

**BOARD OF ADJUSTMENT MEETING
CITY OF FORT LAUDERDALE
WEDNESDAY, DECEMBER 14, 2005 – 6:30 P.M.
CITY HALL
CITY COMMISSION CHAMBERS – 1st Floor
100 N. ANDREWS AVENUE
FORT LAUDERDALE, FL**

BOARD MEMBERS

	<u>Present/Absent</u>	<u>Cumulative from January 2005</u>
Gus Carbonell	P	12-1
Don Larson	P	12-1
Fred Stresau	P	11-2
Scott Strawbridge	P	13-0
Binni Sweeney, Chair	P	11-2
Gerald Jordan	P	9-1
E. Birch Willey	P	7-6

ALTERNATES

David Goldman	P
Don Zimmer	A

STAFF

Robert Dunckel, City Attorney
Don Morris, Planning and Zoning
Greg Brewton, Zoning Administrator

Margaret A. Muhl, Recording Secretary
Jamie Opperlee, Court Reporting Service

GUESTS

Susan Shebel	Joel Feeber
Avrill Barickman	Robert Barickman
Dr. Thomas Tworoger	Jon Shebel
Jeff Ostrow	Michael Madfis
Robert Lochrie	

CALL TO ORDER

Chair Binni Sweeney called the meeting to order at approximately 6:30 p.m. She then proceeded to explain the procedure that would be followed in connection with tonight's meeting. She also stated that she wanted to explain the purpose of the Board of Adjustment. She explained that the zoning

regulations of the City of Fort Lauderdale are found in the City's Unified Land Development Regulations, and this Board was created under the ULDR consisting of seven members with three alternates. She continued stating that this Board had jurisdiction to hear cases involving variances, special exceptions, temporary non-conforming use permits, and appeals regarding interpretations of zoning officials. She stated that all proceedings were quasi-judicial and were similar to Court proceedings but with less formality. Witnesses are sworn in and cross examination is permitted. The Board is constrained to make their decision based on the evidence presented which is then weighed against the criteria set forth in the Code.

Chair Binni Sweeney stated that a board was being shown displaying the criteria in connection with the granting of a variance. She further stated that if any of tonight's applications were in connection with the seeking of special exceptions, temporary non-conforming use permits, or appeal from interpretations, the City Attorney would provide further detail and explanation.

Chair Binni Sweeney explained that the granting of a variance was dependent upon the finding of a unique hardship attributable to the property, and not to the owner of the property. The hardship could not be personal such as someone seeking to add on a third-car garage that would encroach 10' into the setback. A classic hardship attributable to a property was if a business had a sign which they were requesting to be 35' in height, but the sign was limited to 10'. In this case the property was located behind the bridge and required a higher sign. If an applicant attempted to demonstrate that the requested relief would be a better design, then that would not be considered a hardship, and neither could the hardship be self-created either by the applicant or the predecessors in title. Economic hardship does not qualify for a variance. The applicant seeking the variance was not entitled to the highest and best use of the land, but was merely entitled to a reasonable use of the property. If there were other reasonable uses for the property, then a variance should not be granted.

Chair Binni Sweeney further explained that the Board should not grant a variance where the uses would be incompatible with adjoining properties, the surrounding neighborhood, or otherwise be detrimental to the public welfare. In hearing the case, the Chair would announce the case number and recite the relief being requested by the applicant. The applicant would then proceed to present their case. The Board can make inquiries during the presentation so as to become familiar with all of the facts for the case. After the case was presented, there would be a public hearing so individuals either against or for the request could speak. Then, the matter would be forwarded back to the applicant either for rebuttal or closing comments, and then forwarded to the Board for their deliberation. All motions of the Board are to be made in the positive. In order for the requested relief to be granted, there must be a super majority. The Board members must also disclose any conversations or visits held in regard to the cases being presented.

Chair Binni Sweeney asked if there were any sign issues in regard to tonight's cases. There being no sign issues announced, the meeting proceeded forward.

