

**Board of Adjustment Meeting
City of Fort Lauderdale
Wednesday, April 11, 2007 – 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 2007	
		<u>Present</u>	<u>Absent</u>
1. Gus Carbonell	A	2	1
2. Gerald Jordan	P	3	0
3. Don Larson	P	3	0
4. Scott Strawbridge	A	2	1
5. Fred Stresau	P	3	0
6. Birch Willey	P	3	0
7. Binni Sweeney, Chair	P	3	0
 <u>Alternates</u>			
David Goldman	P	3	0
Kenneth Strand	A	2	1

Staff

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

Guests

Richard Kamiler	David Gannon
Rabbi Moishe Lipszyc	Monika Shogan
Stephanie Sufrin	Richard Gold
Simon Fields	Kenneth Williams

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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 the meeting.

Approval of Minutes

Motion made by Mr. Willey and seconded by Mr. Larson to approve the minutes of the March 2007 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.

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1. APPEAL NO. 06-39 *(Deferred from February 14, 2007 meeting)*

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 feet from the rear property line, where Code requires a 15-foot rear yard setback.

Chair Sweeney cautioned the applicant that five of the six members present must approve an item in order for it to pass, and asked if he would like to defer the hearing of his appeal; the applicant said he would not.

Mr. Morris reminded the Board that they had asked the applicant to research the Building Department records for past approvals of the accessory structure, and this information had been included in the Board's packet.

Mr. Richard Kamiler, owner, said the unit had been used as a cottage for 20 to 25 years, and he had bought the property in 2001 knowing that the property was zoned to

allow the cottage to be occupied. Mr. Kamiler referred to the property's original drawings that he had provided. He explained that FPL had metered the building separately for more than twenty years, and the sewer and sanitation billing indicated the same. He said he had purchased the home specifically because of the accessory structure.

Mr. Kamiler said the property was zoned RC-15 when he purchased it and was now RCS-15. He described several multi-family properties recently built on his street.

Mr. Kamiler referred to the portion of the variance application that asked if his request would "disrupt the harmony of the neighborhood" and noted that the cottage had existed as it was in the neighborhood was for 25 years.

Chair Sweeney opened the public hearing.

Mr. David Gannon, neighbor, said he had previously owned Mr. Kamiler's property. He thought that when he purchased the property it had been zoned R-3B, allowing two family units on the property. He said the cottage had always been rented as far as he could recall.

As there were no other members of the public wishing to address the item, Chair Sweeney closed the public hearing and brought the discussion back to the Board.

Chair Sweeney remarked that the permit dated 1951 showed R-3 zoning with a garage, not a cottage. There was no evidence of any plumbing or electric. Mr. Morris said at that time, the R-3 did allow multiple dwellings; when it was changed to RCS-15, new multiple dwellings were no longer allowed, but existing dwellings were allowed.

Mr. Morris informed Mr. Stresau that RCS-15 was a new district specifically for areas that wanted to control development of multiple-unit dwellings in single-family and low-density areas. Victoria Park had specifically approached the City Commission to rezone pockets of Victoria Park to prohibit new construction of multiple-unit dwellings. Mr. Morris said he was unaware of this zoning classification in any other area.

Mr. Larson asked about the sewer permit; Mr. Kamiler said in 1971 the sewer line was added.

Motion made by Mr. Stresau, seconded by Mr. Larson, to approve. Motion failed 4 – 2 with Mr. Willey and Chair Sweeney opposed.

2. APPEAL NO. 07-15

APPLICANT: Ruach, Inc.

LEGAL: "Galt Ocean Mile Resubdivision", P.B. 38, P. 18, Block 16, Lot 9

ZONING: CB (Community Business)

STREET: 3558 W. Ocean Boulevard

ADDRESS: Fort Lauderdale, FL

APPEALING: Section 5-27(b) (Distances of establishments from Church or School)

Requesting a special exception to allow alcohol sales that is incidental to the sale of food in a restaurant that is within 232 feet from one place of worship (Chabad Lubavitch of Fort Lauderdale), and 242 feet from another place of worship (Sephardic Synagogue), where Code requires a separation of 500 feet.

Chair Sweeney cautioned the applicant that five of the six members present must approve an item in order for it to pass, and asked if he would like to defer the hearing of his appeal; the applicant said he would not.

Mr. Morris distributed copies of the restaurant menu to the Board.

Rabbi Moishe Lipszyc, the applicant, explained that they had created a kosher café to serve the community on the east side of Fort Lauderdale, and they wanted permission to serve kosher wine and organic beer. He presented four letters of support from area property owners.

Chair Sweeney opened the public hearing.

Ms. Monika Shogan, neighbor, said she had moved here recently, and she noted that the café offered a kosher dining experience. She thought it would be nice to have a glass of wine with meals, stressing that the alcohol would be secondary to food sales. Ms. Shogan added that the facility was large enough to accommodate parties as well.

