

**BOARD OF ADJUSTMENT MEETING**  
**City of Fort Lauderdale**  
**Wednesday, December 10, 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	6	1
Don Larson, Vice Chair	P	6	1
Diane Centorino	P	6	1
David Goldman	P	6	1
Gerald Jordan	P	7	0
Bruce Weihe	P	5	2
Birch Willey	P	6	1
 <u>Alternates</u>			
Michael Madfis	P	6	1
Henry Sniezek	P	6	1
Karl Shallenberger	P	6	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

**Index**

	<u>Appeal Number</u>	<u>Applicant</u>	<u>Page</u>
1.	08-35	Christopher and Jenessa Stearns	<a href="#">2</a>
2.	08-47	Fort Lauderdale Community Redevelopment Agency	<a href="#">8</a>
3.	08-48	Sweeting Associates, LLC. (DBA) New Visions CDC	<a href="#">9</a>

**For the Good of the City**

**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. Jordan, seconded by Mr. Larson, to approve the minutes of the Board's November 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**

[Index](#)

**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 8<sup>th</sup> 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, attorney for the applicants, said they had engaged in discussions with the Victoria Park Civic Association and the neighborhood.

Mr. Smith displayed a map of the area, and explained that currently this was a 2,223 square foot single-family residence, and RMM-25 zoning allowed family day care with no more than five preschoolers, but required conditional use approval to increase that number to six to twenty-five children. The applicant had begun the process for obtaining the conditional use approval, but it had become apparent that two variances were required: setback and distance separation.

Mr. Smith pointed out that the footprint and general character of the existing structure would not change, and the immediate neighbors would notice no visual or physical difference. Mr. Smith said Ms. Stearns, her mother and sister had opened Montessori houses in New York and Florida.

Mr. Smith explained how the request met the variance criteria:

- a. That special conditions and circumstances affect the property at issue which prevent the reasonable use of such property.

Mr. Smith stated the “nurtury” was a hybrid between a residential and commercial use. The location was convenient for the parents, and was near more intensive uses, “thus would be a reasonable use for this purpose.” Mr. Smith believed “the familiar settings of home and the proximity to the neighborhood are crucial to the success of this project; it would be counterproductive to attempt to provide the desired degree of care and comfort to nurtury parents in a purely commercial property away from homes and neighborhood setting.”

Mr. Smith felt the neighborhood needed this sort of program, and referred to letters from parents in support of the request.

- b. That the circumstances which cause the special conditions are peculiar to the property at issue, or to such a small number of properties that they clearly constitute marked exceptions to other properties in the same zoning district.

Mr. Smith stated the nursery was a unique childcare facility, and pointed out that this type of request was rare in this zoning district. He explained the home environment was integral to the Montessori educational philosophy. This proposal included the adaptive reuse of an existing home for a childcare facility, and it was unlikely that any use such as this would come up nearby.

- c. That the literal application of the provisions of the ULDR would deprive the applicant of a substantial property right that is enjoyed by other property owners in the same zoning district. It shall be of no importance to this criterion that a denial of the variance sought might deny to the owner a more profitable use of the property, provided the provisions of the ULDR still allow a reasonable use of the property.

Mr. Smith said there were property owners all over the City within the RMM-25 who enjoyed a similar use, such as hotels and churches. He explained the most important reason for this request was that it was an important Montessori principle that children must be exposed to enough of their peers to learn from one another.

- d. That the unique hardship is not self-created by the applicant or his predecessors, nor is it the result of mere disregard for, or ignorance of, the provisions of the ULDR or antecedent zoning regulations.

Mr. Smith said the existing setbacks were compliant with requirements for single-family homes and family day care. He noted that the proximity to the Virginia Shuman Young School was important, because this would make for a more seamless transition from daycare to school.

- e. That the variance is the minimum variance that will make possible a reasonable use of the property and that the variance will be in harmony with the general purposes and intent of the ULDR and the use as varied will not be incompatible with adjoining properties or the surrounding neighborhood or otherwise detrimental to the public welfare.

Mr. Smith informed the Board that the 20-foot side yard and 25-foot front setback were required for other use categories in the RMM-25, not specifically for child home care.

He believed a childcare facility would be on the “very low intensity end of all those other uses that it could potentially be.”

Mr. Smith said the rear setback request was for less than one foot, but compliance would require demolition of the structure if the conditional use were granted without the variance.

Mr. Smith wished to address some of the concerns expressed by the Victoria Park Civic Association.

Incompatibility with RS-8: Mr. Smith remarked that the property to the north of this one was a more intense use than this would be. It also had a greater visual and traffic impact on the neighborhood.

Parking: Mr. Smith said the applicant had permission from the Unity Church at 6<sup>th</sup> Street and 18<sup>th</sup> Avenue for staff to use the church parking lot from 7:30 a.m. to 6:00 pm Monday through Friday. A parking variance would still be required from the City regarding on-site parking.

