

**Board of Adjustment Meeting  
City of Fort Lauderdale  
Wednesday, November 14, 2007 – 6:30 P.M.  
City Hall City Commission Chambers – 1st Floor  
100 North Andrews Avenue  
Fort Lauderdale, Florida**

<b><u>Board Members</u></b>	<b><u>Attendance</u></b>	<b>Cumulative Attendance 1/2007 – 12/2007</b>	
		<b><u>Present</u></b>	<b><u>Absent</u></b>
1. Scott Strawbridge, Chair	P	8	2
2. Don Larson, Vice Chair	P	10	0
3. Gus Carbonell	P	8	2
4. Gerald Jordan	P	9	1
5. Fred Stresau	A	8	2
6. Birch Willey	P	10	0
7. David Goldman	P	9	1
 <b><u>Alternates</u></b>			
Bruce Weihe	P	6	0
Diane Waterous Centorino	A	4	2

**Staff**

Bob Dunckel, Assistant City Attorney  
Yvonne Blackman, Secretary  
Don Morris, Board Liaison  
Liz Rivera, Recording Secretary

**Guests**

Fire Marshal Steve Kastner	Norman Brown
Robert Lochrie	Bill Keenan
Dale Chenowith	Andrew Cardo
Kevin Kulik	Jared Anton
James Ross	

**Index**

	<b>Case Number</b>	<b>Applicant</b>	<b>Page</b>
1.	07-35	Broward County Board of County Commissioners	<a href="#">2</a>
2.	07-39	Bill Keenan - Eighteen Hundred Building, LLC	<a href="#">5</a>
3.	07-40	500 SW 3 <sup>rd</sup> Avenue Inc.	<a href="#">7</a>

4.	07-41	Phillipe Ductan	<a href="#">8</a>
		For the Good of the City	9

### **Call to Order**

Chair Strawbridge called the meeting to order at 6:33 p.m. Chair Strawbridge introduced the Board members and described the functions of the Board and procedures they would use for the meeting. Chair Strawbridge called the respondents' attention to the list of criteria from City code for granting a variance.

Board members disclosed communications they had regarding agenda items.

Chair Strawbridge announced there were no sign issues for any case.

### **Approval of Minutes**

**Motion** made by Mr. Larson, seconded by Mr. Jordan, to approve the minutes of the Board's October 2007 meeting. Board unanimously approved.

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

[Index](#)

### **1. APPEAL NO. 07-35** *(Deferred from October 10, 2007 meeting)*

**APPLICANT:** Broward County Board of County Commissioners

**LEGAL:** A portion of Parcel "A" of the REPLAT OF A PORTION OF W.H. MARSHALL SUBDIVISION, as recorded in Plat Book 62, Page 21 of the Public Records of Broward County, Florida, as more particularly described in the application for a variance for Appeal No. 07-35, on file with the Clerk of the City of Fort Lauderdale Board of Adjustment.

**ZONING:** I (General Industrial)

**STREET:** 3400 SW 4<sup>th</sup> Avenue

**ADDRESS:** Fort Lauderdale, FL

### **APPEALING: Section 47-18.13.B.1 (Flammable liquids and fuel storage)**

Requesting a variance to allow an above ground gasoline storage tank in the district where Code stipulates that above ground storage of flammable liquids shall only be permitted at Port Everglades in the area zoned PEDD.

Mr. Morris reminded Chair Strawbridge that the Board had requested the presence of the Fire Marshal to discuss safety issues regarding the tank. The Board agreed they

did not need the applicant to present his case again; they would now hear from the Fire Marshal.

Fire Marshal Steve Kastner reported he had inspected the plans and believed the installation would present no hazard. Chief Kastner did not object to the tank installation, and pointed out it could be useful to the City during a regional incident or after a hurricane.

Chair Strawbridge asked Chief Kastner if an above ground tank was preferable to an underground tank. Chief Kastner stated that this depended upon the tank location the its intended use. He noted that in-ground tanks were the safest but presented environmental issues. In this case, security was adequate for him to be comfortable with the aboveground tank.

Chief Kastner described the tank as very secure and confirmed for Mr. Larson the tank installation would come before him for review and approval.

Chair Strawbridge asked Mr. Morris about alternatives to a variance. Mr. Morris explained that the County could apply for public purpose use, a provision in the code that would allow the City Commission to permit deviations from the code.

