis. Oh, you -- you can't do that. And I want to go ahead and mention one more thing that Paul stated. He said that we admitted that we created the problem. I would challenge that, and I would say that that is not the issue. In fact, what we stated is that -- one of the questions that prompted that response that Paul's referring to is that, well, you guys now have a porch in the back and it seems a lot bigger than what you normally have. It is not. The porch is basically almost exactly the same, so we did not take or eat up any more room where we would have otherwise been able to put the gazebo. It is, if anything, maybe a foot off. So, we stand by our position we did not create the situation. We did not raise the home. We did not bring down the home. We're working with an existing 19 -- I don't know; help me, Leo -- 40, 50 Florida ranch house, which, listen, I remodeled my Florida ranch house in the Gables waterway, and they're a nightmare. So, we're working with what we have. So, in closing, because I think I'm almost there, again, I'm going to reiterate my theme for today's presentation. We just want what other people are getting. We just want to be treated like other people, and like Mr. Gavarrete, which was put in the record because I argued it. He got a variance for his gazebo. We would like to be treated just like Mr. Gavarrete. Thank you.

Mayor Cason: Thank you. Mr. Savage.

Mr. Alos: Does he get a rebuttal?

City Attorney Leen: No, but he -- if the Commission has a question.

Mayor Cason: You had some time left, if you wanted to...

Mr. Alos: Oh.

City Attorney Leen: He's allowed to --

Commissioner Keon: No.

City Attorney Leen: Recognize him if he would.

Mayor Cason: Is that it?

City Attorney Leen: It's up to the Mayor, but you don't have to recognize...

Commissioner Keon: If you have a question for him.

City Attorney Leen: You could ask him questions.

Mayor Cason: All right.

City Attorney Leen: It's probably better.

Commissioner Keon: But he doesn't have a rebuttal.

City Attorney Leen: I would like to clarify one thing. You know, what I'm saying about -- and this is for you because I'm ultimately advising you. It's clear there's a 35-foot setback. That applies to anything. That applies to a garage. That applies to part of the house. What I'm saying is that when you're evaluating the variance standard, you look at the harm that's caused. That's one of the -- that's expressly mentioned in seven. You're looking at the harm that's caused, so I'm not saying that a gazebo will cause harm here, but I am saying that a garage would probably be more harmful in the setback than a trellis. And you have to consider, you know, how big is the structure? How far into the setback is it? Will it affect the quiet enjoyment of the person living next door for whom the setback benefits? This is why we have the hearing today. It's for your determination. You need to weigh that and make -- I'm not telling you which way to go, but that's what you're determining.

Mayor Cason: The problem I have is I don't know why those variances were given. I don't know if there were special circumstances, so -- and we can't know that because it's not in the record.

City Attorney Leen: Well, the -- I mean, you look in the...

Mayor Cason: Or was it given because they were on an irregular lot or some other -- I mean, I don't know. I don't know when they were given, were they grandfathered, some other reason.

City Attorney Leen: Here's the issue. If you need to know that to decide the appeal, you can ask staff. But what I would recommend at that point is that it be remanded for additional fact finding because what the Code says is that that should be decided by the board below. Now, I have a feeling Mr. Savage will object to that, and you should hear from him before you do something like that. You should hear from both sides.

Commissioner Lago: Okay, Mr. Savage.

Mayor Cason: Mr. Savage, would you like to...

