

**Board of Adjustment Meeting
City of Fort Lauderdale
Wednesday, December 13, 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>	Cumulative 2006	
		<u>Present</u>	<u>Absent</u>
1. Gus Carbonell	P	10	2
2. Gerald Jordan	A	11	1
3. Don Larson	P	12	0
4. Scott Strawbridge	P	10	2
5. Fred Stresau	P	11	1
6. Birch Willey	P	9	3
7. Binni Sweeney, Chair	A	9	3

Alternates

David Goldman	P
William Nielsen	A
Kenneth Strand	P

Staff

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

Guests

Neal Waugh	Mickey Hinton
Fleta Stamen	J. Patrick Fitzgerald
Joseph Reiff	Jorge Villa
Will Trower	Mike Noel
Jim Fantasia	Mario DeLeo
Rixon Rafter	Jackie Archer
Courtney Crush	Ann Caruthers

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Call to Order

Vice Chair Larson 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. Willey and seconded by Mr. Carbonell to approve the minutes of the November 2006 Board of Adjustment meeting. Board unanimously approved.

Board members disclosed communications they had regarding agenda items.

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

1. APPEAL NO. 06-36

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APPLICANT: Will Trower

LEGAL: "Sunrise", P.B. 28, P. 42, Block 10, Lot 3

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

STREET: 2500 NE 7th Place

ADDRESS: Fort Lauderdale, FL

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

Requesting a variance to allow the 2nd floor roof eave to extend 28" into the required yard where Code allows a maximum extension of 3' or 1/3 the required yard whichever is less. In this case 1/3 the required yard is 18.33".

Mr. Michael Noel, architect, explained that the standard 24" eave already permitted and built exceeded the maximum by approximately 10". He said they had not consulted the accessory

building code because this was not an accessory building, it was the primary building. Mr. Noel said cutting it back would be a hardship.

Mr. Larson opened the public hearing.

Mr. Noel explained to Mr. Strawbridge that the original project variance was needed because the building protruded into the setback. He had assumed the standard 24" overhang when they added the second floor. The problem was caught in Planning and Zoning inspection.

Mr. Morris explained that the attached garage was considered an accessory structure. Mr. Dunkel drew the Board's attention to the code section, noting that 47-19.2.B was titled "Architectural features in residential districts" and specifically addressed eaves. Mr. Noel said his problem had been that this was a subchapter to accessory buildings and structures.

Mr. Carbonell remarked that this was a recurring problem and felt a fix was needed. In this case, he did not have a problem because this was not adjacent to another two-story home, so it did not appear crowded. Mr. Carbonell said, "When people talk about a two-foot overhang, staff has to write a memorandum with graphics to explain how it's supposed to be measured," noting how measurements often ended up being incorrect.

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

Mr. Strand was concerned about water coming off the roof. He wondered about the adjacent neighbors, and said he would vote against this unless the owner installed a gutter.

Mr. Stresau felt a shortened eave it could not be made aesthetically pleasing. He thought the Engineering Department would take care of any water problems on the property.

Mr. Carbonell felt adding a gutter would only add to the overhang, and as long as the water fell onto a landscaped area, it should be contained in a swale. Mr. Strand said the swale requirement was not always followed.

Mr. Noel said there would be a six-foot wall on the side of the property that would retain all of the water.

Motion made by Mr. Carbonell, seconded by Mr. Stresau to approve. In a roll call vote, Board approved 6 – 1 with Mr. Strand opposed.

2. APPEAL NO. 06-39

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APPLICANT: Richard & Joette Kamiler

LEGAL: "Green's Subdivision", P.B. 19, P. 18, Block 1, Lots 15
and the North 5 feet of Lot 16

ZONING: RCS-15 (Residential Single Family/Medium Density District)

STREET: 626 NE 16th Avenue

ADDRESS: Fort Lauderdale, FL

APPEALING: Sec. 47-19-2.A (Accessory building and structures, general)

Requesting a variance to allow an accessory dwelling in the RCS-15 district, where Code prohibits such dwellings

APPEALING: Sec. 47-19-1.B (General Requirements)

Requesting a variance to allow an accessory dwelling to setback 3.10' from the rear property line, where Code requires a 15" rear yard setback.

Mr. Morris informed the Board that the case had been withdrawn by staff and would be resubmitted at the January meeting.