Ms. Stephanie Sufrin, neighbor, said she had enjoyed the kosher café since it opened, and she agreed that the addition of alcohol sales would enhance the café's service.

Mr. Richard Gold, neighbor, said there was nowhere else close by to have a kosher vegetarian meal with a glass of wine. He would appreciate not having to travel to Boca or Hollywood to have a glass of wine with dinner.

Mr. Simon Fields, president of a Fort Lauderdale synagogue, said they were very thankful for the kosher café, and noted that the nearest establishments serving kosher wine were quite far away, and this had been a hardship. He stated his synagogue's support for this request.

Mr. Fields was concerned about raids at a nearby bar. He asked the Board if approval of the exception could be limited so it could not be grand fathered to a café that was not kosher or if the café was sold. Mr. Dunckel said the special exception would be specific to this business only. Mr. fields said he supported the request.

There being no other members of the public wishing to address the item, Chair Sweeney closed the public hearing and brought the discussion back to the Board.

Mr. Dunckel noted that there was a letter in the Board's packet expressing opposition to the request. This letter noted that there were only three parking spaces for the café. Mr. Morris said they were working with the owners to resolve the parking problem, since they currently did not meet the requirement. The alcohol sales would have no effect on the parking requirement. Mr. Morris said the Certificate of Occupancy had been issued in error by a former City employee.

Mr. Dunckel noted that the letter writer had indicated the cafe was also within 50 feet of a bar and grill. Mr. Morris said staff responsible for investigating the business for a Certificate of Occupancy had determined the only issue related to its proximity to a place of worship, not to its proximity to other places selling alcohol. Mr. Stresau pointed out that the measurement between businesses was door-to-door, not across an alley, and the actual distance between the business doors seemed to be much greater than 50 feet. Mr. Morris said the rabbi had measured the Irish pub at 519 feet and Nick's at 409 feet from the café.

Mr. Dunckel indicated there had been a problem with the original notice, and Mr. Morris said they had contacted neighborhood associations, and noted that all notices included a map showing the correct location. They had received no other responses to the notices other than those letters the Board had.

Mr. Jordan reminded the Board that zoning changes had been initiated to prevent bars and restaurants from becoming too prevalent; the house of worship restriction was one standard they had used. He worried that this would set a precedent for "watering down" that rule elsewhere. Mr. Jordan noted the parking requirement was another standard to which the café did not adhere. He did not want this to become a trend either. Mr. Morris said the Rabbi and Mr. Fields owned the two synagogues located nearby, and both supported the project.

Mr. Goldman reminded the Board that they must consider the specific circumstances for every case before them, and circumstances in another area would be different.

Mr. Dunckel said the Board's determinations were not precedent-setting unless the subsequent case had the same *exact* facts as the previous case. He noted that the Commission had allowed for a special exception when they created the 500-foot

distance separation, provided criteria were met. Mr. Dunckel reiterated the criteria that must be met regarding meeting the special exception requirements per the ULDR, and regarding neighborhood compatibility and the public interest. Mr. Dunckel said the Board could grant the exception conditioned upon resolution of the parking issue.

Mr. Willey was not worried about a conflict with the public interest, but was worried that the alcohol sales would increase trade at the café, adding to the existing parking problem.

Mr. Larson said the café had known about the restrictions, and said he was not in favor of allowing the alcohol so close to the synagogues.

Motion made by Mr. Willey, seconded by Mr. Goldman, to approve the special exception for kosher wine and beer, on condition that it go into effect concurrent with resolution of the parking requirements. [a later motion to continue superseded this motion]

Mr. Stresau was concerned that the additional business would add to the parking problems, noting that if a request for a parking reduction came to the Planning and Zoning Board, he would find it more difficult to vote in favor of a reduction for the café if the beer and wine sales were allowed there. He felt the parking problems should be resolved before requesting the special exception.

Mr. Dunckel reminded the Board that they could still table the request and wait to hear it until after the parking issue had been resolved. Mr. Dunckel asked if Mr. Willey's motion intended that the exception only be granted if the parking requirements could be met without a reduction order. Mr. Willey said no, his intent was that they meet whatever requirements the City determined they must; if another Board granted a reduction, that was fine. Mr. Willey said he should add the words "kosher wine and beer" to his motion.

Rabbi Lipszyc informed Mr. Goldman that most of the restaurant patrons walked there. He said they also owned half the block, and had access to over 30 parking spaces. Mr. Larson noted that each business was allotted its own parking. He felt they should resolve the parking issues first, before the exception was considered.

Rabbi Lipszyc said their services ended by 8:30 and the café opened at 11:00, so they could share parking. During the Sabbath on the weekend, the café was closed.

Mr. Morris said the applicant could ask for a parking reduction, or share parking. He asked the Board therefore not to make approval contingent specifically on a parking reduction.

Mr. Willey said he did not want the applicant to get stuck between the Board of Adjustment and the Planning and Zoning Board, but he was still concerned about the traffic increase with the alcohol sales.

