

**BOARD OF ADJUSTMENT MEETING  
CITY OF FORT LAUDERDALE  
WEDNESDAY, APRIL 12, 2006 – 6:30 P.M.  
CITY HALL  
CITY COMMISSION CHAMBERS – 1<sup>st</sup> Floor  
100 N. ANDREWS AVENUE  
FORT LAUDERDALE, FL**

**BOARD MEMBERS**

	<u>Present</u>	<u>Absent</u>	<u>Cumulative from January 2005</u>
Gus Carbonell		A	15-2
Don Larson	P		16-1
Fred Stresau		A	14-3
Scott Strawbridge	P		17-0
Binni Sweeney, Chair	P		14-3
Gerald Jordan	P		4-1
Birch Willey	P		4-0

**ALTERNATES**

David Goldman	P
Don Zimmer	P

**STAFF**

Robert Dunckel, Assistant City Attorney  
Don Morris, Planning and Zoning

Margaret A. Muhl, Recording Secretary  
Sandra Goldberg, Court Reporting Service

**GUESTS**

Sathporn Yosagrai	Orville Mullings
John Taylor	

**CALL TO ORDER**

Chair Binni Sweeney called the meeting to order at approximately 6:34 p.m. and proceeded to explain the purpose of this Board. Roll call was taken and a quorum was present. She then announced that the Board of Adjustment had jurisdiction to hear cases involving requests for variances, special exceptions, temporary non-conforming use variances, and appeals regarding interpretations made by zoning officials. She further advised that the proceedings were quasi-judicial meaning they were similar to court proceedings. Witnesses would be sworn and limited time would be available for cross-examination. The Board would make all decisions based on evidence presented for each case which had to meet the criteria of the Code. She further explained that no

hardship could be self-created, nor did economic hardships qualify. She stated that a majority of the Board plus one vote was necessary for granting a variance.

Chair Binni Sweeney then proceeded to introduce the members of the Board, and explain the procedure that would be followed during tonight's meeting.

### **APPROVAL OF MINUTES**

**Motion** made by Don Larson and seconded by Gerald Jordan to approve the minutes of the March 8, 2006 Board of Adjustment Meeting. Board unanimously approved.

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

#### **2. APPEAL NO. 06-10**

**APPLICANT:** Castro Investments Co., Ltd.

**LEGAL:** Lengthy metes and bounds description located in Section 16, Township 50 South, Range 42 East on file with the Board of Adjustment, said property otherwise being commonly known as Bay 979 of SOUTHLAND SHOPPING CENTER, 903-1085 West State Road 84, situated on the North side of West State Road 84 between S.W. 9<sup>th</sup> Avenue and S.W. 12<sup>th</sup> Avenue.

**ZONING:** B-1 – (Boulevard Business)

**STREET:** 979 W. State Road 84

**ADDRESS:** Fort Lauderdale, FL

**APPEALING:** Section 5-26B – Requesting a special exception to allow a restaurant to sell beer and wine at a distance of 86'7" from existing establishment (Big Daddy's Liquor Store) that sells liquor where Code requires a minimum of 300' separating establishments that sell alcoholic or intoxicating beverages.

Satheporn Yosagrai, applicant, stated that he was requesting a special exception so that he would be able to serve wine and beer in his restaurant. The restaurant had approximately 40 seats, and he had submitted a sample menu to City staff.

Chair Binni Sweeney asked what percentage of customers would order wine and beer in his restaurant. Mr. Yosagrai stated that he believed 35% to 45% of the food sale would order wine or beer. He explained that the nearby liquor store was a package store.

Don Zimmer asked if the consumption of alcohol would be incidental to the sale of food. Mr. Yosagrai stated that the alcohol would not be the primary sale, but some percentage of customers would order wine or beer with their meal.

Robert Dunckel clarified that about 10% of the gross revenues would come from the sale of beer and wine. Mr. Yosagrai confirmed.

Gerald Jordan stated that his neighborhood was presently battling with Micabi Cigar Store because they were within 300' of another such establishment, and there was a problem with parking in the area. He stated that the subject establishment had ample parking available, and the business that was previously in this location had also sold beer and wine.