Mr. Savage: Sure. Thank you, Mr. Mayor and Mr. City Attorney, Council Members. Obviously, we would object. We've been at this since early this year. Staff has worked to educate the applicants on what they needed to provide. The Board labored and went through each of the enumerated factors of what -- in fact, the difference between the May and September hearing was, okay, your pool deck is okay, but what you're telling us about these other examples is not compelling as a matter of evidence. It's just not compelling, so here, take all this additional time and assemble for us a really good record so that we feel more comfortable diving into this issue. And after all of that time, the application did not change in a way that satisfied the Board, and the examples that were brought -- I'm unaware of any difference in the

evidence package that was presented in May to that that was given in September. We were here at the last meeting by an accident of staff, a good faith mistake. The transcript wasn't here, so there was additional time then. I don't think that we need to remand. The Board heard this application at length. Staff has worked on it at length. I've been an attorney paid to come here and track everything and discuss this item. The Code -- you know, there's a discussion of fairness and even application, and I don't know -- you know, we feel like we've suffered a war of attrition really since early in the year. I mean, how long is this going to go on? Is there ever an end? Are we here until they shore up their case? So, we would object to a continuance. We would object to a remand. We think that you've got between two and three hours of evidentiary hearing before the Board of Adjustment. You've got a big record. They've had every chance and opportunity. They've never argued that they didn't get due process in their proceedings.

Mayor Cason: Craig, if we were to give the applicant what he wants, what kind of a precedent does this set going forward? In other words, the next person comes and wants to build something within the setback and then they would say, well, you just gave it to this applicant. I mean, does this...

City Attorney Leen: Well, a party can always argue that, just like they brought up the four properties today before you. Every variance is viewed separately though because they have to meet all the factors. So, it does set a precedent, but it doesn't set a precedent that will typically bind you in a future case. But, you will have to consider it because now, you know, if someone comes with a gazebo, they'll try to make their case more similar to this one. And if they're -- and if it is similar, ultimately, you have to treat like properties the same. So, if it was an identical property or very close, you would have to also grant them that gazebo.

Mayor Cason: But this property, as you said, is very irregular, so probably we would not find another -- if that's the argument that it's irregular.

Commissioner Keon: But...

Mayor Cason: I mean, so I'm just...

Vice Mayor Quesada: You know what the tough part is on this when discussing irregular, you know, so I've gone through the record. I've looked at the applications. I've looked at everything. As I'm hearing the arguments again, I'm rereading everything. And, you know, you look at 12500 Ramiro, 282 Carabella, 6834 and 5911 Granada, you look at all those and you look at -- I'm looking at the transcript discussion. And I -- looking at the map drawings of it, this property seems to be more irregular. But the problem about it is, I wish the lower level transcript was more descriptive as to why those were granted and why they were not.

Commissioner Lago: That was going to be my next question for Ramon.

Mayor Cason: There's nothing in there.

Vice Mayor Quesada: Which has nothing there, so it's tough to make that determination and look at the elements that we have to follow pursuant to the Code to fit in the pieces so that we can have a rational basis for what we do here. So, you know, when I look at the map and I look at what's in the lower level proceedings, I tend to agree on the one aspect with the appellant, with the applicant here on the sizing aspect of it. But, again, going to the appellee's argument is that it's not in the transcript. The full record isn't there for us to make a rational decision on whether we should overturn what the Board of Adjustment ruled...

Mayor Cason: And Ramon...

Vice Mayor Quesada: On that specific issue.

Mayor Cason; Ramon, is there any indication in any of those other samples that were examples were illegal, somebody just did it, in which case we could go and take them away? Or are these -

- were they variances, even if we don't know why, and we can't know why for the purpose of today.

Planning and Zoning Director Trias: Yeah. I think that in the record you do have four examples that were cited by Vice Mayor Quesada, which I think were forward to you in which variances were granted for gazebos or similar structures. However, as the City Attorney has said, each case is unique. Each case has to be looked at on its own merits. I don't believe any of them set any kind of precedent. Now, I would say this, everybody or a majority of property owners would love to be able to build a gazebo or a structure closer to the water. That is a common request that I have to encounter. So, you need to consider the fact that we do have setbacks and they need to be enforced and respected or not. Because if we decide not to enforce them, then...

Mayor Cason: Do you have people that come to you frequent -- as you said, I want a gazebo right next to the water and you say no and they rebuild it? They build it a different way.

Planning and Zoning Director Trias: I wouldn't say that, but -- I don't know if they build it or not, but the request is made often, yes.