Mr. Dunckel said he had reviewed the code and concluded the fire station would have been granted the public purpose use if the County had applied for it. He explained that the distinction between the public purpose use request and a variance request was that when a variance was sought, the criteria must be satisfied. Since this request was made in order to save the maintenance costs associated with burying the tank, it did not meet the specific criterion that a variance should not be granted to ameliorate economic hardship.

Mr. Dunckel continued that since the Board had approved this request, it would be more difficult to deny another such a request in the future. The distinguishing feature between cases could not be simply that this request was made on the part of a fire station. If the fire station had gone the route of the public purpose use, this distinction could still be made.

Chair Strawbridge agreed that this request did not meet their usual criteria, but he believed they should find a way to accommodate the request.

Mr. Jordan pointed out that the fire station personnel were first responders, and this circumstance should grant them a special exception.

Mr. Willey asked Mr. Dunckel if the Board of Adjustment had the ability to change this to a public purpose use request. Mr. Dunckel informed him the granting of the public

purpose use was made by the City Commission, not by this Board. Mr. Dunckel recommended continuing the case to allow the fire station to exhaust their remedies under the public purpose use.

**Motion** made by Mr. Willey, seconded by Mr. Weihe, to continue this case to allow the fire station to pursue a special exception under public purpose use.

Mr. Willey was concerned with the amount of time it might take for this item to go through the public use request. He asked if it was possible for this Board to grant the fire station the right to temporarily operate without the tank. Mr. Dunckel was not sure if the tank was required for the station to become operational.

Mr. Willey **withdrew** his motion.

Norman Brown, project manager, informed the Board that construction was approximately 40 percent complete, and they expected a Certificate of Occupancy in the spring of 2008. Mr. Dunckel believed the public purpose use could be obtained before then. Mr. Morris explained the process and noted that this would take four months, but could probably be expedited.

Mr. Goldman asked why the appeal had been made to this Board. Mr. Brown stated this had been rejected at the zoning level, and they had removed the gasoline tank from the project and applied for the variance. He reiterated that the fuel was required to keep the station self-sustaining.

Mr. Dunckel said he would urge staff to expedite this through the DRC, Planning and Zoning, and City Commission agendas, and if this Board retained jurisdiction, they could always open it up for temporary relief later on.

Chair Strawbridge opened the public hearing. There being no members of the public wishing to speak regarding this item, Chair Strawbridge closed the public hearing and brought the discussion back to the Board.

Mr. Willey suggested language for motion stipulating the Board would grant a temporary variance during which time the County would seek public purpose use. If this failed, the County would return to the Board of Adjustment.

Mr. Strawbridge recommended that if the public purpose use were not achieved, the variance would remain in place. Mr. Dunckel asked the Board to consider a continuance, with the condition that the County could return to the Board of Adjustment if the public purpose use was not granted. If the Board granted a temporary one-year variance, he recommended it expire after one year or upon granting of the public

purpose relief, whichever came first, with the Board reserving jurisdiction. This would allow them to grant a permanent variance.

Mr. Carbonell said that in his experience, it would take more than a year to go through the public use process. Mr. Dunckel reiterated that he would work to expedite the request, and was sure Chief Kastner would as well.

**Motion** made by Mr. Willey, seconded by Mr. Carbonell, to grant a temporary, one-year variance, which would dissolve upon the City Commission's granting of a public purpose use. During that one-year period, the Board would require the County to seek public purpose use under 47-18.26 and would retain jurisdiction for further relief in this case as warranted. In a roll call vote, all voted in favor 7 – 0.

[Index](#)

## **2. APPEAL NO. 07-39**

**APPLICANT:** Bill Keenan - Eighteen Hundred Building, LLC

**LEGAL:** A portion of Tract "A" Commerce Bank, as recorded in P.B. 112, P. 18 as more particularly described in the application for a variance for Appeal No. 07-39, on file with the Clerk of the City of Fort Lauderdale Board of Adjustment

**ZONING:** AIP (Airport Industrial Park)

**STREET:** 1800 W. Commercial Blvd.

**ADDRESS:** Fort Lauderdale, FL

**APPEALING:** Section 47-14.11 (List of permitted and conditional uses, Airport Industrial Park (AIP) District)

Requesting a variance to allow a free-standing bank facility on the property, where Code prohibits such use.

