

**Board of Adjustment Meeting
City of Fort Lauderdale
Wednesday, October 11, 2006 – 6:30 P.M.
City Hall City Commission Chambers – 1st Floor
100 North Andrews Avenue
Fort Lauderdale, Florida**

<u>Board Members</u>	<u>Attendance</u>	<u>Cumulative 2006</u>	
		<u>Present</u>	<u>Absent</u>
1. Gus Carbonell	P	8	2
2. Gerald Jordan	P	10	0
3. Don Larson	P	10	0
4. Scott Strawbridge	P	8	2
5. Fred Stresau	P	9	1
6. Birch Willey	A	7	3
7. Binni Sweeney, Chair	P	8	2

Alternates

David Goldman	A
William Nielsen	P
Kenneth Strand	P

Staff

Bob Dunckel, Assistant City Attorney
Don Morris, Planning & Zoning
Yvonne Blackman, Planning & Zoning
Sandra Goldberg, Recording Secretary

Guests

Gerald Knight	Doug Snyder
Vicki Eckels	David Goldfarb
Pat Rathburn	Bill Mulder
Antonio Garcia	Peter Rankin
Greg Correll	Ray Dettman
Joel Worchowski	

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Call to Order

Chair Sweeney called the meeting to order at 6:30 P.M., 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 Mr. Larson and seconded by Mr. Jordan to approve the amended minutes of the August 2006 Board of Adjustment meeting. Board unanimously approved.

Motion made by Mr. Larson and seconded by Mr. Jordan to approve the minutes of the September 2006 Board of Adjustment meeting. Board unanimously approved.

Board members disclosed communications they had regarding agenda items.

Mr. Dunckel explained that a bill recently passed in the last legislative session required that the notice the City provided to anyone denied a variance must include an ordinance citation for the denial. Mr. Dunckel distributed copies of the bill and a list of the criteria for a variance, special exception and non-conforming use permits. Mr. Dunckel agreed to provide the criteria for interpretation questions when needed. The City Attorney's office recommended that the Board adopt a motion stating the following specific text to use when a variance was denied: "The applicant failed to prove by a preponderance of the evidence that the application met all of the criteria listed in 47-24.12 subsection 4."

Motion made by Mr. Carbonell and seconded by Mr. Strawbridge to include the text provided by Mr. Dunckel in any order for a variance that was denied. Board unanimously approved.

All individuals wishing to speak on the matters listed on tonight's agenda were sworn in.

1. APPEAL NO. 06-33 (*Deferred from September 13, 2006 Meeting*)[Index](#)**APPLICANT:** Mars Powerline Limited Partnership, Ltd., an Illinois Limited Partnership**LEGAL:** The part of the NW ¼ of Section 15 Township 49 South, Range 42 East, lying west of Seaboard Coast Line Railroad Company (formerly known as Seaboard Air Line Railroad Company) right-of-way, less the West 35 feet thereof; less the right-of-way for N.W. 9th Avenue as described in O.R. Book 3988, Page 648, Public Records of Broward County, Florida; and less the North 970 feet; and less the south 864.07 feet.**ZONING:** I (General Industrial)**STREET:** 5300 N.W. 9th Avenue**ADDRESS:** Fort Lauderdale, FL**APPEALING: Sec. 47-7.10 (List of Permitted and Conditional Uses)**

Requesting a use variance to allow the sale of alcoholic beverages in an existing amusement center on property zoned (I) Industrial, where such use is not specifically allowed.

Mr. Jerry Knight, attorney for the applicant, explained that this was a request for a use variance to allow the sale of alcoholic beverages in an existing amusement center on property zoned Industrial. Mr. Knight noted that the hearing had been continued from the previous meeting at the owner's request so a full Board could hear the appeal.

Mr. Knight continued that in 2003, the Planning and Zoning Board had granted a use variance for the indoor go-cart racing center for a prior owner, and that business had ultimately failed. Mr. Knight explained that the new owner had substantially upgraded the facility, and Mr. Knight provided Mr. Strand and Mr. Strawbridge with the same photos he had distributed to the other members at the last meeting.

Mr. Knight stated that during due diligence, the owner was assured by City Staff that all uses the owner wanted at the facility would be permitted under the prior use variance that had been granted, including the sale of alcoholic beverages. The owner had then made the improvements and obtained an alcoholic beverage license, but was subsequently told by Staff he must apply for a use variance to allow the sale of alcoholic beverages as an accessory use to the recreation use. Mr. Knight said Mr. Goldfarb, the owner, would not have made the investment he had if he had known he would not be allowed to do this.

