BOARD OF ADJUSTMENT MEETING
City of Fort Lauderdale
Wednesday, September 10, 2008 – 6:30 P.M.
City Hall City Commission Chambers – 1st Floor
100 North Andrews Avenue
Fort Lauderdale, Florida

		Cumulative Attendance 6/2008 through 5/2009	
Board Members	**Attendance**	**Present**	**Absent**
Scott Strawbridge, Chair	**P**	**3**	**1**
Don Larson, Vice Chair	**P**	**4**	**0**
Diane Centorino	**P**	**3**	**1**
David Goldman [until 10:45]	**P**	**3**	**1**
Gerald Jordan	**P**	**4**	**0**
Bruce Weihe	**A**	**3**	**1**
Birch Willey	**P**	**4**	**0**
Alternates			
Michael Madfis	**P**	**4**	**0**
Henry Sniezek	**P**	**4**	**0**
Karl Shallenberger	**P**	**3**	**1**

Staff
Bob Dunckel, Assistant City Attorney
Yvonne Blackman, Secretary
Terry Burgess, Chief Zoning Examiner
Greg Brewton, Planning and Zoning director
B. Chiappetta, Recording Secretary, ProtoType Services

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Purpose: Section 47-33.1.

The Board of Adjustment shall receive and hear appeals in cases involving the ULDR, to hear applications for temporary nonconforming use permits, special exceptions and variances to the terms of the ULDR, and grant relief where authorized under the ULDR. The Board of Adjustment shall also hear, determine and decide appeals from reviewable interpretations, applications or determinations made by an administrative official in the enforcement of the ULDR, as provided herein.

Call to Order

Chair Strawbridge called the meeting to order at 6:33 p.m. He introduced the Board members and described the functions of the Board and procedures that would be followed for the meeting.

Approval of Minutes

Motion made by Mr. Willey, seconded by Mr. Jordan, to approve the minutes of the Board's August 2008 meeting. In a voice vote, motion passed 7 - 0.

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

Chair Strawbridge explained to applicants that a majority plus one vote was required to prevail. Since there were seven Board members seated, a vote required 5 yes votes to pass. He drew attendees attention to the board displaying the criteria the Board used to make their decisions.

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1. Appeal No. 08-24 (*Deferred from June 11, 2008)*

APPLICANT:	**Archdiocese of Miami (Cardinal Gibbons High School)**
LEGAL:	**The East 40 feet of W ½ of the NE ¼ of the SE ¼ of the SE ¼ of Section 3, Township 49 South, Range 42 East, said parcel being more particularly described in the application for variance on file with the Clerk of the City of Fort Lauderdale Board of Adjustment**
ZONING:	**CF-HS (Community Facility-House of Worship and School)**
STREET:	**2900 N.E. 47th Street and/or 4601 Bayview Drive**
ADDRESS:	**Fort Lauderdale, FL**

APPEALING: Section 47-8.30 (Table of Dimensional Requirements)
Requesting a variance to allow light fixtures mounted on poles at a height of 65 feet (2 poles) and 95 feet (2 poles), where code limits height to 35 feet.

Board members disclosed communications they had regarding this case.
Mr. Robert Lochrie, representative for the applicant, presented a graphic of the school, and described the layout of the property and the location of the lights. He explained that newer lights were designed to provide more focused coverage while causing less spillage to the surrounding area. Mr. Lochrie said the health safety concern regarding playing games in the heat of the day had increased the desire to play games in the evening. The fields were also needed for more games, placing increased demand on the fields' use.

Mr. Lochrie submitted an affidavit from the Broward County Athletic Association Commissioner Damien Huttenhoff describing the concern the Association had for students playing sports outside in the afternoon, and the preference for them to play in the evenings. Mr. Huttenhoff also indicated that lights were to be installed at all BCAA fields for safety reasons.

Mr. Lochrie acknowledged that Cardinal Gibbons had been denied an application for lights in 1982, but pointed out that in 1982 the property was zoned residential. Mr. Lochrie stated the City had rezoned the entire City in 1997 and rewritten the Zoning Code. At that time, this property was rezoned to Community Facility/House of Worship/School: CFHS. Mr. Lochrie explained that if this property had been zoned CFS Instead, the site plan would be subject to a site plan level 3 review process in front of the Planning and Zoning Board. Because the property was located next to a church, they did not have the option for the site plan level 3 review and must request a variance.

Mr. Lochrie wondered why houses of worship had been denied the ability to go through site plan level 3 review. He noted exceptions in the code to the height requirement, which included "church spires and steeples, chimneys, parapet walls, machine rooms, elevator towers and the like necessary to the design and function of the building but not designed for human occupancy shall not be included in the measurement of overall height."

Mr. Lochrie said the contractor had designed a system that would fulfill the requirements of the school and the BCAA and also avoid light spill in excess of the code restriction or what anyone would want in neighboring properties. The contractor had determined that in order to accomplish this, the lights must be 95 feet tall on one side and 65 feet tall on the other side.