3. APPEAL NO. 06-40

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APPLICANT: Fantasia's of Boston, Inc.

LEGAL: A portion of Lots 3 through 5, Block A according to the Plat of GATEWAY, Plat Book 25, Page 38 of the Public Records of Broward County, Florida, as more particularly described in that certain Lease Agreement on file with the Board of Adjustment.

ZONING: B-1 (Boulevard Business)

STREET: 1826 E. Sunrise Boulevard

ADDRESS: Fort Lauderdale, FL

APPEALING: Section Sec. 5-26(b) (Distance between establishments)

Requesting a special exception from Code 5-26(b) to allow a restaurant to sell alcohol that will be incidental to the restaurant use that is 125' from another establishment that sell alcohol (Canyon Restaurant), where Code requires 300' separation.

Mr. Jim Fantasia, owner, said they were seeking a wine and beer license to accommodate their customers.

Mr. Dunckel clarified that the criteria for this special exception did not include proof of a hardship; the exception should be granted unless it was contrary to the public interest. In response to a question from Mr. Strand, Mr. Dunckel said if the business changed in the future, and food was no longer a major part of their business, they would no longer be permitted to sell alcohol. The special exception was contingent upon the alcohol being served incidental to a restaurant operation.

Mr. Larson opened the public hearing.

Mr. Mario DeLeo, owner of the nearby Canyon Restaurant, said he was opposed to this because he felt it would be detrimental to his business.

Mr. Dunckel informed Mr. Strawbridge that the ordinance was intended to ensure the health and welfare of the community not to control competition between businesses.

There was discussion regarding the measurement between the businesses and Mr. Morris said the 125' measurement was taken from the occupational license. Mr. Dunckel said he would defer to staff's measurements; he felt any possible discrepancy in the measurement was not significantly relevant. The determining factor in this case was the food service, since the alcohol sales must be in conjunction with food sales, and the food sales must predominate. If this were not the case, the business would require a variance. The Board should therefore scrutinize the food facilities at the business.

Mr. Fantasia said their hours of operation were now Noon until 9:30 p.m.

Mr. Willey named several establishments in the immediate area to this business that currently served alcohol, pointing out that this was a "restaurant neighborhood" and he felt any restaurant needed to serve alcohol to survive.

Mr. Rixon Rafter, president of Lakeridge Civic Association, said there was no restaurant on the premises, and referred to it as a "pastry shop." Mr. Rafter objected to the special exception.

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

Mr. Fantasia referred to the floor plan, and explained that they had purchased tables and chairs and set up as a restaurant. They had just received their restaurant license, and he said they would not be able to sell food if they could not sell wine. They would remain a coffee shop if they did not get the special exception.

Mr. Dunckel asked about their kitchen equipment. Mr. Fantasia explained they had convection ovens and would purchase cook tops if they received the wine license. Mr. Willey noted that it was not the Board's responsibility to police Mr. Fantasia's business activity after granting the special exception. Mr. Dunckel advised that the Board could specify in its motion that the exception was contingent upon the kitchen activity.

Motion made by Mr. Willey, seconded by Mr. Stresau, to approve the special exception.

Mr. Strand moved for an amendment that the exception be granted contingent upon the presence and operation of kitchen equipment and the service of food. Mr. Willey accepted the amendment and Board approved 7 - 0.

Motion made by Mr. Willey, seconded by Mr. Stresau, to approve the special exception, contingent upon the presence and operation of kitchen equipment and the service of food. Board approved 7 - 0.

4. APPEAL NO. 06-41

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APPLICANT: Archdiocese of Miami

LEGAL: "Progresso", P.B. 2, P. 18, Block 133, Lots 15 S. 12.50' and Lot 16 thru 24

ZONING: RD-15 (Residential Single/Duplex/Low Medium Density District)

STREET: 1105 NW 6th Avenue

ADDRESS: Fort Lauderdale, FL

APPEALING: **Sec. 47-3-2.B.1 (Nonconforming structure)**

Requesting a variance to enlarge a non-conforming structure where Code prohibits the enlargement of non-conforming structures.

APPEALING: **Sec. 47-5.32 (Table of dimensional Requirements for the RS-15 and RSs-15 districts)**

Requesting a variance for a non-conforming structure to allow for an entry façade (overhang) to setback 22.66' (Church) and 20.66' (Rectory) where Code requires a minimum front setback of 25'.