Chair Binni Sweeney asked if there were any requests or deferrals regarding tonight's agenda.

Fred Stresau stated that he had a conflict with Item #2 on tonight's agenda.

APPROVAL OF MINUTES

Motion made by Don Larson and seconded by Gerald Jordan to approve the minutes of the November 9, 2005 Board of Adjustment Meeting. Board unanimously approved.

ALL INDIVIDUALS WISHING TO SPEAK ON THE MATTERS LISTED ON TONIGHT'S AGENDA WERE SWORN IN.

Chair Binni Sweeney proceeded to welcome back Greg Brewton, Zoning Administrator for the City. Scott Strawbridge stated that Don Morris had done an excellent job during Mr. Brewton's absence.

1. APPEAL NO. 05-41

APPLICANT: Jon L. & Susan D. Shebel

LEGAL: "Rio Vista Isles Unit 3," P.B. 7, P. 47, Block 29, Lot 7

ZONING: RS-8 – (Residential Single-Family/Low Medium Density District)

STREET: 1425 Ponce De Leon Drive

ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47-19.3G (Boat slips, docks, boat davits, hoists and similar mooring devices) – Requesting a variance to permit a one foot (1') setback from both side property lines where the Code requires a minimum five foot (5') setback from the property line.

Chair Binni Sweeney announced that this matter had been deferred. Don Morris explained that a request was made to have this matter deferred until February 9, 2006. He stated that the property owners would have to be notified within 300' of the subject property.

Robert Dunckel, Assistant City Attorney, stated that the manner in which this request was worded provided a broad interpretation. He continued stating that it was not his understanding that Mr. Shebel was requesting a 1' setback for everything on the property, but was requesting a 1' setback on both sides for the purpose of berthing a vessel. He asked the applicant if that could be stipulated and then the Order could be structured appropriately. Mr. Shebel confirmed and stated that a complainant had brought up some other issues which he would also like to address.

Jon Shebel, applicant, stated that they moved here about 10 years and brought with them their business, thereby creating about 350 jobs for the community. He announced that in the next 2-3 years he hoped the number of employees would double. He stated that a lawsuit was filed against the building of their house at the present site. He stated further that they then bought a 48' Hatteras vessel so it would fit within their 50' lot. He advised that after purchasing the vessel they became aware of the required 5' setback. He was informed by the inspector visiting his property that the rules were not enforced unless a complaint was filed. He reiterated that he did not intend to violate the law. He requested that this Board grant the requested variance.

Mr. Shebel advised that a letter was received from the company stating that the vessel was not 48', but was 48' 8" and that it should be measured due to sizes varying. He stated that he was not sure where the measurement was taken from and assumed it was from the deck line. He further stated that it was 6' on the cuff on the Hatteras vessel. Therefore, he requested that his application be amended to reflect that matter. He stated that he just wanted to retain his boat at the place where it had been housed for the last nine years.

Chair Binni Sweeney proceeded to open the public hearing.

Joel Feeger, 1287 N. Rio Vista, stated that he lived directly across the Tarpon River from the applicant. He stated the boat is only used about once a month and is beautiful, and is within their property line. He added that they were good neighbors, and the boat did not cause any adverse affects.

Robert Barickman stated that he was the neighbor to the south and did not have a boat at the present time, and therefore, he offered the use of his dock to the applicant.

Avril Barickman stated that she was in support of the variance request. She said they have a beautiful boat and piece of property and were great neighbors.

Dr. Thomas Tworoger, 1427 Ponce de Leon, stated that he lived north of the subject site. He proceeded to show a photograph of the boat. He continued stating that the realtor for the Shebels came to him before they purchased the property, and asked if he would sign an agreement so they could dock their boat behind the house knowing it would not be legal. He advised that he refused to sign the agreement, and after they moved in he visited the site and advised them of the problem with the boat due to his concern regarding safety. He proceeded to distribute copies of the letter that he received from Hatteras. He stated the suggestion regarding the measuring of the boat was probably in regard to a pulpet which was placed on the boat. He continued stating that the second issue was an economic one.