Mr. Knight said the owner wanted this to be a "full service entertainment destination," and did not feel the business could succeed on the go-cart riding alone. Mr. Knight felt that this use was ideal for this location, and this was why the original use variance had been granted. Since the zoning was industrial, however, the sale of alcoholic beverages was not permitted and they

must apply for a variance to allow the sale of alcoholic beverages as an accessory to the main use.

Mr. Knight said they had explained at the previous meeting all of the safeguards the owner would take to ensure no one operated a go-cart after consuming alcohol. Chair Sweeney asked Mr. Knight about the specific criteria for a variance and he referred to the application, which he felt addressed all of the criteria. He added that if this use were continuing in a commercial recreation district, the sale of alcohol would be allowed. Mr. Knight cited their application regarding the criteria.

Criterion 1: Special conditions/circumstances preventing the property's reasonable use: The commercial recreation use was approved, the alcohol sales was an amenity to this primary use but required a use variance. Criterion 2: Circumstances which cause the special conditions are peculiar to the property at issue: The facility was previously granted a use variance for the commercial recreation use and the alcohol sales use variance would be accessory to the amusement center use and would not be applicable to other properties in the district or to any future use of this property other than an indoor amusement center.

Criterion 3: The literal interpretation and application of the ULDR would deprive the applicant of a substantial property right enjoyed by other owners in the same district: Other property owners in the area had not been granted the recreational use, and were therefore not in a similar situation. Other indoor amusement centers were permitted to serve alcoholic beverages, so permitting this amusement center to serve alcoholic beverages would allow this center to operate as similar amusement centers did. Chair Sweeney asked about the variance denial's costing the owner a "more profitable use of the property, provided the provisions of the ULDR still allow a reasonable use of the property." Mr. Knight said that based on the experience of the past owner, they felt the sale of alcohol was needed for the business to survive.

Criterion 4: The unique hardship was not self-created by the applicant or his predecessors, nor was it the due to ignorance of the ULDR or zoning regulations: If the variance were not granted, this amusement center would therefore be treated differently than other amusement centers. Mr. Knight reminded the Board that the applicant had received certain information from City Staff during due diligence indicating the alcohol sales would be permitted. Criterion 5: The variance is the minimum variance that will make possible a reasonable use of the property and that the variance will be in harmony with the general purposes and intent of the ULDR and the uses would not be incompatible with adjoining properties and surrounding neighborhood: Where similar uses are permitted, alcoholic beverage sales were also permitted, and the service of alcohol beverages would be mostly limited to evenings and weekends.

Mr. Knight said they had come up with additional ways to reduce the possibility of drinking and driving since the last Board of Adjustment meeting, which Ms. Rathburn would address. As to parking lot safety, Mr. Knight noted that they had cameras in the lot, patrolling security

guards and off-duty police on weekends. Mr. Knight explained that the food was served in a different area, so anyone wishing to purchase food need not enter the alcoholic beverage area.

Mr. Peter Rankin, indoor go-cart business manager, informed the Board that these adult-oriented centers were becoming popular in the United States. He knew of five others in the U.S., all of which served alcohol, and none of which had ever had a DUI incident. Mr. Rankin stated the precautions to guard against drinking and driving proposed for this center were "way better" than any he knew of at any other such business.

Ms. Pat Rathburn said she had some experience in the regulation of alcoholic beverage sales, and had therefore been asked to address the Board. She described the steps the center would take to prevent drinking and driving incidents:

- ❖ Hours of alcohol sales the same as hours of the indoor track
- ❖ Sale of alcohol was accessory use to the principal use
- ❖ Alcohol sales limited to closed-off, security guard monitored area
- ❖ Pre-drive interview/certification/identification
- ❖ Patrons purchasing alcohol received hand stamps
- ❖ Pre-drive security briefing/alcohol screening
- ❖ Breathalyzer tests administered to patrons who arrive appearing under the influence if they request to drive
- ❖ Soft drinks and food available away from alcohol area

Ms. Rathburn said the owner was willing to stipulate that the alcohol sales would be tied to their operation and if their operation ceased, the alcohol sales accessory use would cease and they would waive any right to appeal or contest that provision.

Mr. Knight confirmed for Mr. Dunckel that if the breathalyzer detected the mere presence of alcohol, the patron would not be permitted to drive. Mr. Knight submitted an updated site plan describing the current floor plan with the billiard area, the only area where the alcohol would be served or consumed. Mr. Knight confirmed that they were only seeking the variance for the area where the commercial recreation use had already been approved. Mr. Knight explained that while the application was filed by Mars Powerline Limited Partnership Ltd., the operator and liquor license holder, condition number eight was tied to Extreme Indoor Carting LLC.