Ms. Fleeta Stamen, attorney for the archdiocese, explained that the variances were needed for improvements required after Hurricane Wilma. They were requesting an extension of the entry façade 2'4" into the front setback and aesthetic improvements to the rectory canopy to match the building's architecture. The request was intended to enhance the structural support of the entry façade. Ms. Stamen noted that this improvement would be of major benefit to the community.

Mr. Jorge Villa, architect, explained that the façade was originally intended for a third story, and left an 8-inch wall by itself to the third story. He drew the Board's attention to a wood portion of the façade that was damaged by the hurricane. This was the solution they had devised to support that wall.

Mr. Carbonell said this was a "flying buttress" and felt it was an enhancement to the building. He also would like the landscaping enhanced, and Mr. Villa said they planned to do this.

Reverend Charles said after the hurricane, a gap formed where the wall met the roof and the ceiling started to loosen and leak. He agreed that the odd wall must be reinforced. Reverend

Charles said this would also improve the neighborhood and might allow the building to provide shelter in the event of a disaster.

Mr. Larson opened the public hearing. There being no members of the public wishing to speak on this item, Mr. Larson closed the public hearing and brought the discussion back to the Board.

Mr. Strawbridge did not think the application addressed any of the criteria for a variance. The City had received a letter in opposition to the request indicating that this was a self-imposed hardship. Ms. Stamen explained that enhancement of the entry façade support was critical to the facility. She agreed to amend the application to this effect if the Board desired.

Mr. Willey confirmed with Mr. Villa that this was for a supporting structure only and would not increase the footprint of the building. Mr. Morris explained that the building was non-conforming because it was in a residential district. Mr. Dunckel felt that the language “enlarge a non-conforming structure” could be misconstrued to indicate there would be an increase in the structure’s square footage.

Motion made by Mr. Strawbridge, seconded by Mr. Strand, to approve. Board approved 7 – 0.

Mr. Stresau said he had been unsure whether the hardship was self-imposed, but believed the two-foot projection would strengthen and aesthetically help the structure and would not increase the square footage. Mr. villa clarified that the existing canopy would not extend any farther out; they would add two vertical columns matching the church architecture and slightly extend the façade vertically also to match the church architecture.

5. APPEAL NO. 06-42

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APPLICANT: Jackie Archer

LEGAL: That portion of the Southwest one-quarter (SW ¼) of section 29, Township 49 South, Range 42 East, described as follows: Commence at the Northwest corner of said South one quarter (SW ¼); thence Southerly along the West boundary of said Southwest one-quarter (SW ¼) a distance of 535.1 feet to the point of beginning; thence Easterly and parallel to the North boundary of said Southwest one-quarter (SW ¼) a distance of 154.39 feet to a point; thence Southerly and perpendicular to the last mentioned course a distance of 120 feet to a point; thence Westerly and perpendicular to the last mentioned course a distance of 156.69 feet to a point on the West boundary of said Southwest one-quarter (SW ¼); thence Northerly along the West boundary of said Southwest one-quarter (SW ¼); a distance of 120.02 feet to the point of beginning.

ZONING: Broward County RS-5

STREET: 2420 NW 31 Avenue

ADDRESS: Fort Lauderdale, FL

APPEALING: Broward County Section 39-281(2)

Requesting a variance to allow a non-profit neighborhood social and recreational facility on property with frontage of 145'.03" and 15,000 S.F. area, where Broward County Code requires a minimum frontage of 150'.0" and a minimum area of one (1) acre.

Ms. Jackie Archer, president of Growing Smart Development Corporation, explained that this was a non-profit neighborhood social/recreational facility providing youth programs. They intended to renovate the building for this purpose; there would be no additions or other changes.

Mr. Neal Waugh said they would address all code-related items, such as parking, at the DRC review. Mr. Waugh said the property was adequate to their uses because all of their programs would be indoors. Mr. Waugh said they had a preponderance of support from neighbors and homeowner associations.

Ms. Archer stated the hours of operation would be Monday through Friday, from 4:30 to approximately 7:00, with additional weekend hours for special events.

Mr. Larson opened the public hearing.