Mr. Lochrie continued that these plans had been submitted to the City, and Planning and Zoning had approved to them. The work had passed two inspections, but upon the

third inspection, the Zoning Department took another look at the project and had red tagged it, indicating that the light fixtures were going to be deemed structures and that therefore the 35-foot maximum height had been exceeded. Since they were not eligible for a site plan review process, the school must appeal to the Board of Adjustment for relief.

Mr. Lochrie stated the hardship was that the school required the lights at this height in order to use the fields in the way they were intended to be used.

Regarding the "Special conditions and circumstances that affect the property" criterion, Mr. Lochrie explained there were directly adjoining neighbors. Therefore the light system must be designed to provide the light, but avoid spillage into the neighborhood, and the light design accomplished this.

Regarding the "Conditions which are peculiar to the property at issue…" criterion, Mr. Lochrie stated this property had always been a high school with sports fields. All other areas zoned CFHS did not have a high school football field except for St. Thomas Aquinas, which had lights approximately 80 feet tall.

Regarding the "A literal interpretation of the ULDR would deprive the owner of a property right that is enjoyed by other property owners in the same zoning district" criterion, Mr. Lochrie reiterated that the other high school that had a football program had lights.

Regarding the "The hardship is not self-created" criterion, Mr. Lochrie explained that the hardship was to design a system to meet the requirements, while avoiding shedding light all over the neighborhood.

Regarding the "The variance is the minimum variance necessary to make reasonable use of the property and is in harmony with the general purposes and intent of the ULDR" criterion, Mr. Lochrie felt they had demonstrated the need for evening games, and had agreed to various restrictions, per consultations with the neighborhood association.

Mr. Lochrie referred to a letter written to the Board by the neighborhood association president outlining stipulations and agreements Cardinal Gibbons High School had made regarding the use of the field lights to protect the neighborhood from problems they were concerned about due to the nighttime activity. Mr. Lochrie agreed to include these as conditions of the variance. He said the school was also committed to providing a significant landscape buffer around the field.

Mr. Vernon Jay Frankee, lighting expert, described his area of expertise and work he had done. He explained that the City had used the same lighting system a few years

ago at Holiday Park and other parks to control the spill level. Mr. Frankee described criteria used to design lighting systems, and noted that glare was of particular concern for sports. He explained that the use of taller poles and more specialized lighting fixtures reduced glare, afforded better safety and comfort and allowed lights to be pinpointed onto the field instead of spilling into the neighborhood. Mr. Frankee stated if the lights had been made 35 feet tall no one would have liked it.

Mr. Willey said Mr. Lochrie had indicated that due to their design, these lights would not have any spillover, and asked if this was true. Mr. Frankee stated there was some spill over, but it did not exceed levels stipulated by the City, which was one foot-candle at the property line. Mr. Frankee confirmed he had not designed this system. He said when he designed a lighting system, he took the neighborhood into account. Mr. Frankee stated when he designed a project, there was usually a civil engineer who checked zoning codes for height restrictions; he was mainly concerned with light spill over. Mr. Willey asked how many feet the spillover was; Mr. Lochrie said the measurement was made at the property line and decreased as one moved outside the property line.

Mr. Lochrie confirmed that there would be 30 athletic events per year requiring the lights to be turned on. Of those, only five would go past 8:30 p.m. To provide traffic control, the school had agreed to have at least six uniformed police officers on-site during any football game, to set police barricades at the two main entrances to the neighborhood to restrict access, and to provide an off-site parking facility for big games.

Mr. Lochrie said the neighborhood association would be provided with updates on upcoming events that they could notice in their newsletter. This would provide direct, ongoing interaction between the school and neighborhood association.

Mr. Shallenberger was concerned about guarantees for the neighborhood. Mr. Lochrie said the school would sign a written agreement with the City and/or neighborhood association that would include enforcement rights against the school for violating the agreement.

Mr. Bernard Paul-Hus, the electrical contractor, described work done by his company and said they were probably the largest electrical contractor in the area. Chair Strawbridge asked Mr. Paul-Hus if he took the Zoning Code into consideration when designing lighting. Mr. Paul-Hus explained that usually by the time he became involved, the lighting was already designed. For this project, Mr. Paul-Hus said he never would have looked at the City code regarding the heights, but only the National Electric Code and light spillage.

Mr. Paul-Hus said the plans had been very clear, and were approved on first submission. The project had passed two inspections and it was not until the inspection to provide temporary power for testing that this issue was raised for the first time.

Ms. Centorino asked what the result would be if 35-foot poles were used. Mr. Paul-Hus guessed that it would be possible to light a track, but it would become dark very quickly toward the center of the field. If the lights were angled out, they would blind players on the field.

Mr. Brewton explained the permit process for the light poles. Mr. Shallenberger asked Mr. Lochrie what the school would have done if the permit had been denied. Mr. Lochrie said the school would not have installed the lights, but would have pursued a process similar to this one because it was important for the school to have the lights. Mr. Shallenberger wondered if community outreach would have been better if the permit had been initially denied. Mr. Lochrie acknowledged that the community outreach process had occurred "kind of backwards" in this case, but he could not say if the results would have been different if done sooner.