Garbage: Mr. Smith said the applicant had arranged for private trash pickup on all weekdays the property was not already serviced by the City, and presented a letter pursuant to this.

Possible change of operator: Mr. Smith’s client had agreed to limit any approvals to the current applicant only, not the property.

Number of students: The applicant was willing to limit enrollment to no more than 18 students.

The covenant: Mr. Smith remarked that they had worked well with the Civic Association, and believed the covenant was enforceable. He stated it would “provide teeth” to all of his client’s concessions.

Mr. Smith said the school’s proximity to the nearby SSRF [a retirement community] would allow the groups to have combined activities. He noted that most of the immediate neighbors would not be home during school hours, and there was a fence and trees that provided a buffer to the adjacent property.

Mr. Weihe referred to the declaration of restrictions, and asked if the variance would go away in the event something happened to Ms. Stearns. Mr. Smith did not believe the applicant’s husband would continue the business, and agreed the variance would go away.

Mr. Dunckel noted that the language did say “and/or” Mr. or Ms. Stearns, and Mr. Smith agreed to re-draft that section. Mr. Dunckel noted that the current wording did not ensure the variance would go away, and advised the Board that they had never accepted a declaration prepared by an applicant. The Board could attach conditions to the granting of the variance, and could use excerpts from the declarations for the conditions.

Mr. Willey was concerned that the parking agreement with Unity Church was not as “firm” as it should be. Mr. Dunckel added that for an offsite parking agreement, the City required a 50-year lease between the parties on the parcel used for parking. Mr. Smith reminded the Board that they would go before Planning and Zoning to request a parking reduction or to use offsite parking to satisfy the parking requirement. The request today did not concern parking. Mr. Dunckel informed the Board that if they approved the variances, it would be presented to Planning and Zoning for approval of conditional use. The Planning and Zoning Board could also request changes to the site plan.

Chair Strawbridge acknowledged that this Board was not voting on the parking, but the applicant chose to discuss parking to address concerns from the neighborhood.

Chair Strawbridge opened the public hearing.

Mr. Ted Fling, Vice President of the Victoria Park Civic Association, said Mr. Smith presented the request to Association representatives on June 22 2008, and the Association had expressed several concerns. On October 1, 2008, Mr. Smith made another presentation to the Association membership, and the membership had voted unanimously to oppose the request.

Mr. Bob Oelke, Victoria Park Civic Association member, referred to the list of concerns he had emailed to the Board. He displayed a map of the area, and pointed out that neighbors to the south would be inconvenienced by parents dropping off and picking up children at the school. He added that the restriction requiring separation from the SSRF was intended to keep traffic and other problems at a minimum. Mr. Oelke said the Association anticipated the daycare would create an increasing business use within the residential neighborhood.

Mr. Oelke noted that the property’s current use, family daycare center, allowed up to five children, but a County audit revealed that Ms. Stearns had eleven children on the property. Since the County performed the inspections, Mr. Oelke wondered how they would know how many children were actually in the daycare center. He also wondered who would enforce the offsite parking. Mr. Oelke believed that the offsite parking must be in the same zoning district as the facility, and Unity Church was not.

Mr. Oelke described several SSFR facilities currently and formerly located in Victory Park for Mr. Weihe, and specified there was one other daycare center. Mr. Weihe believed it was the responsibility of the owner to enforce the offsite parking agreement.

Mr. Burgess confirmed the City performed annual fire inspections on daycare centers. Mr. Dunckel informed the Board that the City's Code Enforcement Division would not enforce a declaration of restrictions; he advised the Board to include conditions in the variance because violations of variance conditions could be addressed by Code Enforcement, or could cause the variance to expire.

Mr. Willey was unsure Mr. Smith had presented a valid hardship. Mr. Smith explained that the hardship would be the increased setback requirements that followed the increase in the number of students. He said there was no economic hardship. Mr. Smith explained that the Montessori model required a mix of ages in the students; this was why Ms. Stearns desired to expand the center.

Ms. Jenessa Stearns, applicant, informed Mr. Willey that four children were present on the property that day, and she anticipated five on Thursday and six on Friday. Ms. Stearns said she sometimes allowed parents to drop off additional children when there were extenuating circumstances.

Ms. Stearns explained that this was not typical daycare. She said she had a "really controlled group with excellent, educated staff who really know how to keep an environment peaceful and calm and where children are really thriving." Ms. Stearns believed the facility would be a benefit to Victoria Park, and noted that several students' parents lived within walking distance and approved of the request.

Ms. Stearns explained that the majority of her students were not present from 8:00 a.m. until 6:00 p.m. Most were present in the morning only for acclimation to a school setting.

Ms. Amanda Tobin said she and her husband were brought up on Montessori and both felt it was important to involve their children in it. She spoke of the positive environment in a Montessori school, and said she looked forward to sending all of her children there.