Chair Binni Sweeney stated that an Italian restaurant in her neighborhood caused a problem because they did not live up to their parking agreement. Don Larson confirmed and added that emergency vehicles also had a difficult time entering and exiting the area. He asked if that situation could be called up for review.

Robert Dunckel stated that he believed a condition of the variance for that establishment was that valet parking would be provided. Chair Binni Sweeney stated that valet parking had not been provided. Don Larson explained that valet parking was available, but they did not park the cars properly.

Robert Dunckel reminded the Board that in the final analysis of this case, the ordinance read that if this Board found that such special exception would not be contrary to the public interest, the Board must vote in favor of the special exception.

Don Larson asked if there was a square footage requirement in connection with the sale of beer and wine. Gerald Jordan explained that there was a 200' requirement, and that a certain number of parking spaces had to be provided.

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 back to the Board.

**Motion** made by Don Larson and seconded by Gerald Jordan to close the public hearing. Board unanimously approved.

**Motion** made by Scott Strawbridge and seconded by Gerald Jordan to approve the request as submitted. Roll call showed: YEAS: Don Zimmer, Don Larson, Gerald Jordan, Scott Strawbridge, Birch Willey, David Goldman, and Binni Sweeney. NAYS: None. Motion to approve carried 7-0.

1. **APPEAL NO. 06-09**

**APPLICANT:** Rosia M. Spikes

**LEGAL:** "Tuskgee Park," P.B. 3, Page 9, Block 5, Lot 8

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

**STREET:** 1028 NW 5<sup>th</sup> Court

**ADDRESS:** Fort Lauderdale, FL

**APPEALING:** Sec. 47-5.31 (Table of Dimensional Requirements for the RS-8 District)

Requesting a variance to allow a corner yard setback of 12.5 feet (facing a side street) for a single family home where Code Section 47-5.31 requires a 13.75' corner yard setback.

John Taylor stated that they were builders of low income housing in the City of Fort Lauderdale. He explained the subject lot was located at the corner of NW 5<sup>th</sup> Court and 11<sup>th</sup> Avenue. Plans were submitted and a house was built as if the lot had been 50', but during the spot survey it was found that the lot was 55'. The corner setback had been set for a 50' lot, and therefore, they were 1.75' short.

Chair Binni Sweeney asked if this was a hardship due to the dimensions on the property.

Mr. Taylor stated it was not a hardship and they were just asking for a variance, and there would be no imposition on the west side.

Don Zimmer asked if the site plan had not shown the lot to be 55' when they were applying for the permit. Mr. Taylor stated the plan had shown a 50' lot.

Scott Strawbridge stated that a sealed survey had to be submitted when applying for a permit, and he asked if that survey showed the lot to be 50'. Mr. Taylor confirmed. Scott Strawbridge further stated that since this was a larger lot, they had not consumed the entire buildable portion. Mr. Taylor once again confirmed.

Don Zimmer stated that this zoning district only required a 5' side yard for the other side, and this applicant had 7.5'. If the error had been caught early on before the pouring of the foundation, the home could have been moved. Now, the home would have to be demolished and they would have to start over.

Chair Binni Sweeney stated that a survey had been used in good faith. Mr. Taylor confirmed.

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 back to the Board.

**Motion** made by Don Larson and seconded by Gerald Jordan to close the public hearing. The board unanimously agreed.

**Motion** made by Don Larson and seconded by Birch Willey to approve the application as submitted. Roll call showed: YEAS: Gerald Jordan, Scott Strawbridge, Birch Willey, Don Zimmer, David Goldman, Don Larson, and Binni Sweeney. NAYS: None. Motion to approve carried 7-0.

### 3. APPEAL NO. 06-04

**APPLICANT:** Kaizer Taub

**LEGAL:** "Victoria Park," P.B. 15, P. 52, Block 13, the Northerly 26.0' of Lot 5, all of Lot 4 and the Southerly 19.0' of Lot 3.

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

**STREET:** 450 Victoria Terrace

**ADDRESS:** Fort Lauderdale, FL

**APPEALING:** Sec. 47-5.31 (Table of Dimensional Requirements for the RS-8 District) – Requesting a variance to install a windmill (Wind Generator) at 55'0" height where the maximum height of a structure in the RS-8 District is limited to 35'.