Mr. Robert Lochrie, representative of the applicant, explained that this was a request for a freestanding bank facility/office. He pointed out the property on an aerial photograph, and explained that the underlying land use was commercial, which allowed financial institutions. The zoning on the property was AIP, airport industrial park, and the property had been rezoned in 1997 with the adoption of the ULDR. Mr. Lochrie explained that the code had been changed so that the definition of business uses no longer included financial institutions.

Mr. Lochrie presented part of the site plan, and stated they were not requesting any variances from any code section other than the use itself. He noted that there were other banking facilities in the area and they were requesting the same allowance. Mr. Lochrie explained that one of the requirements for the use variance was that they show the use was compatible and consistent with other uses in the vicinity. As there were other banking facilities and an office park in the area, they believed it was compatible.

Mr. Lochrie explained to Mr. Weihe that the former MIA zoning allowed for "business/office" use of the property, and the previous definition of business office use included financial institutions. The current code permitted administrative offices, but the interpretation made by staff for his client was that this did not include financial institutions. He was unsure when this change in interpretation had taken place. Chair Strawbridge opened the public hearing. There being no members of the public wishing to speak regarding this item, Chair Strawbridge closed the public hearing and brought the discussion back to the Board.

Mr. Goldman stated he had learned that the proper way to allow a proscribed use would be to rezone the property, not to apply for a variance. He asked if use variances had always been in the City's code. Mr. Dunckel stated he had researched this, and said he had discovered a case indicating that if the criteria were met, a use variance was acceptable. Mr. Dunckel therefore recommended that the Board strictly scrutinize the criteria to be sure the application met them prior to granted a variance.

Mr. Dunckel believed Mr. Lochrie had hinted that staff's interpretation that a financial institution was no longer permitted was questionable, and wondered why Mr. Lochrie had not brought this before the Board. Mr. Lochrie explained that historically he had not had luck bringing interpretation questions before this Board. Mr. Lochrie informed the Board that previously, his client had obtained a building permit for a bank on an adjacent piece of property.

Mr. Lochrie believed this request met the criteria, and stated Fort Lauderdale did allow use variances. He drew the Board's attention to the criterion asking if this was a use that others in the zoning district enjoyed that the owner was being denied from enjoying, noting that since other banks were located in the area, this certainly applied. Mr. Lochrie stated this also met the criterion for consistency with neighboring properties.

Mr. Morris said financial institutions were specifically mentioned in other zoning districts, not under professional and administrative offices. Mr. Morris stated if a particular use were not spelled out specifically in a district, it was by definition not permitted.

Mr. Weihe asked if there was a definition of professional and administrative offices in the code; he wondered why this would not be included under that term. Mr. Carbonell agreed, and pointed out that this district allowed restaurants. He wondered how financial institutions could have been omitted. Mr. Morris could not say why this had been left out of the definition, but believe there must have been a reason.

Mr. Dunckel read the code definition for "professional offices" and said a financial institution did not necessarily fall within that definition. Mr. Lochrie pointed out that the old definition did not specifically mention financial institutions either; it stated

professional administrative offices were permitted, and a further definition of this specifically mentioned financial institutions.

Mr. Lochrie reiterated that City staff had determined that a bank was not permitted at this location. Therefore, the City's code provided for a variance, as long as the criteria were met. He believed they met the criteria.

Mr. Weihe he believed there was sufficient to ambiguity in the language that he would support the request. Mr. Goldman commented that there were other zoning districts that allowed this use. Chair Strawbridge pointed out that there were other development opportunities for this property that would meet code.

**Motion** made by Mr. Weihe, seconded by Mr. Jordan, to approve. In a roll call vote, the vote was as follows: Mr. Weihe - yes; Mr. Willey – no; Mr. Goldman – no; Mr. Jordan – yes; Mr. Carbonell – yes; Mr. Larson – yes; Chair Strawbridge – no. **Motion failed 4 – 3.**

[Index](#)

### **3. APPEAL NO. 07-40**

**APPLICANT:** 500 SW 3<sup>rd</sup> Avenue Inc.

**LEGAL:** “The Town of Fort Lauderdale”, P.B. “B”, P. 40, Block F, Lots 1 and 2

**ZONING:** RAC-SMU (Regional Activity Center -Southwest Mixed-Use)

**STREET:** 500 SW 3<sup>rd</sup> Avenue

**ADDRESS:** Fort Lauderdale, FL

#### **APPEALING: Section 47-21.9.2.b (Landscape requirements for vehicular use areas)**

Requesting a variance to allow the existing adjacent building wall to serve as the required perimeter masonry wall between the VUA and abutting property, where code requires a 2½ foot perimeter landscape area or a masonry wall at least 30 inches in height between the VUA and the abutting property in lieu of the perimeter landscape area.