Mr. Lochrie stated another condition of the variance could be subjecting the variance to the Board's jurisdiction so that if the school violated the conditions of the variance, it could be revoked until the condition was corrected.

Chair Strawbridge was surprised that the designer was not present since he was the person responsible for the plans. Mr. Paul-Hus said he had signed the same affidavit as the contractor. He stated per his and the designer's reading of the code, since these were sports lights for a sports field, they did not believe this violated the code. He had since learned that the City of Fort Lauderdale interpreted that these light poles were a structure. Mr. Lochrie confirmed that "light poles" were never specifically mentioned in the code. He reiterated that this application met the criteria for variance.

Mr. Dunckel stated there had been papers filed by an attorney in opposition to this request and he felt residents represented by attorneys should be given an opportunity to present their case prior to opening the public hearing.

Mr. Tucker Gibbs, attorney, explained he represented Dr. Robert Prager and Edward Deeb, who both lived adjacent to the school. He stated both of his clients objected to the granting of the variance, because it failed to meet the standards. Mr. Gibbs stated lighting was not the issue; the height of the structure was the issue.

Mr. Gibbs stated there was a provision that came before all of the criteria, which was that the applicants must show a unique hardship by fulfilling all five of the criteria. Mr. Gibbs said the applicant had provided no competent and substantial fact-based evidence in the record relating to each one of the criteria.

Mr. Gibbs reminded the Board that a variance could only be granted if the applicant demonstrated a hardship that was attributable to the land by proving its met all five of

the variance criteria. Regarding the first criterion. Mr. Gibbs said a hardship must be such that it rendered it virtually impossible to use the land for the purpose for which was zoned. This property had been used as a school since 1961 and afforded the owner that reasonable use. There was no requirement in the law that the school must have lighted football fields. Mr. Gibbs said this might help the school, but the lack of a football field did not present a hardship that deprived the school of the reasonable use of their land. He noted that the school had prospered academically and athletically for 40 years without a lighted field.

Mr. Gibbs referred to a case called Geary versus the City of Coral Gables. In this case, it was specified that the hardship must arise from circumstances peculiar to the realty alone, unrelated to the conduct or the self-originated expectations of any of its owners. Installing lights on the football field was a self-originated expectation; it was not related to the land. Mr. Gibbs stated health was not a hardship in zoning law.

Regarding the first criterion: “Special conditions and circumstances affect the property which prevent the reasonable use of the property” Mr. Gibbs stated reasonable use of the property was what it was zoned for, which was a school, and they had this reasonable use.

Regarding the second criterion, “Circumstances which cause the special conditions which are peculiar to the property at issue or to a small number of properties” Mr. Gibbs stated this related to the reasonable use. The circumstances which caused the special conditions were not relevant, because the school had the reasonable use of the land.

Regarding the third criterion, “Literal enforcement of the land development regulations would deprive the applicant of a substantial property right enjoyed by other properties in this zoning district” Mr. Gibbs said the applicant had presented no evidence that the installation of the 65-foot and 95-foot light fixtures where code allowed a maximum of 35-foot light fixtures was a substantial property right. Mr. Gibbs agreed the school had the right to light the field, but they did not have the right to a variance for a certain type of lighting.

Regarding the fourth criterion: “The unique hardship is not self-created nor is it the result of mere disregard or ignorance of the provisions of the ULDR” Mr. Gibbs said, “Everybody got up here and said, ‘Hey, we knew the ULDR said this.’” Therefore, this hardship was self-created and was a result of disregard of the provisions of the ULDR.

Regarding the fifth criterion: “The variance is the minimum variance that will make possible the reasonable use of the property, will be in harmony with the purpose, intent of the land development regulations, the use as varied will not be incompatible with adjoining properties or the surrounding neighborhood or otherwise detrimental to the public welfare” Mr. Gibbs reiterated that the variance was not necessary to permit

reasonable use of the property. He stated the variance ran counter to the language of the ULDR which specified 35 feet was the maximum height in this zoning district. Mr. Gibbs said Mr. Lochrie had admitted that the lights would have negative impact on the neighborhood, and had devised an agreement with the surrounding neighborhood to mitigate that.

Regarding Mr. Lochrie's proposal for the applicant to "make a deal" with the Board, Mr. Gibbs said one reason people had problems with government was that governments tended to play favorites with enforcement of laws. Mr. Gibbs said it was his clients' position that it would set a bad precedent for the Board to make a contract outside the code.

Mr. Dunckel asked that homeowners living within 300 feet of the school address the Board next; any residents living more than 300 feet away would speak later under general public comments.

Mr. Edward Deeb, 4310 Northeast 28th Avenue, said his property faced west, overlooking the football field behind Dr. Pager's home. He strongly opposed the variance request, and said he did not believe there was a hardship inherent with the property that prevented the school from utilizing the property as they had since 1961.

Mr. Deeb said the problem with this request was that it would be at the expense of the entire surrounding community. Mr. Deeb said the objection was not to the light spillage but to the hulking light structures, which would be so out of place on the skyline of the Coral Ridge neighborhood. He felt the lights would negatively impact the welfare of the community and the home values. Mr. Deeb pointed out that the school had not performed any outreach in the community during the planning process and had instead waited until they realized there was a problem with the neighbors.