Mr. Strawbridge asked Mr. Morris why alcohol sales were not permitted in industrial areas. Mr. Morris explained that many industrial uses did not combine well with alcohol use, so restaurants, nightclubs and commercial recreation spots were not permitted. The use variance already granted was specific to the go-cart course. Mr. Morris confirmed that if the go-cart track were opened in an appropriate zoning district, the sale of alcohol would not be in question. Mr. Knight said that City Staff had wanted the request brought to the Board of Adjustment specifically to enable conditions to be attached to the use.

Chair Sweeney opened the public hearing.

Mr. Greg Correll, local business owner, said this business had improved Powerline Road, and he appreciated having a local recreation spot such as this.

Mr. Knight reiterated for Mr. Dunckel that the off-duty Police officers would patrol the parking area on the weekends; he agreed to add this to the list of conditions.

There being no other members of the public wishing to speak on this item, Chair Sweeney brought the discussion back to the Board.

Mr. Jordan noted that this was a business that would bring needed tax dollars to the City, and said he had no objection. Mr. Strawbridge felt the property had been treated as if it had been re-zoned, and denying the variance would be like denying the applicant of a right that would be enjoyed by others in the same district. Chair Sweeney felt they had done a “marvelous job” trying to control the alcohol consumption, but felt the desire to sell alcohol was “purely an economic hardship,” and they had admitted as much, and this was not a basis for a variance.

Motion made by Mr. Jordan and seconded by Mr. Larson to approve, including the list of conditions the Board had received plus the condition that an off-duty Police office patrol the parking area on weekend evenings. In a roll call vote, motion was approved 5 – 2 with Chair Sweeney and Mr. Strand opposed.

2. APPEAL NO. 06-35

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APPLICANT: Vicki Eckels

LEGAL: “Everglades Land Sales Company First Addition Lauderdale,” P.B. 2, P. 15, Block 5, Lot 29

ZONING: RML-25 (Residential Low Rise Multifamily/Medium High Density District).

STREET: 917 SE 14th Street

ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47-19.2.BB.1 (Swimming pools, hot tubs and spas)

Requesting a variance to construct a swimming pool located two (2) feet from the east side property line (SE 10th Avenue), where Code requires a minimum setback of (5) feet from any property line.

APPEALING: Sec. 47-19.5.B.1d (Fences, walls and hedges)

Requesting a variance to construct a 6’ fence with a zero setback along the east side property line (SE 10th Avenue), where Code requires a minimum average setback of 3’. A maximum of 30% of such fence may be located closer than 3’, provided the minimum average setback of 3’-0” is maintained.

APPEALING: Sec. 47-20.5.C.5 (Site Circulation)

Requesting a variance to construct a circular driveway, where the Code requires a 25' sight triangle to be provided in a parking area that abuts the intersection of two (2) streets or where a street intersects with a driveway on the parking area.

Ms. Vicki Eckels, property owner, addressed the specific criteria: Criterion 1: Special conditions/circumstances preventing the property's reasonable use: The property abutted a one-way street with a 16-foot easement between the pavement and the property line. Regarding the second request, Ms. Eckels noted that since there was no southbound traffic on the one-way street, preserving the sight triangle served no function.

Criterion 2: Circumstances which cause the special conditions are peculiar to the property: Ms. Eckels reiterated that this was a one-way street with a very wide right-of-way. Criterion 3: The literal interpretation and application of the ULDR would deprive the applicant of a substantial property right: Ms. Eckels felt that enforcing the ULDR in an area with a 16-foot right-of-way "results in the property owner having use of 12 feet while maintaining a total of 19 feet as a right-of-way." Ms. Eckels felt 16 feet was more than sufficient to accommodate a sidewalk in the future, and still avoid having the fence abut the sidewalk. She noted there were other properties on Southeast 10th Avenue with fences on the property line.

Criterion 4: The unique hardship was not self-created by the applicant or his predecessors: Ms. Eckels said the east side of the main dwelling had the same footprint as when constructed.

Criterion 5: The variance is a minimum variance: Ms. Eckels said this was a minimum variance and the improvements would be an enhancement to the corner and the neighborhood.

Ms. Eckels presented a petition she had circulated among her neighbors with 13 signatures in support of her variance request and noted that her immediate neighbor had sent an email in support as well.

Ms. Eckels explained to Chair Sweeney that there was a sewer line in the backyard preventing installation of the pool in the backyard.

Mr. Strawbridge asked if Ms. Eckels would install three feet of landscaping on the street side of the fence, and she agreed.