Mr. Kevin Kulik, applicant, stated the code required them to build a masonry wall on the eastern perimeter of the property but the neighboring property had constructed a warehouse wall on the property line. The wall that code required would therefore need to be located against that warehouse wall. Mr. Kulik stated they were requesting a variance because they did not wish to damage the neighbor's property.

Mr. Kulik pointed out that if they did build the wall or install a hedge, this would shorten the length of their parking spaces, rendering them too short to and causing them not to comply with the parking requirements. Mr. Kulik stated they were requesting the variance to allow the neighbor's building to serve as the perimeter wall.

Chair Strawbridge opened the public hearing. There being no members of the public wishing to speak regarding this item, Chair Strawbridge closed the public hearing and brought the discussion back to the Board.

Mr. Kulik confirmed for Mr. Willey that they also intended not to install the landscaping in this area, as it would interfere with the parking. He noted that they had much more landscaping on other areas of the property than code required. Mr. Jared Anton concurred that even without the landscaping next to the wall, they would still exceed the required amount of green space for the property.

Mr. Dunckel reminded the Board that a variance was permanent, and cautioned them to consider that at some point the warehouse might be demolished. Mr. Kulik said they would be willing to stipulate to that in the event the warehouse was demolished, they would comply with the code and either plant the hedge or erect the wall.

**Motion** made by Mr. Goldman, seconded by Mr. Weihe, to approve, with the condition that the variance would be dissolved if the warehouse to the east were demolished, or if the principal structure on the property was demolished. In a roll call vote, all voted in favor 7 – 0.

[Index](#)

#### **4. APPEAL NO. 07-41**

**APPLICANT:** Phillipe Ductan  
**LEGAL:** "Progresso" P.B. 2, P. 18, Block 127, Lots 31 and 32  
**ZONING:** RD-15 (Residential Single /Duplex/Low Medium Density District)  
**STREET:** 1210 NW 7 Terrace  
**ADDRESS:** Fort Lauderdale, FL

**APPEALING:** Section 47-5.32 (Table of dimensional requirements for the RD-15 district)

Requesting a variance to allow the existing single family house to encroach 3.6 feet into the side yard, resulting in a 1.4 foot side yard, where Code requires a 5 foot side yard

Mr. James Ross, representative of the applicant, explained that during construction of the duplex they had discovered that the existing adjacent building was encroaching on its own property line. The variance would allow them to continue building the duplex.

Mr. Dunckel confirmed with Mr. Morris that it was actually lot 33 that required the variance, but the variance must be tied to lots 31 and 32, presently before the Board, to maintain the 10'4" distance separation between the buildings. Mr. Dunckel stated the



Board did not have sufficient jurisdiction this evening because lot 33 was not before them; only lots 31 and 32 had been advertised.

Mr. Ross said when they applied for the variance, they were advised to request the variance for the lot with the existing house, because the other two houses met the requirements. Mr. Dunckel clarified that the lot with the existing house was lot 33, which was not included in the application. Mr. Ross reiterated that they had followed the instructions from staff, and the project had already been held up for five months.

Mr. Dunckel felt they could allow building to continue on the duplex, and require the applicant to return the following month, with all four lots listed on the variance application.

Chair Strawbridge opened the public hearing. There being no members of the public wishing to speak regarding this item, Chair Strawbridge closed the public hearing and brought the discussion back to the Board.

**Motion** made by Mr. Weihe, seconded by Mr. Willey, to continue the case for 30 days. In a roll call vote, all voted in favor 7 – 0.

**Report and For the Good of the City**

[Index](#)

Chair Strawbridge thanked Mr. Morris for his service, and wished him luck in his new position.

There being no further business to come before the Board, the meeting was adjourned at 8:12 p.m.

Chair:

---

Scott Strawbridge

Attest:

---

ProtoType Inc.

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