Mr. Deeb said he had contacted the homeowners association and asked them to hear this case. But the president of that board rejected this idea, stating it was not a homeowners association issue. He and Dr. Prager had "crashed" a homeowners association meeting and tried to explain to them why they had such a problem with this. He noted that this issue had never been put to the full homeowners association membership for a vote. The letter sent to the Board of Adjustment was the opinion only of the homeowners association board members who had voted for it. Mr. Deeb asked the Board to deny the variance request.

Dr. Robert Prager, adjacent property owner, recited athletic awards and titles the school had won over the years, and wondered what the hardship was for the school. He asked if this was a request to overcome an inconvenience and to achieve a higher and more intense use of the property at great expense to the adjoining homeowners. Dr. Prager noted that the home sites in the area were planned first and the school chose to be "an

island in a sea of residential property." He said there was no hardship, and the light fixtures were not compatible with their beautiful homes. Dr. Prager also worried about security and safety issues on the property that additional nighttime events could cause. He asked the Board to deny variance request.

Dr. Prager explained to Mr. Jordan that when there were large afternoon football games parking became an issue on the lawns of the neighborhood. He said beer bottles also appeared in his backyard.

Mr. James Colonel, 4320 Northeast 28th Avenue, said he opposed the lights in the neighborhood. He felt they would drastically negatively impact the neighborhood. Mr. Colonel noted the traffic and parking problems that already occurred during very large games, and said these games belonged in a stadium, not in a residential neighborhood. Mr. Colonel pointed out that the request for the variance had been caused by the City's mistake in granting the building permit.

Chair Strawbridge opened the public hearing.

Mr. John Darling said his complaint was not against the lights but the light poles, which he said were like cell towers in the neighborhood.

Mr. Gus Halmoukos said the lights turned the neighborhood into Dolphins Stadium and could be seen from blocks away. He noted that the football team had been playing without the lights for years. Mr. Halmoukos remarked on the noise made by people leaving the football games and said this was bad enough now, but a least it was happening in the afternoon, not at 10 o'clock at night. Mr. Halmoukos said he had spoken with the vice president of the homeowners association board, who indicated he would not oppose the lights because his children went to the school and his wife worked there.

Ms. Margo Possenti said her backyard was adjacent to the football field. She strongly opposed the lights because of the potential crime, noise, light pollution and negative impact on property values. She was concerned that the promises the school would make to the homeowners association would not be kept over the long term.

Mr. Patrick Curry said he and many other neighbors did not object to the lights, and he felt Cardinal Gibbons High School had always been a very good neighbor. He noted that Cardinal Gibbons allowed families participating in sporting events at Bayview Park to use their parking area because City parking was insufficient. Mr. Curry said he disagreed with some neighbors' concerns about an increase in crime, traffic and a decrease in property values. He believed nighttime kids' sporting events were very wholesome events. Mr. Curry pointed out that if the school installed 35-foot lights, and

did not require a variance, there would be no requirement for the school to provide law enforcement or traffic control.

Mr. John Bloom said one of the reasons he had bought his home was to be near the school. He was in favor of the lights and believed holding the games at night would allow more families and their children to attend. Mr. Bloom explained that the park lights already shined into his home, so he appreciated the lights' being designed to avoid spilling over into the community.

Mr. Harry Durkin said he had seen many games and events at Cardinal Gibbons for the past 23 years. He believed the City could handle anything that might happen as a result of granting the variance, and was convinced that Cardinal Gibbons would maintain law and order.

Mr. Edward Merrigan said his property was approximately 100 feet away and he was in favor of the lights.

Mr. Bob Hanke praised Cardinal Gibbons, and said the lights did not bother any neighbors he knew off except for those complaining today. He wondered if the neighbors would be concerned about crime if these lights were replaced with 35-foot lights. Mr. Hanke said the lights in Bayview Park were 60 to 65 feet tall, and he felt denying the variance would be penalizing the school. Mr. Hanke said the only way they would know the effect the lights would have on the neighborhood would be to turn them on.

Ms. Kara Cespedes said she supported sporting events but she had problems with Cardinal Gibbons kids walking onto the golf course after school, smoking pot and doing drugs. She said she had spoken with the principal at Cardinal Gibbons when she had problems with kids speeding down the streets, and he informed her that the school had no control over the students after 3 p.m. Ms. Cespedes said there had been two fatality accidents on Bayview Drive in the past month and she was worried about her children's safety.

Mr. Dave Benson said he supported the lights, because he supported kids and providing kids a positive environment. Mr. Benson said he had coached on this field and remarked on the fact that it was horrendous to play on that field in the heat of the day.

Ms. Elva Bielejeski said over the past 40 years in the neighborhood she had seen a big change in crime in the area. She opposed the lights, because in her experience in New Rochelle, New York, nighttime football games did bring an increase in crime.

