

BOARD OF ADJUSTMENT MEETING
City of Fort Lauderdale
Wednesday, November 12, 2008 – 6:30 P.M.
City Hall City Commission Chambers – 1st Floor
100 North Andrews Avenue
Fort Lauderdale, Florida

<u>Board Members</u>	<u>Attendance</u>	<u>Cumulative Attendance</u> <u>6/2008 through 5/2009</u>	
		<u>Present</u>	<u>Absent</u>
Scott Strawbridge, Chair	P	5	1
Don Larson, Vice Chair	P	5	1
Diane Centorino	P	5	1
David Goldman	P	5	1
Gerald Jordan	P	6	0
Bruce Weihe	A	4	2
Birch Willey	P	5	1
 <u>Alternates</u>			
Michael Madfis	P	5	1
Henry Sniezek	A	5	1
Karl Shallenberger	P	5	1

Staff

Bob Dunckel, Assistant City Attorney
Yvonne Blackman, Secretary
Cheryl Felder, Service Clerk
Terry Burgess, Chief Zoning Examiner
Mohammed Malik, Chief Zoning Plans Examiner
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 6:35 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. Larson, seconded by Mr. Jordan, to approve the minutes of the Board's October 2008 meeting. In a voice vote, motion passed 7 - 0.

Board members disclosed communications they had regarding items on the agenda.

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

1. Appeal No. 08-35

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APPLICANT: Christopher and Jenessa Stearns
LEGAL: "Progresso", P.B. 2, P. 18, Block 235, Lots 12 and 13
ZONING: RMM-25 (Residential Multifamily Mid Rise/Medium High Density District)
STREET: 1801 NE 8th Street
ADDRESS: Fort Lauderdale, FL

APPEALING: Section 47-18.8.8 (J) (Child day care facilities – *Dispersal requirements*)

Requesting a variance to permit a childcare facility to exist 508 feet where Code requires that no childcare facility exist within 1,500 feet of an SSFR (Social Service Residential Facility) above a Level 1 facility.

APPEALING: Section 47-5.36 (Table of dimensional requirements for the RMM-25 district)

Requesting a variance to permit a side setback of 6 feet 10 inches, where Code requires 20 feet.

APPEALING: Section 47-5.36 (Table of dimensional requirements for the RMM-25 district)

Requesting a variance to permit a rear setback of 19 feet 10 inches, where code requires 20 feet.

APPEALING: Section 47-5.36 (Table of dimensional requirements for the RMM-25 district)

Requesting a variance to permit front setback of 15 feet, where Code requires 25 feet.

Mr. Grant Smith, representative of the applicants, requested a deferral to the Board's next meeting. He explained they were still consulting with the neighborhood and making changes based upon their input.

Motion made by Mr. Larson, seconded by Mr. Jordan, to defer this case to the Board's December meeting. In a voice vote, motion passed 7 - 0.

2. APPEAL NO. 08-38

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APPLICANT: Andrew and Millie Wright

LEGAL: "Coral Ridge Country Club Add No. 3," P.B. 52, P. 14, Block L, Lot 2

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

STREET: 3010 NE 42nd Street

ADDRESS: Fort Lauderdale, FL

APPEALING: Section 47-19.2.S (Accessory buildings and structures, general – *Mechanical and plumbing equipment*)

Requesting a variance to allow an Air conditioning Unit to remain in the front yard, where Code states that Mechanical and plumbing equipment, such as air conditioner compressors, generators, lawn irrigation pumps, and swimming pool accessories shall not be located in the required 25 foot front yard.

Mr. Ron Mastriana, representative of the applicants, displayed photos of the Wright's rebuilt house. He explained that this was a case of the plans having been created and approved and the inspections passed with no one noticing that the equipment was incorrectly located in the setback. Mr. Mastriana said the architect had thought that

locating the air conditioning unit behind a wall with heavy landscaping was a permitted way to design the plan.

Mr. Mastriana showed photos of the unit and requested a variance because he believed the installation met the intent of the code. He noted that all of the neighbors endorsed the variance request, and referred to a letter from the next-door neighbor in favor of the variance. Mr. Mastriana stated they had presented the request to the neighborhood association, which had no objection.