Commissioner Lago: Let me ask you a quick question. First of all, I wanted to find out from my colleagues if anybody has taken the time to actually visit the site. Has anybody here?

Commissioner Keon: No, but I think that we were instructed to base our opinion on the record that is...

Vice Mayor Quesada: Yeah.

Commissioner Keon: Presented to us, so we're not there to gain or look for additional information or additional input. It is based on the record. I...

Commissioner Lago: But I was going to tell you why I made that comment.

Commissioner Keon: Okay, go ahead.

Commissioner Lago: I made that comment because...

Commissioner Keon: I think it would be inappropriate. Is it inappropriate we do that?

City Attorney Leen: The -- you know, an appeal is considered the same as a quasi-judicial hearing, so it's limited to the record. Typically, under Jennings, you should not have ex-parte communications and you should not do a site visit. If you do a site visit, though -- it's allowed, but you have to disclose it.

Commissioner Lago: That's what I'm...

City Attorney Leen: It's not recommended.

Commissioner Lago: That's what I'm about to do.

City Attorney Leen: And it's not recommended because there are things you may see in the site visit that are not really in the record. So, it's just -- it's not rec -- the case law says it's not recommended.

Commissioner Lago: I'm going to put it on the record that I made a site visit, okay. Now, if I'm allowed to speak in reference to...

City Attorney Leen: Well, describe your site visit then.

Commissioner Lago: That's what I was going to do. And I need to understand exactly when you talk about the neighbor, the neighbor's issue is with the site, the disruption that potentially the gazebo would result in. Is that what they mentioned, Ramon?

Planning and Zoning Director Trias: The neighbor next...

Commissioner Lago: Yes.

Planning and Zoning Director Trias: Yes, yes. The house right next to it and they don't appreciate the setback that would result if the gazebo is built. Keep in mind that this is a fairly substantial structure. This is not a trellis. This is a building.

Mayor Cason: Let me ask you. Even if a neighbor agreed that it was fixed, the site line, is that relevant to us? I mean, it's within the setback. If the neighbor said, I'm satisfied, would -- it's still within the setback, but I'm satisfied. It's no longer as ugly looking from my point of view. Is that something we can take into consideration?

Commissioner Keon: Well, I think...

Mayor Cason: Or is the law the law on this?

City Attorney Leen: Typically, you can consider all of this. You're considering the harm to the adjoining property owner. If they don't have a harm, there's two reasons you can consider that. One, it's one of the factors. But two, you also, you know, just from a practical perspective, if someone's not objecting and everyone's okay with it, typically, the Commission or a court or whoever, if there's no objection, can grant it, you know, based on the request. But here, you have an objecting party that's presenting evidence, so you do have to consider that.

Commissioner Keon: Right. I think that, you know, having sat on the Board of Adjustment a long time ago, you know, every property that comes before you is a separate property and it's not necessarily related to any other variance given because you don't know when in time it was given or what the circumstances of that variance were. And we don't have a record on that. It's not contained in here, so we can't consider that. So, what we look at is our Code. The Code says on waterway properties, you have to be 35 feet back from the waterway because it affects the site line of property owners to their view of the waterway. So, you know, for that reason, so anything that you place in that setback affects the neighbor. . And in this instance, it's clearly indicated that there is a neighbor that objects to that because I'm going to assume it affects their site line and their view from their home. It also says, you know, I mean, the fact that it's irregular is the irregularity has to create a condition that makes it -- they are unable to follow the Code. So, it's, you know, not that it just happens to be irregular. It's that the irregularity affects their ability to live within the setbacks that the Code provided. If there was like a little cove here or something that was a natural cove that came into their yard or something that affected that so it actually reduced the setback or something, that would be -- you could consider that, but it doesn't. Actually, they have more space, so it's not -- you know, my feeling on this is either I would uphold the Board of Adjustment, or if we really feel that there should be additional evidence that could have been presented that wasn't presented for whatever reason, regardless of the preparedness of either party, that wasn't presented, then, yeah, there's a potential to remand it back to them to consider all of that evidence. But I don't think that anybody has presented anything here that would any way not allow you to support -- us to support the findings of the Board of Adjustment, which was -- I think they had one vote that supported it and the rest didn't support it. And I certainly understand that, you know, for aesthetic reasons or whatever, you know, a gazebo may be more preferable to you in your home to sit in a certain place and you may like your pool, you know, in a certain direction or whatever else, you know, knowing we would deny that. But the rules with regard to the setbacks are such that there isn't any reason other than it seems that you would prefer it there that would create the hardship, and that's what the -- a variance is granted for. It's not about preference. It's not about what I like. It's really based on a hardship, and there doesn't seem to be any evidence that there is a hardship. And