Ms. Rosemary Rayhill remembered kids speeding down the streets before the speed bumps were installed. She felt they could revisit the light issue now and acknowledged this could be a positive thing, allowing families to get together in the evening.

Ms. Deana Paul explained that during afternoon games, cars parked lining both sides of the streets and she believed this presented an access problem for emergency vehicles.

Father Vincent Kelly explained that the land was platted in 1960 and the school was built soon after. The church was built in 1969. Father Kelly referred to the lights at St. Thomas Aquinas, and said they had existed there for over 35 years. On the average weekend, St. Thomas had over 3,500 people at their games, and Father Kelly said this had fostered community cohesiveness. He admitted there were some who might be offended by excess parking, but added the church did not mind residents using the church and school parking lots while using the park.

Father Kelly said the school wanted to be a good neighbor. He noted that there would be crime in the area with or without a night game, and they had up to sixteen police officers to control traffic during games at St. Thomas. Father Kelly asked for the Board's consideration for their students.

Mr. Paul Ott, principal of Cardinal Gibbons High School, refuted the statement made by Ms. Cespedes that he had informed her he did not have control over his students after 3 p.m. He said he did exercise control over the students after three p.m. Mr. Ott asked the Board to take into consideration the health and welfare of the students, noting that northeast Fort Lauderdale was enhanced by Cardinal Gibbons, and that many graduates played a prominent role in politics, law enforcement and the legal profession in Fort Lauderdale and the students donated thousands of community service hours.

Ms. Sharon O'Connor, President of the Coral Ridge Country Club Estates Homeowners Association, said she was not biased on this issue and represented the neighborhood. She said the board had discussed this at length and felt strongly that the school had been a cooperative neighbor in many ways, and they believed the school would live up to the conditions in the agreement. Ms. O'Connor said there was one thing missing, this was an agreement to allow citizens to use the school's parking for all events at Bayview Park.

Mr. Shallenberger asked how many members were on the homeowners association board. Ms. O'Connor informed him that there were 16 board members and all of them had input into the letter sent to the Board of Adjustment. The vote was a majority; two board members had been out of town; two had been adamantly opposed; one had been on the fence and one had been unable to attend the meetings. Ms. O'Connor said the board had heard from many people and they had created the list of conditions to address all the residents' concerns.

Ms. O'Connor explained the homeowners association board had originally decided not to take a stand on the issue, but some members have become emphatic and the board had decided that because they had been elected to make decisions for the neighborhood, they must take a position.

Chair Strawbridge remarked how homeowners associations usually resisted taking a position on a variance request, and asked if Ms. O'Connor felt the Board of Adjustment should make their decision based upon the criteria or whether the applicants were "good guys are not." Ms. O'Connor said that was the Board's job and she did not know the details of how the Board made their decisions. She reminded Chair Strawbridge that there were other issues such as the parking situation in the neighborhood. She said if the school and the church did not support the neighborhood in its parking problems there we would be no Coral Ridge Little League or City games at Bayview Park. She believed there was reason for compromise, and said the board was sincerely sympathetic to the concerns expressed by Mr. Deeb and Dr. Prager. Ms. O'Connor confirmed for Chair Strawbridge she was adamant that the variance should be revocable if the school violated the conditions.

Ms. O'Connor explained to Mr. Jordan that the homeowners association board had several meetings regarding this. At the September meeting, the school and residents had made presentations, after which the board discussed the situation and agreed they needed to take a position. At the meeting, Ms. O'Connor had requested a show of hands from those willing to support a compromise with Cardinal Gibbons High School, and all but one board member raised their hands. They had held another meeting to hammer out the points of the compromise.

The Board took a ten-minute break and upon returning, addressed the Coral Ridge Ministries deferral.

Mr. Michael Piper, a member of the Board of Directors of Coral Ridge Little League, said he had been authorized by the board to speak for them. He explained that Coral Ridge Little League operated out of Bayview Park.

Regarding the criterion: "The variance is the minimum variance that will make possible the reasonable use of the property, will be in harmony with the purpose, intent of the land development regulations, the use as varied well not be incompatible with adjoining properties or the surrounding neighborhood or otherwise detrimental to the public welfare" Mr. Piper stated the use of the school's field for nighttime football games would not be incompatible with the neighborhood as this had been going on at the park for many years. Mr. Piper said the lights were good for the general welfare of the community in the same way the High School itself was a benefit. He stated the Little League could not operate without Cardinal Gibbons' assistance regarding parking. Mr.

Piper added the school allowed the Little League to use their rooms for meetings as well. Mr. Piper said Coral Ridge Little League was concerned that if Cardinal Gibbons was not permitted the lights they no longer allow others to use the parking lot and classrooms.

Mr. Piper said he was an attorney who defended cities when their staff members made mistakes. He was aware that if a city made a mistake in issuing a permit it could stop a project once this was discovered. Mr. Piper said the fact that the government could do this to a person did not make it the right thing to do. Mr. Piper said there were justifiable reasons for granting variances for the light poles.

Mr. John Lindsay had attended day games at Cardinal Gibbons and remarked on the danger of the heat. He said he could see the lights from his home and they were not a problem for him or his neighbors.