Mr. Morris confirmed that this was an annexed area, and Fort Lauderdale code would not allow this in a residential district, but County code would, provided it met certain frontage requirements. Mr. Dunkel said County Zone Code RS-5 translated to City RS-4 or RS-8; he agreed this facility would not be permitted under the City's codes. Mr. Morris thought "there could be an interpretation that we've made in the past... that would allow that use in that zoning classification." Mr. Dunkel noted that in an RS-4 or RS-8, this would not be allowed regardless of lot size. Mr. Morris explained that in some of their Community Facility zoning classifications, there would be a 10,000 square foot minimum lot size and 100-foot lot width and in other CF districts, there were no minimum lot sizes or widths.

Mr. Morris said the applicant understood that if they were granted the variance they would need to meet all DRC requirements. He confirmed for Mr. Carbonell that they must use the Broward County zoning regulations and land use development code for this property. Mr. Morris informed Mr. Stresau that once rezoning occurred, Fort Lauderdale code would apply to the property. Mr. Stresau felt the neighbors might be upset at allowing this facility in their residential neighborhood. Mr. Morris said they did communicate with the neighbors about this process, and they were aware that Broward County code applied for now. Mr. Waugh informed the Board that they had letters of support from the neighbors and homeowner associations.

Mr. Dunkel explained to Mr. Goldman that even though they used County codes, they used the City's variance criteria. Mr. Goldman said the land use was Low-5 and asked about County

code for this type of use. Mr. Morris said he had not researched this, but he assumed Broward County did as Fort Lauderdale, and did not allow uses in zoning codes that were not permitted in the land use regulations.

Mr. Carbonell said the lot requirements were meant to accommodate parking, landscaping, etc., and while he approved of the project, he felt this was the wrong place for it. Mr. Waugh said their parking would be code compliant.

Ms. Micky Hinton, volunteer, informed the Board that this used to be a chicken farm, and 31st Avenue was now a street with many types of businesses along it. She noted that this would be a facility for the neighborhood kids; they would not be dropped off from elsewhere for after-school care.

Mr. Strawbridge feared that the code would “hit you between the eyes like a two-by-four.” He thought they would be forced to return to request many more variances in the future and ultimately, they would not succeed. Mr. Strawbridge said he really liked what they were trying to accomplish, but said it broke his heart because he could see it becoming discouraging as they went forward. Mr. Larson agreed with Mr. Strawbridge and Mr. Carbonell.

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

Motion made by Mr. Stresau, seconded by Mr. Willey to grant the variance, with the condition that the hours of operation be 4:30 p.m. to 7:00 p.m. weekdays. Motion failed 3 – 4 with Mr. Stresau, Mr. Carbonell, Mr. Willey and Mr. Larson opposed.

6. APPEAL NO. 06-43

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APPLICANT: William Massey

LEGAL: “Everglade Land Sales Company’s First Addition to Lauderdale, Florida”, P.B. 2, P. 15, Block 14, Lot 17. Said lands situate, lying and being in Broward County, Florida, together with the South 8 feet of the 16 foot wide alley North of, and adjoining with the North line of said Lot Seventeen (17).

ZONING: B-1 (Boulevard Business)

STREET: 609 SE 16th Court

ADDRESS: Fort Lauderdale, FL

APPEALING: **Sec. 47-21.9.A(2) (Landscape requirements for vehicular use areas)**

Requesting a variance from the required landscape buffer of ten (10) feet required by 47-25.3.A(3)(d)(i) of the ULDR for the property lines abutting residential property to five (5) feet on the east border of the property.

Courtney Crush, attorney for the applicant, said the lot was unique because it was 50 feet by 143 feet, a substandard lot, and was located at the end of the B-1 zoning district, abutting zone

RMM-25. She noted the building met or exceeded the minimum setback, open space, lot coverage and vehicular use area landscape requirements.

Ms. Crush explained the special circumstances that warranted the variance: the property itself, coupled with the City's engineering requirements for driveways. She noted that the width of the property, and the requirement for a two-way driveway, dictated they must have a significant amount of pavement on the site. Ms. Crush noted that this property was unique because it was a "leftover" parcel that was uniquely situated at the edge of its zoning district.

Ms. Crush stated they had struggled to meet the City's code with one small exception: on the east side of the property, which abutted a residential project, they needed the reduction of the required 10-foot landscape buffer to accommodate the driveway paving.

Regarding the criterion that the literal application of the code would deprive the property owner of the substantial property right, Ms. Crush said this was B-1 and was intended for commercial uses. They believed this project would provide a perfect transition between the gas station and the residential project. Ms. Crush presented renderings of the project from various angles.