even if there are other people that may have, you know, they could have a structure that's within a setback, I don't know why it was done, but that doesn't create a hardship for you. And so, you know, I mean, I would love to give you your pool wherever you'd like and then your gazebo wherever you'd like it so you can enjoy your house and whatever else. I don't blame you at all for asking, for trying, whatever. But I don't feel that there's anything we could do that could support it.

Mayor Cason: Commissioner Lago.

Commissioner Lago: This is what I was trying to get to before, and this is why I mentioned the fact that I had done a site visit. If you do a site visit to the property, you really get to have an understanding. And I want to put on the record I know Janet very, very well. Janet's a close friend of mine. Her children are close friends of mine. I met the applicant the first time when I visited his residence, so I want to be clear and transparent. The problem that I have is two-fold. Number one, we have given this to other individuals. We may not have a record of it, but we have provided this type of relief to other owners. There isn't a record of it here right now, and I guess that's a problem. And I wish we would have had it, an understanding why we gave it to them and under the certain circumstances that that was granted. But when you come to the site, you notice that the location of where the proposed gazebo would be -- and a gazebo, from my understanding, is a structure which has four pillars. So, the line of sight is obstructed minimally, correct, Ramon? Is that correct?

Commissioner Keon: Is that in the record?

Commissioner Lago: A gazebo is...

Commissioner Keon: No, a gazebo could be any kind of a structure. Is there -- is it in the record what the actual dimensions and the...

Commissioner Lago: That's what I'm...

Mayor Cason: I don't think so.

Commissioner Keon: I don't see it.

Mayor Cason: I don't think it was.

Commissioner Keon: I don't see it, so I'm going to accept that it's a gazebo. It's a structure.

Commissioner Lago: Are the plans...

Commissioner Keon: That's not in the record.

Planning and Zoning Director Trias: I have the plans here.

Commissioner Lago: They're in the record.

Commissioner Keon: Are they in --? I didn't see them in the record.

City Attorney Leen: All of that -- anything considered below is in the record.

Commissioner Lago: I don't want to go back and forth, but I just...

City Attorney Leen: It should -- well, it can be supplemented.

Commissioner Lago: But let me...

City Attorney Leen: But it needs to have been heard below.

Commissioner Lago: Craig, I'm just going to finish.

Mayor Cason: Why don't you finish.

Commissioner Lago: And then I'll be done, okay, and then we could move on to actually taking a vote here. The design of the gazebo has to be on the record. I mean, it was submitted for review of the City, so it's there. I haven't seen it personally, but I mean, I imagine -- and again, maybe I am overstating the case that it's four pillars. Maybe it's five pillars. Maybe it has a wall. I don't know exactly. But my understanding is that it was four pillars with some sort of structure on top that would limit the view. Now, my biggest concern is this. What is it -- what is -- what would hold this gentleman back from basically doing what every single other person on the waterway has done, which I saw with my own eyes? And this is why I recommend it. Get on a boat and drive to the waterway. I don't know if we're breaking the rules or if people are breaking the rules, but this could open up a can of worms. And that is, just throw up a 40-foot hedge. If you throw up a 40-foot hedge right there between the homes, the individual, Mr. Savage's client, has no view of the waterway now, zero, not one.