Mr. Mastriana explained to Mr. Madfis that the air conditioning compressor served half of the complex. Mr. Gerry Squadrito, project manager, informed the Board that there were four air conditioning units for the house. Mr. Madfis asked if there was no other possible location for the unit, and Mr. Squadrito said it could be moved to the front area. Mr. Madfis pointed out that there was plenty of room in the fenced in courtyard. Mr. Squadrito felt this would not be compatible with the beautiful front entrance. Mr. Madfis referred to the photo and pointed out the area he felt was a viable location.

Mr. Madfis stated, "The idea here is, can we build a building and develop a site in compliance with the code without having to ask for any variances. If you can do that, then I think you're having a hard time proving a hardship." This was why he had suggested a solution that would not require a variance.

Mr. Larson had visited the site and felt that moving the unit to the location suggested by Mr. Madfis would "do some injustice to the quality and the type of the building that's out there." He acknowledged there was no hardship, but felt that moving the unit would "make a mess of the ... ambiance of the front entranceway."

Mr. Mastriana agreed there were other places the unit could have been located that could have been considered "if there would have had some direction in the beginning on how to design it" but he believed locating in the front would be "ruining the front of this beautiful house." He felt granting the variance would be in keeping with the intent of the code.

Ms. Centorino referred to a letter from Al and Susan Rothberg, neighbors on the next street who expressed concern about setting a precedent if the variance was granted. Chair Strawbridge stated, "As a matter of course, we don't set precedents; it's pretty hard for somebody to come in and say we have." Ms. Centorino had visited the property and noted that the wall contained the sound from the unit.

Chair Strawbridge asked the applicants if they would agree that the wall and landscaping would remain as long as the unit was in place. Mr. Madfis felt the wall's remaining in place was critical, but added that the sound coming from the unit must not be permitted to increase either.

Mr. Dunckel said he assumed the unit met the noise ordinance now, and making a particular sound level a condition of the variance would require that someone measure the decibel level to record the threshold.

Mr. Willey felt they were considering multiplying the mistakes made by the architect and the City inspector who had approved the plans. He stated there was not a hardship other than creating a "little bit of an eyesore in the front yard" and said he found it difficult to grant "the eyesore hardship." Mr. Willey believed they were "working really hard at trying to convince ourselves to let this thing get a variance."

Mr. Goldman agreed with Mr. Willey, but said in this case there was no eyesore because the unit was behind an attractive wall. As long as the wall remained and the unit met the noise ordinance, Mr. Goldman said he would be inclined to grant the variance.

Chair Strawbridge reminded the Board that the code stated the responsibility for compliance fell to the design professional, not the City plan reviewers. He remarked on the design professionals who had appeared before the Board and admitted they had not taken the code into account when designing a project. Because of this, Chair Strawbridge said he no longer accepted that the City was partly to blame just because staff offered plan review on a voluntary basis. Chair Strawbridge said the Board was well within its rights to deny the variance and the owner would then be within his rights to sue the architect.

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. Madfis reiterated his remark that the unit could be moved to the entrance courtyard, adding that in this location its performance might be enhanced and the unit might last longer.

Motion made by Mr. Larson, seconded by Mr. Jordan, to approve, on condition that the wall and landscaping remained, and that the decibel level from the unit would never exceed by more than 7 the decibel level determined in a test to be performed by the applicant. In a roll call vote, the vote was as follows: Ms. Centorino - no; Mr. Goldman – yes; Mr. Jordan - yes; Mr. Larson – yes; Mr. Willey – no; Mr. Madfis – no; Chair Strawbridge - yes. Motion **failed** 4 - 3.

3. APPEAL NO. 08-40

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APPLICANT: Michel, LLC

LEGAL: All that portion of the S ½ of the SW ¼ of the SE ¼ of the NE ¼ of Section 12, Township 49 S, Range 42 E, 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: B-1 (Boulevard Business)

STREET: 6241 N. Federal Highway

ADDRESS: Fort Lauderdale, FL

APPEALING: Section 5.26(b) (Distance between establishments)

Requesting a special exception to allow a restaurant to sell alcohol that is incidental to the sale of food at a distance of 50.10 feet from an establishment (Legends Pub) that sells alcohol, where Code requires a minimum of 300 feet separating establishments that sell alcoholic or intoxicating beverages.