Mr. Tim Hernandez felt that for a neighborhood to be healthy, it should have a heterogeneous mix of uses. He felt this made Coral Ridge a healthy, unique place. Mr. Hernandez said the mix of land uses in the area had existed harmoniously for years. He felt the variance criteria were met and wondered why the variance was required. He noted that the ULDR allowed to such things as chimneys, steeples and other projections to exceed the height limitation.

Mr. Gibbs asked if Mr. Hernandez was testifying as an expert, and Mr. Fernandez replied that he was testifying as a neighbor.
Ms. Kathie Wayland said this was not a community; it was a neighborhood. She did not understand how Mr. Gibbs could say that playing in 90° heat was not a hardship. Ms. Whalen said she was in favor of the lights, and did not understand if people's objection was to the lights or to the height.

Mr. Ryan Bass said he was present on behalf of Cardinal Gibbons students. He did not believe the lights would have a negative impact on the community, noting that the school provided security and protection. Mr. Bass said the lights would allow kids to attend school events, take pride in their school and do positive things in the community.

Mr. John Kelley explained he was involved in youth athletics and said the cheering and the bands he could hear during football games was music to his ears. He said he had knowingly bought his home in an open, vibrant community, and he would never advocate anything that was not in harmony with the community. Mr. Kelley said he fully supported the variance request for the following reasons: Playing games at night was safer for the players and game attendees; girls' lacrosse was played in the winter when the sun went down significantly earlier; Cardinal Gibbons had been a tremendous neighbor.

Ms. Linda Mattlack stated the lack of lights presented a hardship. It was not only difficult to see during many games in the winter, but also games were often called because of darkness.

Mr. Carlos Perez Cubis wondered why anyone would buy a home near a school and not expect school activities. He said a good, successful school in the community was a plus in real estate.

Mr. Bob King said many of the issues raised in opposition to the light poles such as parking, litter and traffic were already issues because games were being held at the field. Mr. King believed many people bought homes in the area because of the school. He seriously doubted most people checked the allowable height for lights in the area before buying their homes. Mr. King acknowledged the school would have lights, and these particular lights would restrict light spill over into the neighborhood and provide better field illumination. He agreed that the lights were a matter of safety for the students, and the health/safety concerns created the hardship.

Mr. Richard Dudee felt those who opposed the variance request actually opposed night games, not the height of the lights. He stated lights were permitted as long as they were not over 35 feet, and football games were permitted, including night games. Mr. Dudee noted that if the variance request was turned down, the school would build the lights at 35 feet and would be permitted to use the field as often as they wanted. If the variance were granted, the Board could include conditions which would address the neighbors' concerns.

Mr. James Ambrose, member of the Coral Ridge Country Club Estates Homeowners Association board, said it was stated on the permit the contractor and principal signed that they agreed to abide by all laws and building codes. Mr. Ambrose stated, "Heights 60 feet above the building code is devastating to a residential neighborhood."

Mr. Jason Ulbrich, member of the Coral Ridge Country Club Estates Homeowners Association board, said he was a strong believer in private property rights and the rule of law, and he must support residents who opposed the lights. He believed the code was created to protect homeowners and felt they should be adhered to. He feared if the lights were permitted it could cause some residents' properties to be devalued.

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

Mr. Goldman asked Mr. Gibbs and Mr. Lochrie A) If they each stood by their legal arguments, and B) If their clients intended to sue if the Board voted against their client's interests. Mr. Gibbs said he stood behind his legal argument said he could guarantee

his client would sue if the Board granted the variance. Mr. Lochrie said he stood behind his legal argument and the school would pursue "any available legal rights" if the Board did not grant the variance.

Chair Strawbridge pointed out that the poles could be utilized in the future for things such as cell phone antennas and other revenue-generating devices. Mr. Lochrie assumed Chair Strawbridge was intimating that the school would intentionally attach some other device in order to circumvent the code, and stated they would absolutely agree there would be nothing else mounted on the poles.

Mr. Jordan asked Mr. Lochrie to restate the hardships. Mr. Lochrie said lights were desired to allow games to be played in the evenings. Hardships included:

- The lack of lights prevented in the school reasonable use of its athletic facilities
- The peculiarity of the property was the presence of the Church
- Kids were forced to play in the daytime heat

Mr. Jordan asked if there was a hardship for the neighbors. Mr. Lochrie said it was important for the neighborhood that the school make reasonable concessions, as they had agreed to do.

Mr. Gibbs said he was concerned with the law and not with opinions.

Mr. Goldman felt it obvious that this would end up in court, but said he believed Mr. Gibbs had the stronger legal argument.

Mr. Larson hoped to this would not go to court. He said he had walked the area and understood the different hardships. He explained his own situation in which a parking garage had been built nearby that flooded his condo with very bright light all through the night. Mr. Larson said he had created a list of pros and cons regarding the situation. When he considered the 35-foot light fixture he had determined that the angle would be low enough that light overspill in the neighborhood would be severe.