Commissioner Keon: But a 40-foot hedge is not legal in the City of Coral Gables.

Commissioner Lago: Twenty-foot hedge.

Mayor Cason: Eight feet I think is...

Commissioner Slesnick: Trees, lots of trees.

Commissioner Lago: Trees, just grow -- just put trees. Okay, but just put -- plant trees. And if you look at the waterway -- I mean, you know this better than anybody else -- that's what people do on the waterway so it would obstruct -- and the reason they would obstruct Mr. Savage's

client's view is because of the irregular-shaped lot. Because the way that the two lots are joined, you have that potential opportunity for this gentleman here to plant trees which, in a few years, would completely overtake any -- there wouldn't be one iota of sight. And I think that's something that we need to take into account because you don't want this gentleman to do that because that would be really negative in reference to the person's sight. Do you understand what I'm saying? Do you agree with me or...

Mr. Savage: No, I -- respectfully, and I appreciate everything that you're saying.

Commissioner Lago: No, that's why I brought you up.

Mr. Savage: Look, a lot of hypothetical things could happen. A lot of hypothetical future events could happen that could be detrimental. My -- you know, opposition has a theme and I have a theme. And my theme is that we have a Code that's been published to the citizenry and that there's nothing wrong with us to come to our local government and ask that it be enforced in the way that it's written. And there are factors that the Board -- and by the way, I practice a lot in the City of Miami. Their lower boards are de novo boards. It's very frustrating to serve on the boards over there because they just get a do-over in the City Commission. Whether it's for good or for evil or whatever, in our wisdom, we've decided here to set up a true appeal, not a de novo do-over, but a true appellate body. So, I'm saying that that evidence, discussions of shrubbery, discussions of my client's property, all of that had to have happened below and that you are sitting now as -- in analogous to a court, to an appellate court. So, we can't bolster that record here and we don't know what they might...

Commissioner Lago: Well, let me interrupt your...

Mr. Savage: Yes, sir. Thanks for letting me respond.

Commissioner Lago: No, no, no. That's why I called you up, but let me be very clear. It's a disservice to the City and to the residents when you don't have answers on why things were done. I'm not telling you. I'm telling when staff -- when we -- I don't have an answer why certain variances were granted, and then you have to -- you're introduced to something, like I was, and I went to see the situation because I want to be versed. Because when you do an aerial view, you're not really understanding what's going on, and I want to make sure that when I come before here and make a decision that could affect any resident in this community or I'm considering even granting a variance, I want to view it in person. I want to see what's going on. And we should have that information that says why was a trellis granted, why was a gazebo granted, why was any structure granted within the setback, and we don't have that here. I understand. I understand that that may -- but you have to agree with me on that part that we should have that information.

Mr. Savage: Well, I think it may be forthcoming from your staff. And I'll just say one last thing and then I'll sit down.

Commissioner Lago: Of course. You could say two things, by the way, if you'd like.

Mr. Savage: Also, we have to remember always what are we doing and why are we here or some flavor of that. I may have misstated it. But what I'm getting at is the rest of us are obeying the law. The applicants are asking for special permission, a special exception, a special variance to not obey the law. So, the burden -- and the Code is clear; the case law is clear for decades -- is entirely, totally and entirely on them. They've had a year to bring -- almost a year to straighten it out, and now we're all here at this late hour with all these attorneys and all this money and all this time rolling up our sleeves trying to put together their evidence packets for them, no. They're the ones asking to go 55 in a 35. They have to bring the evidence to support that; it's their burden. It's why our good people serve on the board, and they even invited them to come back some months later, so thanks very much.

Mayor Cason: Vice Mayor.

Vice Mayor Quesada: I wasn't sure if Ramon was going to say something else. So, I need to gather my thoughts a second. I'm not quite ready with my questions.