Chair Binni Sweeney advised that this case had been omitted from last month's agenda.

Don Morris, Planning and Zoning, stated that the applicant and requested that this case be deferred until the Board's May meeting. The height of the windmill on the plans had been higher than the actual height, and therefore, the plans would be amended.

**Motion** made by Don Larson and seconded by Don Zimmer to defer this matter until May 10, 2006. Board unanimously approved.

**“For the Good of the City”**

Chair Binni Sweeney asked for clarification regarding what happened when a variance had been granted with conditions, and then those conditions were not being met by the applicant.

Robert Dunckel stated that there were two courses of action that could be taken. He stated that a violation of any conditions set by this Board or the Planning and Zoning Board in any relief granted rises to the dignity of a violation of the ULDR, and the matter could be presented to the Code Enforcement Board. There is also case law to the effect that a violation of a condition of the Board of Adjustment would enable them to revoke or rescind the variance which had been granted. He stated that had never been done in this City.

Don Larson stated that he had been working with his District Commissioner on this matter and the Police Department, and he spoke with the operator of the valet service, along with the Attorney for the owner of the establishment. He stated that off-duty police officers were also used at the site, but cars were still left blocking lanes sometimes 3-4 hours. Nothing was being done about the matter. He reiterated that the situation was not fair to the residents of the neighborhood. He stated that when the variance was granted, it was one of his stipulations that both lanes were to be kept open, but the applicant had not complied.

Chair Binni Sweeney stated that if any of the Board Members felt that the applicant was not living up to the conditions set forth as part of the variance, then she suggested that they speak further with the City Attorney's office.

Robert Dunckel suggested that the matter not be pre-judged at this time because the applicant was entitled to due process. The burden would be on the City to show that the applicant was violating the conditions set forth by this Board. He stated that if the condition stated that they were to provide valet parking, then there might not be a violation even though the valet parking procedure was not working sufficiently. He further stated that he would review the matter if the Board desired.

Chair Binni Sweeney stated that she had learned over the years that what one gets when one does not get what they wanted was experience. Therefore, this should help the Board in the future when stipulations were placed on the granting of variances. She reiterated that the stricter and more detailed the stipulations, the better to enforce them.

Scott Strawbridge requested that Robert Dunckel review the order regarding the subject matter and provide copies to the Board Members. He continued stating that the Board might want to consider over time bringing such matters back for discussion and possible action. He stated that could have a calming affect on future applicants.

Chair Binni Sweeney further stated that this would only be in regard to stipulations. Robert Dunckel confirmed and stated that would apply to applicants who were violating a condition set forth in the Order. He reiterated that there was still the Code Enforcement Board to deal with such matters, and in the case law there was a phrase which appeared from time-to-time which was: "...the law abhors forfeitures," and therefore, the degree of the violation of the condition would be reviewed by the Court. He stated as an example an Airport in another County where they had brazenly violated the condition that was a permanent violation of the condition, and he was not sure the Court would be anxious to revoke a variance which was granted if they were addressing intermittent violations of a condition. He felt that intermittent violations of a condition would be more appropriate for a Code Enforcement Board action, rather than a revocation of the variance.

Chair Binni Sweeney stated that she was referring actually to a classic parking situation on Broward Boulevard which took about 4 years to settle.

Don Morris stated that there was a request at the last meeting to review a certificate of non-conforming use regarding the School Board. He explained that the only such use he could locate without a specific address was NE 21<sup>st</sup> Street which had been closed out by the Code Enforcement Board since all requirements had been met. He asked if a specific address could be provided.

Chair Binni Sweeney stated that the issue had been raised by Gus Carbonell who was not present this evening. She explained that when the school was being refurbished there had been a temporary non-conforming use granted for a parking lot which was located catty-corner to the school, but she did not know the exact address. She reiterated that this was one of the oldest elementary schools in the City. She stated that Gus Carbonell would be the one to speak on this matter.

**Motion** made by Don Zimmer and seconded by Gerald Jordan to adjourn the meeting. Board unanimously approved.

There being no further business to come before the Board, the meeting was adjourned at approximately 7:06 p.m.

Chair

\_\_\_\_\_  
Binni Sweeney

ATTEST:

\_\_\_\_\_  
Sandra Goldberg 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.

---