Dr. Tworoger further stated that in Section D of the criteria it stated clearly that the unique hardship was not to be self-created. He remarked that this situation was self-created. He stated that the applicant was in violation and could get a smaller boat and dock the boat elsewhere. He continued stating that they are not really requesting a 1' setback, but an 8" setback. He stated that he had nothing against townhouses or condominiums, but he did not live in one, and therefore, he did not want to live in a situation with a zero lot line.

Mr. Shebel stated that it was untrue that anyone requested a variance for them prior to their moving into the house. He stated the boat had been docked for nine years, and per Florida law he believed there was protection for property owners in regard to situations that were allowed to continue for a period of time. He reiterated that his boat was not bothering anyone and there was no danger involved. He reminded the Board that these problems are ongoing in the City, and therefore, one person should not be punished.

There being no other individuals who wished to speak on this matter, the public hearing was closed and discussion was brought back to the Board.

Motion made by Don Larson and seconded by Gus Carbonell to close the public hearing. Board unanimously approved.

Gus Carbonell stated that one of the neighbors offered use of their dock to the applicant, and he asked if that individual was the next door neighbor on the other side. He stated there were ways to develop parking agreements, and he asked if there was a method in the Code whereby two neighbors could enter into a cross agreement, and thereby the boat would be shifted the 5' onto the other piece of property.

Robert Dunckel stated that a species of agreement was offered to the City Commission at one time, but it was rejected.

Greg Brewton stated that they would then be creating two violations.

Fred Stresau stated that they had spent months doing the marine overlay and had discussed such items as this one. He believed there was a consensus to attempt to hold to the setback requirements for docks, boats, and walls. He stated further that he would like to approve this, but he believed the intent of the ordinance was to hold to the setbacks as they did for principal structures.

Scott Strawbridge stated that this was a difficult situation, but the spirit and intent of the Code was still intact. He remarked that physical items did not create bother, and only people created bother. He stated the boat was in the setback and he hated these types of situations. He stated that the boat was oversized, and the situation was self-created. He stated further that criteria were not being met unless they decided to vote emotionally on this matter.

Motion made by Birch Willey and seconded by Fred Stresau to approve the application as submitted. Roll call showed: YEAS: None. NAYS: Fred Stresau, Don Lawson, Gus Carbonell, Gerald Jordan, Scott Strawbridge, Birch Willey, and Binni Sweeney. Motion failed 0-7.

Fred Stresau had a conflict of interest with Item #2, and therefore, stepped down. David Goldman sat on the Board in his place during the discussion of that item.

2. APPEAL NO. 05-44

APPLICANT: Las Olas & Andrews LLC

LEGAL: "Town of Fort Lauderdale," P.B. "B", P. 40, Block 26, Lots 19 (D) and Portions of Lots 20 & 21

ZONING: RAC-CC – (Regional Activity Center – City Center District)

STREET: 1 West Las Olas Blvd.

ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47-13.20.H.7.a. (Pedestrian Priority Streets – Street trees) – Requesting a variance to allow three (3) existing Sabal Palmettos along Andrews Avenue where one and a half (1.5) shade trees are required.

Jeff Ostrow, owner of the property, stated that Michael Madfis, architect, was also present this evening. He stated that this project was before the Board about seven months ago for several variances, and after DRC review, they learned of issues involving street trees on Las Olas and Andrews. The ULDR stated that shade trees were required in the area, and it also states that in situations where there are to be proposed structures where there is not enough room for shade trees, Sabal Palmettos may be substituted.