Mr. Larson believed that the traffic issues had existed for years and could be addressed. He said he would favor the variance for the lights because he did not want property owners to go through what he had gone through at his home and the variance would allow them to put conditions on use of lights. Mr. Larson acknowledged that his decision was not strictly according to the law, but said he was considering what was good for the people and he believed the neighborhood would benefit from the higher lights.

Mr. Dunckel agreed the Board could include reasonable conditions to attach to the variance. He pointed out that the existing draft of the agreement was not sufficient but

could be used as an outline. He noted that turning police powers over to the neighborhood association and the school was not the way to go with respect to conditions attached to variances.

Mr. Shallenberger was concerned about the fact that a homeowners association had been pressured to become involved with a variance request. Mr. Shallenberger said in his experience working for the City, agreements with homeowners associations did not work in the long term. Mr. Shallenberger believed it was not correct to compare the park and the school.

Mr. Shallenberger said he had read the affidavits regarding the dangers of students playing sports in the daytime heat, and asked Mr. Ott to read the affidavits before scheduling any future daytime sports practice or game outdoors.

Ms. Centorino stated, “I feel like a heel.” She believed that under the legal definition of a hardship she agreed with Mr. Gibbs' argument. At the same time, she had children who had been involved in sporting events and had attended games in the daytime sun and had “died of the heat.” Ms. Centorino admitted she would have to vote against the variance because she did not believe the request met the criteria for a hardship.

Mr. Jordan said it was the Board's job to determine if there was a hardship. In this case, he believed there was a hardship for the homeowners, not the school. Mr. Jordan also did not like the way the homeowners association board had made the decision for the homeowners without a vote from the entire membership.

Mr. Willey stated the Board of Adjustment had a set of criteria to determine hardship, strictly limited to the land and how it affected the use of the property. He believed Mr. Gibbs was “dead on” in his argument that the lack of light did not present a hardship to the school. He said he would not vote in favor of the variance request.

Chair Strawbridge wanted everyone to understand that the process and the law was working. He stated, “Unfortunately, there isn't a bonus point system for being a nice guy under the zoning code.” He said the school was a tribute to what was right and good in the community and “…what good guys do and what great guys do is they play by the rules… and sometimes that means you don't get what you want.”

Motion made by Mr. Larson, seconded by Mr. Willey, to approve. In a roll call vote, the vote was as follows: Ms. Centorino -- no; Mr. Goldman – no; Mr. Jordan - no; Vice Chair Larson – yes; Mr. Shallenberger – no; Mr. Willey – no; Chair Strawbridge -- no. Motion **failed** 1 - 6.

At 10:45 Mr. Goldman left the meeting and Mr. Sniezek joined the Board on the dais.

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2. Appeal No. 08-33

APPLICANT: **Brian and Christine Fingado**
LEGAL: **"Beach Way Heights Unit B", P.B. 25, at Page 27, Lot 64**
ZONING: **RS-4.4 (Residential Single Family/Low Density District)**
STREET: **1272 Seminole Drive**
ADDRESS: **Fort Lauderdale, FL**

APPEALING: **Section 47-19.2.BB (Accessory buildings and structures, general-Swimming pools, hot tubs and spas)**
Requesting a variance to allow a waterfall/slide feature that is ten (10) feet in height to be located six (6) feet from side property line, where Code requires that such features shall not exceed 2½ feet in height when located within the required yard.

This case was taken out of order.

Ms. Christine Fingado, applicant, requested deferral to a future time to make sure her application was properly made. She explained her contractor had filed the application and she did not believe it "fully reflects what my feelings are on the matter.".

Mr. Willey said he had visited the property and discovered that the waterfall had already been constructed.

Motion made by Mr. Larson, seconded by Mr. Jordan, to defer the item to October 8, 2008. In a voice vote, with Mr. Willey opposed, motion **passed** 6 - 1.

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3. Appeal No. 08-23

APPLICANT: **Peter Derrig**
LEGAL: **"Coral Ridge Country Club Addition #1," P.B. 40, P. 18, Block 1, Lot 25 together with all fixtures located therein and improvements located thereon**
ZONING: **B-1 (Boulevard Business)**
STREET: **4200 N. Federal Highway**
ADDRESS: **Fort Lauderdale, FL**

APPEALING: Section 47-23.3 (Setback requirements at rear of business building abutting an alley)

Requesting a variance to allow a zero (0) feet setback from the property line for a trash enclosure, where the code requires a fifteen (15) foot setback from the property line.

Mr. Edward Amoroso, architect, said the applicant wanted to store the trash container on the property line. He explained that if the variance were not granted, they would lose a third of the rear garden and two parking spaces. Mr. Amoroso provided photos of surrounding properties and noted that they all had trash containers on the property line. Mr. Amoroso said they intended to build a concrete platform and a wood enclosure for the container.

Mr. Amoroso acknowledged that this was not the only option, but it was the best option.

Mr. Shallenberger said there were always alternatives, and this was one of the best.

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

Motion made by Mr. Shallenberger, seconded by Mr. Larson, to approve. In a roll call vote, the vote was as follows: Ms. Centorino - yes; Mr. Jordan - yes; Vice Chair Larson – yes; Mr. Shallenberger – yes; Mr. Sniezek – yes; Mr. Willey – yes; Chair Strawbridge - yes. Motion **passed** 7 - 0.