Planning and Zoning Director Trias: Mr. Mayor. Mayor, if I could.

Commissioner Slesnick: Ramon, if you want to say something.

Mayor Cason: You want to answer something?

Planning and Zoning Director Trias: Very briefly. In the record, the reasons for those gazebos that were granted, briefly, but basically, what we have listed in the staff report is that the reasoning was that the lots were irregular. That was the reasoning that was used. Now, each case is different. Each case is looked at uniquely, and that is the issue with that. But the reasoning had to do with the lot irregularity.

Commissioner Keon: But it was the fact that the irregularity of the lot created a hardship.

Planning and Zoning Director Trias: Yes.

Commissioner Keon: Is that right?

Planning and Zoning Director Trias: Yes. That was the...

Commissioner Keon: Okay.

Planning and Zoning Director Trias: Reasoning in those other examples that we have on the record.

Commissioner Keon: Right. And it was your feeling and staff report on this particular one, did the irregularity of this lot create a hardship?

Planning and Zoning Director Trias: No, it did not.

Commissioner Keon: No.

Planning and Zoning Director Trias: Because the lot was large enough...

Commissioner Keon: Was larger, okay.

Mayor Cason: They could put the gazebo anywhere.

Planning and Zoning Director Trias: And the thinking was that the applicant could design a gazebo that met the setback.

Commissioner Keon: Okay.

Planning and Zoning Director Trias: That was the thinking.

Commissioner Keon: Okay, thank you.

Mayor Cason: Commissioner Slesnick.

Mr. Alos: Can I say one thing or I'm going to burst like a tick. Can I just say one thing?

Mayor Cason: Yeah, go ahead.

Mr. Alos: Real quick. Everyone keeps saying that there's nothing of record. Yes, there is. In fact, the staff report made my record for me. Forget everything else. It specifically says on 6834 Sunset Drive, variance obtained for Chickee hut. Chickee hut's thatched roof covering was not considered as intrusive a roof as a gazebo. They're giving us a record. 12500 Ramiro Street, extremely irregular -- which is my slippery slope argument. They're saying it's irregular and there was the hardship. So, and I could keep going on. The trellises -- well, trellises were looked at a little different. It's giving us the reasons why it was approved. And my position is, they're not applying those reasons uniformly. They're giving us the irregular portion. We got that part. And for the Chickee and for the trellis, they're saying, well, Chickees didn't -- maybe were looked at a little different because maybe they didn't blind spot as much. And trellises were -- no. And that's the, you know, friendly argument I was having with Craig. It's 35 feet.

Mayor Cason: But the only thing that we don't know is that the irregularities in the others, is it -- did it prohibit a gazebo to go anywhere other than -- I mean, in this case, you admitted you could put the gazebo all kinds of places on the property. We don't know if the irregularity prevented -- forced them to go only in that area. I don't know, but it's not in the record.

Mr. Alos: Okay.

Mayor Cason: Commissioner Slesnick

Commissioner Slesnick: I know both parties very, very well here. And I'm just disappointed that I don't have more visuals or more plans or more sight lines or pictures from either side showing what the view would be like or not like or what -- and if there is a gazebo or trellises or something in some other property...

Commissioner Lago: That's -- Can I just interject? That's why I made the site visit. Even though it may not have been...

Commissioner Keon: Because it's based on this record.

Commissioner Slesnick: But based on this...

City Attorney Leen: Once again...

Commissioner Slesnick: But this is what the...

City Attorney Leen: Once again, he can -- remember, under Jennings, you can make a site visit, but it's -- there's a presumption of prejudice. You have to explain...

Commissioner Slesnick: Well, I was recommended not to make a site visit.

City Attorney Leen: You have to put on the record what your site visit was. It's not illegal. It's just not recommended. I do know in past occasions there have been site visits. Ultimately, it's up to the Commission whether you want to allow site visits or not. I would not suggest talking about it here today, something for another day. But it has happened in the past and they are legal. I want to be clear for purposes of this record, it is allowed under Jennings. It just has to be put in the record. Frankly, the record would include the site plan, so there is -- that should be in the record, even if it wasn't in what was given to you, that's in the record below and a court would look at that because that's ultimately what the decision is based on.