Mr. Ostrow continued stating that a 14' sidewalk now exists, and three Sabal Palms were on Andrews Avenue. No trees presently exist on Las Olas. He stated that they were requesting to have palm trees on both sides, and when requesting to substitute the ratio was 2 to 1. He proceeded to show a panoramic view of the streets. He stated that the City's master plan was calling for intersections to have Sabal Palms. He further stated that the lot was unique because serious infrastructure was at the site such as signs, streetlights, major boxes, and FP&L poles which would prohibit the placement of such shade trees.

Mr. Ostrow further stated that they would do the 2 to 1 ratio in their proposal. He stated the proposed building would have aluminum canopies on both sides which would provide shade.

Robert Dunckel stated that in reading the request for relief, he did not see anything about the height the Sabal Palms would be planted if the variance was granted. Mr. Ostrow stated that they were going to match the existing trees on site. Robert Dunckel asked if they would be 18' clear trunk. Mr. Ostrow stated they were about 18.5' and growing.

Chair Binni Sweeney asked if the Master Plan for the City had been adopted by ordinance. Greg Brewton advised that the Master Plan had been adopted.

Robert Dunckel stated that he did not believe the Plan was adopted by ordinance, and normally such plans were approved and accepted in concept. Mr. Brewton agreed. Robert Dunckel stated that the Plan would not trump the ULDR, and the Commission had to take further action in order to bring the ULDR into conformity with the vision expressed in the Master Plan.

David Goldman asked if the awnings would outline the entire building. Mr. Ostrow explained that glass covered both sides of the building, and aluminum canopies would be installed in those areas. He advised that would cover more than 50% of the building. He further stated that the ULDR had language referring to the RAC area and stated that such palms were preferred for those streets.

Gus Carbonell stated that at one time the City had designated certain streets to have certain types of street trees, and he believed that Andrews Avenue was designated for Sabal Palms up to the railroad tracks to the north and even further. He asked if they overrode other designated shade trees for streets. Greg Brewton stated that Andrews Avenue was one of the streets that had been designated for a certain type of tree.

Chair Binni Sweeney proceeded to open the public hearing. There being no individuals who wished to speak on this matter, the public hearing was closed and discussion was brought to the Board.

Motion made by Birch Willey and seconded by Don Larson to approve the variance as requested.

Robert Dunckel asked if the Board wanted to attach the condition to the motion that the trees were to be 18' clear trunk at planting. The maker and second of the motion agreed to such condition.

Roll call showed: YEAS: Don Larson, Gus Carbonell, Gerald Jordan, Scott Strawbridge, Birch Willey, David Goldman and Binni Sweeney. NAYS: None. Motion carried 7-0.

Birch Willey stated that he visited the corner of this site, and he felt the site needed to be cleaned up especially since the King Tut Exhibit was going in across the street. Mr. Ostrow stated that the corner would be cleaned up for the exhibit.

Scott Strawbridge suggested that some greenery be placed on the site.

Fred Stresau returned to the Board and David Goldman stepped down.

3. APPEAL NO. 05-46

APPLICANT: The Las Olas Company, Inc.

LEGAL: "Resubdivision of Block "A" Edgewater," P.B. 2, P. 6, portions of Lots 1, 2 & 3 and "Edgewater Addition," P.B. 1, P. 123(D)

ZONING: RAC-EMU – (Regional Activity Center – East Mixed Use)

STREET: 706-708 Las Olas Boulevard

ADDRESS: Fort Lauderdale, FL

APPEALING: **Sec. 5-26(a)** – Requesting a variance to allow the sale of wine separated by a distance of 98 ft. (Shizen), 129 ft. (Bris), 160 ft. (O'Hara's) and 224 ft. (Café Europa) from existing establishments that serve alcohol where Code requires minimum 300' separation of.

Robert Dunckel explained that this application was for a variance, and normally this was an application for a special exception where the sale of food predominated over the sale of alcoholic beverages. In this case that component was missing, and therefore, this application was being treated under Section 5-26(a). There was a burden on the applicant to prove all the elements in the criteria that were necessary for the granting of the variance, as opposed to the lesser burden of the special exception.