Mr. Franco Filippone, owner of the restaurant, said he did not intend to pursue a full liquor license. He informed the Board that there had been a restaurant on this site for over 20 years. Mr. Filippone said the owner of the nearby establishment supported his request.

Mr. Filippone had not been able to purchase the existing liquor license due to “massive amounts of liability that was on it.” He felt he must have the license in order to operate successfully. Mr. Filippone had discovered that in 2003, the Board of Adjustment had granted a special exception to the next-door Thai restaurant that sold beer and wine.

Chair Strawbridge informed Mr. Filippone that a special exception did not require a hardship. He asked if the food accounted for more than 51% of sales, and Mr. Filippone said the food was “well over” that threshold.

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

4. APPEAL NO. 08-41

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APPLICANT: Nick Motosko
LEGAL: "Lauderdale Isles, No. 2," P.B. 34, P. 3, Block 2, Lot 26
BROWARD COUNTY
ZONING: RS 5 (One-Family Detached Dwelling District)
STREET: 2523 Bimini Lane
ADDRESS: Fort Lauderdale, FL

APPEALING: County Code: Section 39-287, Rear yard

Requesting a variance to build a bedroom addition with a 8.5-foot rear yard setback, where Code requires 15-foot rear yard setback.

Mr. Roger Maki, architect, explained that the applicant was attempting to support his aged father while caring for a newborn. Mr. Maki acknowledged that the planned addition would protrude into the rear setback, but said this would not affect the neighbors to the rear because there was a waterway separating the properties. The addition would be screened from neighbors to the north by large bushes between the lots.

Ms. Centorino asked if the addition could be on a second floor instead of the ground floor. Mr. Maki said this was possible, but could be problematic and costly because of the age of the home.

Mr. Nick Motosko, owner, remarked that there was a two-story home in the neighborhood and it looked out of place.

Chair Strawbridge felt there were other options to accommodate Mr. Motosko's father within the existing footprint or within the setback requirements. Mr. Jordan said he was very opposed to interfering with the rear setback; he feared if this were allowed, neighbors would want to do the same. Mr. Motosko confirmed for Mr. Madfis that this was an original "Gill" house and there had been a minor addition made to the rear of the house prior to his ownership.

Mr. Larson agreed there were other options available to create additional space for Mr. Motosko's father. Ms. Centorino suggested that another room in the home could be converted for Mr. Motosko's father.

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. Madfis, seconded by Mr. Jordan, to approve. In a roll call vote, the vote was as follows: Ms. Centorino - no; Mr. Goldman – no; Mr. Jordan - no; Mr. Larson – no; Mr. Willey – no; Mr. Madfis – no; Chair Strawbridge - no. Motion **failed** 0 - 7.

Request For Extension Of Final Order

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[This item was heard out of order]

5. APPEAL NO. 08-05

This matter was presented to this Board on March 12, 2008 concerning the appeal of Jerry Lobel, “Amended Plat of Portions of Lauderdale Manor Addition,” the W. 46.52 ft. of Lot 12, together with the E. 43.48 ft. of Lot 13, Block H; “Chateau Park Section-B,” P.B. 31, P. 26, Block 158, 1241 W. Sunrise Boulevard, Fort Lauderdale, FL

Where the Appellant sought a variance from the Board under:

APPEALING: Section 47-18.3.A (Automotive sales dealer, rental agency, new or used)

Requesting a variance to allow a Auto Rental Agency on a 90-foot wide lot, where the Code requires a minimum lot width of 100 feet for a Auto Rental Agency.

Chair Strawbridge reported a letter had been received from the applicant’s representative requesting deferral.

Chair Strawbridge noted that the deferral was for platting the property. Mr. Dunckel reminded the Board that the building permit must be pulled within 180 days of the granting of the variance and advised the Board to defer this until their December meeting.

Motion made by Mr. Jordan, seconded by Mr. Larson, to defer this case to the Board’s December meeting. In a voice vote, motion passed 7 - 0.

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There being no further business to come before the Board, the meeting was adjourned at **7:43 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