Commissioner Slesnick: If there were other addresses being cited, and we have the records of them in the Planning and Zoning Department, I would have liked to have seen the lot sizes and where the gazebos or trellises and so forth were.

Mr. Alos: If I may, that was submitted (INAUDIBLE).

Commissioner Slesnick: But that didn't come to us.

Mayor Cason: It didn't get in the record, so therefore, we can't opine on it is my understanding.

Mr. Cornide: It was part of the hearing. If I may address. It was submitted as part of the package that we submitted..

Mr. Alos: For the September hearing.

Mr. Cornide: For the September hearing, for the second hearing.

Commissioner Keon: But what we don't have...

Mr. Cornide: And...

Commissioner Keon: I'm sorry.

Mr. Cornide: Forgive me.

Commissioner Keon: No, go ahead, I'm sorry.

Mr. Cornide: And all of these -- and these five variances that we've been discussing for quite some time were prepared by Martha Salazar-Blanco, who helped us prepare these variances and these examples that were requested by Chairman Otero in the first hearing to be submitted as examples.

Commissioner Keon: Right.

Mr. Cornide: He specifically, I think, in the transcript states, bring me examples. But I -- I'm not a lawyer. I'm just going to say this if I take -- for thirty more seconds. Every variance is

completely different. So, the bottom line is, you know, you can choose to look at them as precedents or not, but every one being viewed completely different. And I -- the argument that I caused this, I think just doesn't hold water. And I'm going to say this because you can move the gazebo to the other side, but who's to say that I don't have a problem with that neighbor? And there is no way for me -- I will categorically tell you, the only way I can put that gazebo in place within the 35-foot setback is in front of my master bedroom. It just doesn't work. It doesn't work. If you look at the transcript and look at the line of 35 feet, because of the irregularity of the lot, you come back so far that the only place to put it in the setback is in this corner. So, I personally take objection to the fact that the City -- I forget the gentleman over here -- said, oh, you can move it around. We tried. We looked at it. Professionals on our side looked at the design. I didn't come in and design it myself. Professionals looked at it, architects looked at it, and we did submit it to the City two years ago, two years ago. I've been living in my home you sold me, Jeannett, which I've had a wonderful life there...

Commissioner Slesnick: Thank you.

Mr. Cornide: For two years now.

Mayor Cason: And did you put this in -- I mean, you put the pool in first?

Mr. Cornide: I put everything in completely.

Mayor Cason: And then you knew -- but you knew, I understand from earlier, that you were going to have a problem, that this was going to be -- I forget the words that were used, that this -- you left until the end what was going to be the toxic part, the really difficult part.

Mr. Cornide: We have -- we applied for a variance throughout the whole process and we reached out to all of our neighbors throughout the entire process.

Mayor Cason: Commissioner Slesnick, anything else you want to...

Commissioner Slesnick: No.

Mayor Cason: Vice Mayor?

Vice Mayor Quesada: I'll tell you that I'm conflicted on this. I'm sort of down the line. You know, I find Mr. Alos' argument somewhat convincing when it comes to the four properties. When I look at it, I notice on pages 12 and 13 of the transcript -- I also looked at the pages 65, 67 to which -- where Mr. Savage pointed me to. And I got to tell you, I haven't made up my mind yet. I haven't. I'm being honest with you. I'm sort of wavering back and forth in looking at the arguments made at the lower level, as well as all the statements and the arguments made here today. And I'm right down the middle right now.

Mayor Cason: You want to think about it during our executive session?

Vice Mayor Quesada: I don't know if there are any other questions that others have.

Commissioner Keon: No. I really think...

Vice Mayor Quesada: I mean, every question that everyone's asking on...