Chair Sweeney reminded Rabbi Lipszyc that he could request the Board table this. Mr. Dunckel reminded him that if this was denied, they must wait two years to apply again.

Rabbi Lipszyc totaled all of the parking spaces to which they had access, but Mr. Morris said they would still need a reduction because they were required to provide parking for each use 24 hours per day, seven days per week. He added that parking reductions were specific to use, and usually to a business.

Rabbi Lipszyc conferred with his partner and requested that the request be tabled, to be brought back at the applicant's discretion. Mr. Morris noted that a non-time-specific tabling would require re-notification of over 1,000 letters. He suggested the Board continue the case time-specific; the Board could continue the case again, if need be.

Motion made by Mr. Willey, seconded by Mr. Stresau, to continue the item for 60 days. Board approved 6 - 0.

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3. APPEAL NO. 07-16

APPLICANT: Hans J. Kirsch

LEGAL: "North Bal Harbor", P.B. 5, P. 3, Lot 116

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

STREET: 2200 NE 22nd Terrace

ADDRESS: Fort Lauderdale, FL

APPEALING: **Section 47-19.2.S (Mechanical and plumbing equipment)**

Requesting a variance from Section 47-19.2.S to allow two (2) air conditioner units to set back 3.95 feet and 4.01 feet from the North property line, to allow pool equipment to setback 1.45 feet from the North property line, and to allow two (2) air conditioner units to set back 3.25 feet and 4.20 feet from the South property line, where Code requires that all mechanical equipment set back a minimum of 5 feet from the property line.

Chair Sweeney cautioned the applicant that five of the six members present must approve an item in order for it to pass and asked if he would like to defer the hearing of his appeal; the applicant said he would not.

Mr. Kenneth Williams, the applicant's architect, described the process he had followed to obtain the building permit, noting that the construction had been underway for approximately one year, with several reviews and inspections along the way. In March

2007, during final Zoning review, an issue was discovered with the location of the air conditioning unit.

Mr. Williams said Doug Kurtock had made the Zoning comments, and Mr. Williams had provided written responses to his comments. Mr. Williams said he had informed Mr. Kurtock that the equipment did not exceed the criteria for size, and he acknowledged that the equipment was within 5 feet of the property line. Mr. Dunckel said this was, in fact, one of the criteria that should have been met. Mr. Williams contended that this was well within an exception.

Chair Sweeney opened the public hearing. As there were no members of the public wishing to address the item, Chair Sweeney closed the public hearing and brought the discussion back to the Board.

Mr. Jordan thought the equipment setback was “pretty basic” in construction, and every designer and contractor should be well aware of it. Mr. Williams thought that the size criteria applied *because* he had not met the setback criteria, and since he met the size criteria, the unit was allowed. Mr. Williams had assumed that if not meeting the setback requirement was not allowed, the plans would have been returned to him again.

Mr. Dunckel read from the code provision: “mechanical and plumbing equipment such as air conditioner compressors, lawn irrigation pumps and swimming pool accessories, may be located within the required side or rear yards, but shall be no closer than five feet from any property line, provided that no such structure exceeds five feet in height, measured from the grade, eight feet in length, and limited to an area of forty square feet.” Mr. Dunckel said *all* of the components must be met, and added that code section 47-1.16 stated that “approval of a development permit shall not be construed to create a right to any development of property that fails to meet the requirements of all land development regulations applicable to the development.”

Mr. Willey confirmed that Mr. Kurtock had signed off on the plans with the equipment in the setback.

Mr. Goldman said he saw nothing in the variance request that would satisfy the criteria for granting the variance. Mr. Williams reiterated that the plans had been reviewed and passed by many departments and inspectors.

Motion made by Mr. Jordan, seconded by Mr. Larson to grant the variance. Board denied 6 – 0.

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4. APPEAL NO. 06-42 (*Request for Rehearing from December 13, 2006 meeting*)
(*Deferred from March 14, 2007 Meeting*)

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.

Chair Sweeney said the applicant had requested another deferral, and she opposed this. Mr. Goldman opposed it as well.

Mr. Dunckel said he had spoken with Neil Waugh, who had asked if it was necessary to appear this evening, and Mr. Dunckel had told him he never told a party to not appear.

Mr. Morris said he had recommended the applicant appear.

Motion made by Mr. Stresau, seconded by Mr. Jordan, to grant a re-hearing. Board denied 2 - 4. [Vote was originally 3 – 3 but Mr. Goldman admitted to being confused about the intent of the motion and changed his vote].

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Mr. Stresau said the City Clerk had indicated the Board must hold an election of officers. Mr. Dunckel said the code specified that election of officers should take place in June, so they would wait until then.

Mr. Dunckel informed the Board that all code supplements were available on the City's website, and on UniCode.com.

Chair Sweeney thanked everyone for their help during her tenure as Chair.

There being no further business to come before the Board, the meeting was adjourned at 8:06 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.