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4. Appeal No. 08-34

APPLICANT: BZ Holdings, LLC
LEGAL: "Beverly Heights", P.B. 1, P. 30, Block 18, Lots 1 and 2
ZONING: RO (Residential Office District)
STREET: 1116 and 1120 E. Broward Boulevard
ADDRESS: Fort Lauderdale, FL
APPEALING: Section 47-21.9.2.a. (Landscape requirements for vehicular use areas - Perimeter landscape area)

Requesting a variance to allow a perimeter landscape area of 0 feet – 28 feet and an average of 12 feet 1¾ inches, where the code provides that the depth of the perimeter landscape shall be a minimum of five (5) feet, a maximum of twenty-eight (28) feet, and an average of ten (10) feet.

APPEALING: Section 47-21.10.B.3. (Landscape requirements for all zoned district)

Requesting a variance to allow 32.91% of landscape area, where the Code requires a minimum of thirty-five percent (35%) of the gross lot square footage shall be in landscaping, maintained by an irrigation system.

Mr. Robert Lochrie, representative of the owner, explained that the site was at the Southwest corner of Southeast 12th Avenue and Broward Boulevard with a 2,700 square foot medical office building. He stated that they planned to build a 900 square-foot addition, which triggered landscape requirements the existing building did not meet. Mr. Lochrie explained they intended to install the required landscape buffer on the new site, but this did not exist on the west side of the property. The landscape code also required a 35% landscape area, but the existing site only contained 25% landscape area. Mr. Lochrie said the landscaping they would create with the addition would increase the total to approximately 32%.

Mr. Lochrie said the hardship was that extending the landscape area to Broward Boulevard would result in the loss of two parking spaces. They were therefore requesting to be permitted to leave the west side of the property as it was, with the caveat that they were bringing the overall landscaping up to 32% and providing all of the other requirements for the addition.

Board members disclosed communications they had regarding this case.

Mr. Jordan said this was in his Colee Hammock neighborhood, and the homeowners association board did not have any objection to this request.

Chair's Strawbridge suggested the reduction of overall landscape area could be corrected by “tweaking down the square footage of the new edition.” Mr. Lochrie said the addition was intended to provide intern service for doctors and state statute regulated the size of the rooms.

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

Mr. Willey said ordinarily he would not be in favor of a variance such as this, but felt they should act to get the improvement now in this transition area because they might not have that opportunity in the future.

Motion made by Mr. Larson, seconded by Mr. Sniezek, to approve. In a roll call vote, the vote was as follows: Ms. Centorino - yes; Mr. Jordan - yes; Vice Chair Larson – yes;

Mr. Shallenberger – yes; Mr. Sniezek – yes; Mr. Willey – yes; Chair Strawbridge - yes. Motion **passed** 7 - 0.

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Rehearing

5. Appeal No. 08-20

APPLICANT: **Coral Ridge Ministries Inc.**
LEGAL: **Coral Ridge Commercial Blvd. add No. 1 52-17 B that PT of TR B & VAC alley lying N of A line, said line being 261.88 N of SW Cor Lot 5 Blk 2, Meas Alg E R/W/L of US 1 & Perpend to said E R/W/L**
ZONING: **B-1 (Boulevard Business)**
STREET*:* **5554 N. Federal Highway**
ADDRESS: **Fort Lauderdale, FL**

APPEALING: **Section 47-22.3.E (General Regulations – Detached freestanding signs and pylon signs)**
Requesting a variance to allow sign to be setback 5 feet, where Code requires 20 foot setback when detached signs are located within any zoning district abutting those trafficways subject to the Specific Location Requirements, Interdistrict Corridor Requirements as specified in Section 47-23.9, shall be located a minimum of twenty (20) feet from the property line of the lot or plot on which the sign is located.

The Board of Adjustment **DENIED** this application by a vote of 0 in favor and 7 against on June 11, 2008.

This item was heard out of order.

Mr. Paul Cochran, representing Knox Seminary Board, stated he was ready to proceed, but said the Board may wish to defer. Chair Strawbridge advised Mr. Cochran that if he wanted the case to be heard this evening, it must be heard last. Mr. Cochran agreed to see how the meeting progressed.

Upon returning to the case, Mr. William Ashcraft, representative of the seminary, requested a deferral to the next meeting on October 8.

Motion made by Mr. Larson, seconded by Mr. Goldman, to defer the item to October 8, 2008. In a voice vote, motion **passed** 7 - 0.

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Report and For the Good of the City

Mr. Willey referred to the request for a deferral from Christine and Brian Fingado the Board had granted earlier in the evening, and asked if staff could indicate on the

agenda when projects for which variance were sought had already been completed. Mr. Burgess agreed to do this and Mr. Dunckel agreed there was no legal issue.

There being no further business to come before the Board, the meeting was adjourned at **11:10 p.m.**

Chair:

_____

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.

Minutes prepared by: J. Opperlee, Prototype Services