Commissioner Keon: If everyone is -- if you're...

Vice Mayor Quesada: This one...

Commissioner Keon: Uncomfortable and you believe there's additional evidence that should be had, you know, you can remand it back to the Planning and Zoning Board -- I mean, to the Board of Adjustment. But I think that, you know, you're...

Vice Mayor Quesada: I don't think it's going to change going back here.

Commissioner Keon: What?

Vice Mayor Quesada: All we're going to do is delay this process even longer...

Commissioner Keon: Well...

Vice Mayor Quesada: For both sides.

Commissioner Keon: But I don't think that, you know, based on the information we have in this record, I don't -- well, for me, I can't arrive at a different decision than the Board of Adjustment. I mean, I would support the Board of Adjustment if that be the case because I don't think you have anything else. And I would have to believe that the other Planning and Zoning -- and the other Board of Adjustments that have previously ordered -- if there were variances granted, you know, there had to be -- they believed or a majority of them believed that the evidence presented to them by the attorney or whoever represented them was far more persuasive than, you know, the information that was provided to this Board of Adjustment. And, as you know said, the burden is on the applicant to provide that. I mean, you know, those that are, you know, attorneys in this room, we know that everybody can argue a case and sometimes it depends on the skill of the attorney as to whether or not -- how the outcome is in any given -- in any judgment that comes down. But I don't -- and you know, the setback has changed over time. I mean, I don't know what the other setbacks -- I don't know what they were previously, if they were, you know, grandfathered in, if the thing was there. You know, I don't know anything about it, so what we're dealing with is not everybody else. What we're dealing with is this particular property, and the information that was presented is not persuasive in change -- to me, in overriding the Board of Adjustment. You know, I'll agree with you that it's irregular, but you

haven't -- it isn't persuasive that that irregularity is what has caused the -- a hardship whereby you should have a variance. So, I don't see any of that so...

Mayor Cason: So do you want to make a motion on (INAUDIBLE)?

Commissioner Keon: I will make a motion to uphold the Planning and Zoning Board.

Mayor Cason: Do we have a second?

Commissioner Keon: I mean, the Board of Adjustment.

Mayor Cason: Do we have a second? I will second it.

City Attorney Leen: You can't second it.

Mayor Quesada: I can pass this to the Vice Mayor.

Commissioner Slesnick: I second.

Mayor Cason: You second it? Okay, all right. City Clerk.

Commissioner Lago: I vote yes, in favor.

Mayor Cason: Favor of the...

Commissioner Lago: Of granting.

Mayor Cason: Of granting, okay.

City Attorney Leen: Okay, wait, wait, wait.

Commissioner Keon: Wait a minute, no.

City Attorney Leen: This is (INAUDIBLE) confusing.

Mayor Cason: It's the other way around.

Commissioner Keon: I'm writing to uphold...

Commissioner Lago: Yeah, I vote no, I'm sorry. Okay, I apologize.

City Attorney Leen: Well, let me just, before you vote then.

Vice Mayor Quesada: Reverse or affirm?

City Attorney Leen: So you are...

Commissioner Keon: Denying the appeal.

City Attorney Leen: You're affirming the decision below.

Mayor Cason: Upholding the...

City Attorney Leen: That's your motion.

Commissioner Keon: My motion is to...

City Attorney Leen: To affirm the decision of the Board of Adjustment.

Commissioner Keon: Affirm the decision of the Board of Adjustment.

Mayor Cason: All right, and so we have -- Commissioner Keon has made the motion. Commissioner Slesnick has second it. City Clerk.

Commissioner Lago: I vote no.

Mayor Cason: Want to think about it while we (INAUDIBLE).

Vice Mayor Quesada: No, no, just ten more seconds. I vote yes.

Commissioner Slesnick: I always uphold the current Zoning Code and Building Code, so I vote yes.

Commissioner Keon: Yes.

Mayor Cason: Yes.

(Vote: 4-1)