Mr. Ben Baldanza said he and his wife had sought the Montessori daycare for their son because here he would be socialized and meet other kids, and learn to be a "real, responsible human being" and Mr. Baldanza believed this was happening. He remarked it was "priceless" to have a "residential option in a home-setting environment." Mr. Baldanza noted that this was not located in a true residential area because there was commercial and multifamily development within walking distance. He said there was nothing like the nurtury on the east side of Broward County and it was needed.

Ms. Monica Glaysher Wells said she lived one block from the nursery and her daughter attended the daycare. She felt the Montessori added much to the neighborhood, and said she supported its continued development.

Mr. Brad Tuckman said this environment allowed children to learn on their own. He said parents had wondered what they would do if the school ceased to exist. Mr. Tuckman said parents dropped children off at different times and respected other properties in the area.

Ms. Celeste Coster supported the growth of the Montessori facility, saying it provided superior care and education, and options were limited in this area.

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.

**Motion** made by Mr. Weihe, seconded by Mr. Goldman, to approve.

Mr. Jordan said they had the same problem in Colee Hammock. He felt this was a great concept, but said residential neighborhoods were always fighting to keep big businesses out. He advised Ms. Stearns to take the concept elsewhere in the City.

Ms. Centorino agreed this was not a vote on the Montessori program. She said her own children had attended Montessori school, but she believed this property was too small to accommodate the facility. Ms. Centorino did not believe a hardship existed to justify granting the variance.

Mr. Dunckel advised the Board to vote on Section 47-18.8.8 (J) first.

In a roll call vote, motion to approve the request regarding Section 47-18.8.8 (J) **failed** 4 – 3 with Mr. Willey, Ms. Centorino and Mr. Jordan opposed.

Mr. Dunckel noted that this denial rendered the other requests moot and advised the Board to create one motion to address the remaining three requests.

**Motion** to approve the three requests regarding section 47-5.36 **failed** 4 – 3 by a roll call vote with Mr. Willey, Ms. Centorino and Mr. Jordan opposed.



## **Request For Extension Of Final Order**

### **2. APPEAL NO. 08-47**

[Index](#)

**APPLICANT:** Fort Lauderdale Community Redevelopment Agency

**LEGAL:** "River Gardens", P.B. 19, P. 23, Block 1, Lots 1, 2 and 3, Less N. 10 feet.

**ZONING:** RM-15 (Residential Multifamily Low Rise/Medium Density District)

**STREET:** 2130 & 2140 NW 6<sup>th</sup> Street

**ADDRESS:** Fort Lauderdale, FL

**APPEALING:** Section 47-5.34 (Table of dimensional requirements for the RM-15 district)

Requesting a variance to allow a 10 foot and 15 foot front yard, where Code requires a 25 foot front yard.

This matter was presented to this Board on May 14, 2008, and the Board, having heard and reviewed the evidence in this matter, ordered that the said appeal be granted by a vote of six (6) in favor and one (1) opposed, on the following condition: That oak trees be planted consistent with the illustrations presented to the Board, satisfactory to the City's landscape requirements. Dated this 9th day of July 2008.

### **[This item was heard out of order]**

Chair Strawbridge said the applicant was present to request an extension.

Ms. Janice Hays, representative of the applicant, New Visions CDC, explained they had needed to go through the DRC [which was a lengthy process] after obtaining the variance. She requested an additional six months to pull the permits.

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 it was a shame the City of Fort Lauderdale had to ask for front and side yard variances on residential streets such as these.

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

**3. APPEAL NO. 08-48**

[Index](#)

**APPLICANT:** Sweeting Associates, LLC. (DBA) New Visions CDC

**LEGAL:** “River Gardens”, Block 2, Lots 1,2,3,4,5 & 6, Said parcel being more particularly described in the application for a variance for Appeal No. 07-48, on file with the Clerk of the City of Fort Lauderdale Board of Adjustment

**ZONING:** RM-15 (Residential Multifamily Low Rise/Medium Density District)

**STREET:** 2144 & 2158 NW 6<sup>TH</sup> Street

**ADDRESS:** Fort Lauderdale, FL

**APPEALING:** Section 47-5.34 (Table of dimensional requirements for the RM-15 district)

Requesting a variance to allow 10-foot and 15-foot front yard, where Code requires a 25 foot front yard.

This matter was presented to this Board on May 14, 2008 and the Board, having heard and reviewed the evidence in this matter, ordered that the said appeal be granted by a vote of six (6) in favor and one (1) opposed on the following condition: That oak trees be planted consistent with the illustrations presented to the Board, satisfactory to the City’s landscape requirements. Dated this 9th day of July 2008.

**[This item was heard out of order]**

Chair Strawbridge said the applicant was present to request an extension.

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 repeated his previous opinion that it was a shame the City of Fort Lauderdale had to ask for front and side yard variances on residential streets such as these.

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

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

[Index](#)

There being no further business to come before the Board, the meeting was adjourned at **8:09 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