Scott Strawbridge disclosed that he had discussed this matter with Robert Lochrie. Don Larson also disclosed that he had spoken with Robert Lochrie. Birch Willey stated that he had spoken with Robert Lochrie.

Robert Lochrie, attorney for JMC Willa Grapes LLC and the Grape Restaurant and Store, stated that this location was the former site of Cheeseburger/Cheeseburger on East Las Olas Boulevard. He stated that the owners of the facility, and the Managing Director were also present at tonight's meeting. He proceeded to show a photograph of the site. He explained that the request was for a retail wine store which would be a significant portion of the business, along with a tasting area and a restaurant with a to-go area. He further stated that no hard alcohol or beer would be sold. He advised there was also a seating area for the restaurant.

Birch Willey stated that the seating area was limited, and the applicant needed to be careful stating what the customer would be allowed to do on site.

Mr. Lochrie proceeded to show a photograph of the retail area, the wine counter, and the tasting area. He further stated that they were located within 300' of other restaurants and bars. He then showed the floor plan for the site. He explained that the facility would be opened for lunch and dinner, and the hours of operation would be 10:00 a.m. –12:00 a.m. and 10:00 a.m. –2:00 a.m. on weekends.

Chair Binni Sweeney asked where the seating area would be located at the site. Mr. Lochrie explained that the tables shown were for the serving of food.

Gerald Jordan stated that this restaurant would be okay at the site, and that he had no objections.

Gus Carbonell stated that parking would not be an issue for the site. Greg Brewton explained that parking would not be an issue as long as there would not be an increase in the customer service area, or a change of use.

Scott Strawbridge asked for further information regarding the letter that had been written in favor of this request. Mr. Lochrie stated that they had no idea why that letter had been written. Scott Strawbridge stated that this facility would be compatible with the area.

Birch Willey stated that there was a change in use due to the retail portion. Greg Brewton stated that tonight's action would not waive any other Code requirements as it relates to change of use or parking. He further stated that there was an existing restaurant at the site which had a higher parking calculation than what would be required for retail. Therefore, it did not constitute a change of use. Birch Willey asked if a variance could be granted based on wine alone. Robert Dunckel confirmed.

Fred Stresau asked if they were approving a development plan. Greg Brewton stated that the Board would not be approving a development plan. Robert Dunckel reminded the Board that the variance would run with the land. Fred Stresau stated that he did not have a problem with the application as it was being submitted, and how the property was being developed, but would object to a liquor store putting in a wine component on the site. Greg Brewton stated that the site was going to be a restaurant.

Robert Lochrie stated that they would not object to a condition stating that there was to be a restaurant in addition to the retail wine store. Robert Dunckel stated that in addressing these concerns, conditions could be added to the variance that would prevent a liquor store from being on the site.

Motion made by Fred Stresau and seconded by Gerry Jordan to approve the requested variance with the caveat that that there was to be a restaurant with a kitchen, along with the seating depicted. Roll call showed: YEAS: Don Larson, Fred Stresau, Gus Carbonell, Gerald Jordan, Scott Strawbridge, Birch Willey, and Binni Sweeney. NAYS: None. Motion carried 7-0.

“For the Good of the City

Greg Brewton proceeded to thank the Board for their support and consideration shown to him and his family during a difficult time in his life. He certainly appreciated everyone and their love was generated to himself and his family, and without that it would have been more difficult for them.

Motion made by Birch Willey and seconded by Gerald Jordan to adjourn the meeting.

There being no further business to come before this Board, the meeting was adjourned at approximately 8:00 p.m.

Chair

Binni Sweeney

ATTEST:

Jamie Opperlee for Margaret A. Muhl
Recording Secretary

A mechanical recording is made of the foregoing proceedings, of which these minutes are a part, and is on file in the Planning & Zoning Offices for a period of two (2) years.