Regarding the requirement that the hardship not be self-created, Ms. Crush pointed out that they were restricted by the boundaries of the property. They had designed the project to meet as much of the ULDR as possible, while being sensitive to the neighbors. She pointed out that the architecture was complementary with the adjacent condo. They had received an email of support from the developer of the condo project.

Regarding the compatibility requirement, Ms. Crush felt the project was architecturally compatible, was a low-intensity use with low parking requirements. They also exceeded the vehicular use area landscape requirements and setbacks.

Ms. Crush confirmed for Mr. Goldman that the palm trees on the rendering were actually on the neighbor's property. Mr. Willey wondered if they should be flexible about the landscaping or the paving. Board members agreed that encouraging additional landscaping was usually preferable, but Mr. Strawbridge was worried about reducing driveway width.

Mr. Dunckel said that per code, they could not reduce the drive aisle, but there was a provision that allowed the access driveway to be reduced to no less than 10 feet wide when used to access 10 parking spaces or fewer, provided either A) It was necessary to preserve an existing tree classified as "C" or higher or B) an existing building was occupying space for the required wider drive. He advised Ms. Crush she could request a variance to this section to justify a 10-foot drive, thereby preserving the greater green space. Mr. Carbonell thought the length of the building would not allow a one-way drive.

Mr. Stresau felt this was an “absolutely ideal design solution for that lot, for the condominium people that are adjacent to the east...” He did not feel there would be sufficient traffic on the parcel to present a conflict they could not work out internally.

Mr. Strand said he would like to see more trees. Mr. Strawbridge and Mr. Larson agreed it would be an asset to the area and provide a buffer from the gas station for the condos. Mr. Carbonell felt they should include more palms in the landscape buffer; Ms. Crush agreed to this. Ms. Crush said the owner’s preference was to leave the drive at 20 feet to accommodate two-way traffic.

Mr. Larson opened the public hearing. There being no members of the public wishing to speak on the item, Mr. Larson closed the public hearing and brought the discussion back to the Board.

Motion made by Mr. Willey, seconded by Mr. Carbonell, to approve, on condition that the landscape plan add as many trees as possible according to the staff’s review, based on the requirements of the buffer yard and the other City code requirements. Board approved 7 – 0.

Mr. Morris wanted clarification on the additional landscape condition. Mr. Strand wanted a “wall of trees.” Mr. Carbonell said they should use species usually used under power lines and that were compatible with plantings on the other side of the wall: Crepe Myrtle and Sabal Palms. Ms. Crush said they would use the Board’s suggestions at the DRC meeting. Mr. Stresau suggested they specify that the project must meet the requirements of a buffer yard “as though they were providing the required dimension.” This required one tree per 300 square feet. Ms. Ann Caruthers, project architect, said they were not opposed to using palms.

Mr. Dunckel clarified that the motion required the applicant to meet the landscape requirements of the buffer yard ordinance as if the variance had not been granted. Mr. Stresau agreed this was his intent. Mr. Dunckel noted that this would result in twice the usual number of trees for the square footage, and could create a conflict in tree distance separation requirements.

Mr. Stresau clarified that his suggestion was that “they be required to meet the one tree for every 300 square feet as though they were providing the buffer as the code prescribes, not the 5 feet.” Mr. Willey felt they should be required to meet the buffer zone “as reduced” to avoid a conflict with the tree and canopy distance separation.

Mr. Goldman suggested that if Mr. Stresau’s idea proved unviable, the applicant could be required to donate to a trust fund to plant trees elsewhere in the City.

Mr. Larson suggested that they request the applicant plant additional trees per the City’s guidance. Mr. Morris said this was possible. Mr. Stresau suggested final wording for the

motion's condition: "as many trees as possible according to the staff's review, based on the requirements of the buffer yard and the other City code requirements."

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Mr. Morris advised Board members to notify him if they did not have a copy of the ULDR.

Mr. Stresau announced that the City Commission had recently approved a change to the landscape code to reduce the specimen tree requirement from 18" to 6". The Commission had also directed Dave Gennaro to triple the palms.

There being no further business to come before the Board, the meeting was adjourned at 8:33 p.m.

Chair

Binni Sweeney

ATTEST:

Sandra Goldberg For Jamie Opperlee,
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.