Mr. Carbonell felt there were unique issues with Ms. Eckels' property. He noted that swales were typically 8 – 11 feet wide, and this one was 16. Mr. Carbonell felt this property would be a good transition between the historic neighborhood and rapidly changing nearby multiple-family neighborhood. He agreed there would be plenty of room left if the City ever desired to install a sidewalk.

Chair Sweeney opened the public hearing.

Mr. Ray Dettman, resident and president of Harbordale, explained that they had unable to take a formal vote on this item at their last meeting, but no one had objected. Mr. Dettman agreed it would be an asset.

There being no other members of the public wishing to speak on this item, chair Sweeney closed the public hearing and brought the discussion back to the Board.

Mr. Dunckel recommended the Board be specific with regard to landscaping.

Motion made by Mr. Jordan and seconded by Mr. Stresau to approve all three items, including the condition that shrubbery be installed on the public side of the fence. In a roll call vote, motion was approved 7 – 0.

3. APPEAL NO. 06-37

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APPLICANT: Alpha Summerhill LLC

LEGAL: "Las Olas By The Sea Extension", P.B. 3, P. 8, Block 8, Lot 6

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

STREET: 3325 NE 14th Court

ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47-19.2.B (Accessory building and structures, general)

Requesting a variance to retain a 24" eave overhang as per approved plans, where code requires a such eave overhang to not exceed 1/3 the required yard or 3 feet, whichever is less. In this case, the maximum eave overhang shall not exceed 20".

Mr. Antonio Garcia, general contractor and representative of the owner, said the plans had been approved by the City as is, and at final inspection, the inspector noticed the size of the eave.

Mr. Larson said that builders had a responsibility to meet building criteria. He was upset that there was no gutter and water ran onto the neighbor's property, and said he would not vote to approve unless Mr. Garcia agreed to install gutter on that side of the house; Mr. Strand agreed. Mr. Garcia said he, the architect and City Staff had all missed the eave.

Mr. Strawbridge said this was a "no-brainer" for Staff on plan review and should not have come to the Board. Mr. Carbonell thought most architects would have trouble finding the code section with this provision in it. Mr. Stresau could not see how anyone could have missed this and wanted to know who had approved the plans; Mr. Morris did not know.

Mr. Joel Worchowski, one of the owners, said they had communicated with the neighbors for the duration of the project and this was an oversight. He agreed to install a gutter to alleviate the water problem.

Chair Sweeney asked if the Staff member who passed these plans would be informed about his/her mistake; she felt this would help cut down on errors in the future. Mr. Morris said they had already improved procedures since these plans were approved, but in the future, they could notify Staff of their errors.

Motion made by Mr. Strawbridge and seconded by Mr. Jordan to approve, with the condition that the contractor complete the gutter on the west side in a timely manner. In a roll call vote, motion was approved 7 – 0.

Mr. Strawbridge said they had a Board policy that the applicant should bring the approved plans when claiming that the plans were approved with errors, so the examiner could be identified. He did not think it was fair in this case to make the applicant return, and therefore be delayed 30 days, since he had not brought the plans with him.

Mr. Carbonell admitted the overhang calculation could be convoluted and confusing due to the number of components to consider.

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Mr. Stresau said he and Mr. Dunckel had discussed the Lighthouse of Faith Ministry case from the Board's September meeting, and agreed that they should tie the variances to the particular owner so the abutting property's development could not be hindered in the future. Mr. Dunckel said Mr. Stresau had asked if they should move to reconsider their decision on that case, and Mr. Dunckel thought this would be bad policy because then the owner must be noticed of the re-hearing and this would cause undue delays. The exception to this would be if a Board member believed a fraud had been perpetrated on the Board.

Mr. Dunckel reminded the Board that variances attach to a property, not to a person. In cases where the Board was intent on making the variance attach with a person, Mr. Dunckel would ask the applicant for a waiver to appeals or contests for themselves and successors.

Regarding the go-cart case, Mr. Stresau reminded the Board that last month, they had informed Mr. Knight that a super-majority vote of approval was required before he made his presentation, but Mr. Knight had asked for the continuance after making his presentation. Mr. Stresau felt that as long as the voting rules were explained to an applicant, if the applicant chose to proceed and made the presentation, the Board should vote.

Mr. Carbonell asked Mr. Dunckel about former Board members and the lobbying rules. Mr. Dunckel had done some research, and felt the lobbying exclusion did apply to former Board members, but thought the City should amend the ordinance to meet the intent, because it was unclear.

There being no further business to come before the Board, the meeting was adjourned at 8:23 p.m.

Chair

Binni Sweeney

ATTEST:

Sandra Goldberg For Jamie Opperee,
Recording Secretary

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