

BOARD OF ADJUSTMENT MEETING
City of Fort Lauderdale
Wednesday, March 11, 2009 – 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	8	1
Don Larson, Vice Chair	P	8	1
Diane Centorino	P	8	1
David Goldman	P	8	1
Gerald Jordan	P	9	0
Bruce Weihe	P	7	2
Birch Willey	P	8	1
 <u>Alternates</u>			
Michael Madfis	P	8	1
Henry Sniezek	P	8	1
Karl Shallenberger	P	7	2

Staff

Bob Dunckel, Assistant City Attorney
Yvonne Blackman, Secretary
Cheryl Feldman
Jorg Hruschka, Building Inspector
Mohammed Malik, Building Inspector
Terry Burgess, Chief Zoning 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 6:47 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

Mr. Weihe asked for a change to the wording of his motion on page 7.

Motion made by Mr. Larson, seconded by Mr. Jordan, to approve the minutes of the Board's February meeting as amended. 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:	<u>Christopher and Jenessa Stearns</u>
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.

[The applicant was granted a rehearing at the February 11, 2009 meeting]

Mr. Dunckel recommended this case be deferred to the Board's April meeting because the applicant must make a buffer yard ordinance request, but this had not been advertised for tonight's meeting.

Motion made by Mr. Weihe, seconded by Mr. Larson, to defer the case to the Board's April meeting. In a voice vote, motion passed 7 – 0

Request for rehearing

2. Appeal No. 09-03

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APPLICANT: Parkview Townhomes Homeowners Association
LEGAL: "Coral Ridge," P.B. 21, P. 50, Block 11, Lot 11
ZONING: RMM-25 (Residential Multifamily Mid Rise/Medium High Density District)
STREET: 2800-2806 NE 15th Street
ADDRESS: Fort Lauderdale, FL

APPEALING: Section 47-19.3.A (Boat slips, docks, boat davits, hoists and similar mooring devices)

Requesting a variance to add one (1) additional boat lift with less than 100 foot separation, where code limits to one (1) mooring device per the first one hundred (100) feet of lot width or portion thereof, and one mooring device for each additional one hundred (100) feet of lot width.

APPEALING: Section 47-19.3.B (Boat slips, docks, boat davits, hoists and similar mooring devices)

Requesting a variance to reconstruct an existing boat dock and boatlift 17.5%, where code limits boatlifts to 15% of the canal.

Mr. Fred Blitstein, representative of the applicant, explained that at the previous meeting, there had been a "major mistake in the interpretation of the actual code." Mr. Blitstein said the agenda item and the code said two different things, and he had discussed this with Mr. Burgess. The agenda item stated that the boatlifts must be 100 feet apart, but the code did not mention any mandatory separation.

Mr. Blitstein read from code section 47-19.3 aloud: "...and shall be limited to one mooring device per 100 feet of lot width or portion thereof and one mooring device for each additional 100 feet of lot width." The agenda item had read: "...with less than 100-foot separation."

Mr. Blitstein requested a rehearing to return with additional documentation that would satisfy the Board members who were concerned about the 100-foot separation.

Mr. Burgess agreed that the code specified only how many mooring devices were permitted, but noted he had discovered past interpretations indicating there must be 100 feet separating the lifts.

Mr. Dunckel thought the language "...and one mooring device for each additional 100 feet of lot..." did require a 100-foot separation, but believed the Board could grant a variance to place the lifts closer, which was the action the Board had taken. He wondered why Mr. Blitstein had returned to the Board with this request.

Mr. Dunckel asked Mr. Blitstein what was wrong with the variance he had been granted. Mr. Blitstein believed if the code language had been read at the hearing, the original configuration for the boatlifts he proposed would have been approved.

Mr. Goldman felt the code could be interpreted different ways, and suggested Mr. Blitstein request an interpretation from the Board. If the Board agreed on a different interpretation, Mr. Blitstein could use this to request the rehearing.

Mr. Dunckel said, "He can hang his hat on a detailed statement of the nature of any clear error on the part of the Board; I think he's probably met his burden in that regard, and the Board, in its discretion, could grant a rehearing, have him come back the following month with both the request for a variance and the interpretation question. Take the interpretation question first and if it's resolved in his favor he might not need a variance."

Mr. Larson stated he would rather make sure that any mistake was corrected for reference in the future, and said he supported rehearing the request.

Motion made by Mr. Larson seconded by Mr. Jordan, to approve the request for a rehearing.

Mr. Dunckel noted that the property was less than 200 lineal feet, so a variance was still required for the second boatlift. The Board could choose to impose reasonable conditions on the variance, i.e. a distance separation, if it wished. Therefore, the resulting determination on rehearing could be exactly the same as before.

Mr. Strawbridge cautioned Mr. Blitstein that the rehearing could have an entirely different result: he could lose the variance the Board had granted. Mr. Blitstein acknowledged this was possible.

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

3. Appeal No. 09-04

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APPLICANT: Sunny River Holdings, LLC
LEGAL: "Subdivision of New Utopia", P.B. 8, P. 21, S. ½ of Lot 19 and the S. ½ of Lot 20
ZONING: RD-15 (Residential Single /Duplex/Low Medium Density District)
STREET: 716 SW 9th Terrace
ADDRESS: Fort Lauderdale, FL
APPEALING: Section 47-19.2.H (Accessory Buildings and Structures, general - driveways)

Requesting a variance to allow a 17-foot driveway, where Code requires a minimum of eighteen (18) feet in length when used as a stacking or parking space.

APPEALING: Section 47-5.32 (Table of dimensional requirements for the RD-15 and RDs-15 districts)

Requesting a variance to allow a 16.35-foot corner yard setback, where Code requires a minimum of 25% of the lot width, which in this case equates to 16.5 feet.

Mr. Robert Allica, project architect, acknowledged the setback and driveway problems were small. He noted that the distance from the building to the edge of the curb was over 30 feet and there was no sidewalk on either side of the building. He confirmed the 17-foot drive way had been approved on the plans and the corner yard problem had arisen during construction.

Chair Strawbridge acknowledged the Board had received three letters from neighbors objecting to the request.

Mr. Burgess pointed out that there was a 20-foot interior garage, and suggested the applicant could “maybe give a foot out of that ...”

Mr. Allica explained that the garage rear wall was up against the stairs and if the wall were moved, they would have to move the entire vertical access. He said the intention of the 18-foot setback was for stacking. The driveway was more than 17 feet long, but less than 17 of those feet were inside the property line. The driveway was actually 31 feet 4 inches. Mr. Burgess clarified that if there were no garage, the applicant would be required to have 18 feet of parking space on the property. Since this property had a garage, “it’s used as stacking from the property line; it says parking and stacking.”

Mr. Goldman noted the plans had indicated a 16-foot 6-inch setback. Mr. Allica said this had been approved on the plans, but the structure had not been not built to this specification. Mr. Burgess stated the stacking was measured from the door face, which was 8 inches back from the building face.

Ms. Centorino wondered if the garage doors could be moved in to the north to gain a foot. She was concerned that three neighbors opposed the request. Mr. Allica said this was physically possible, but not practical because impact doors were approved based on how they were installed into the structure.

Mr. Goldman said he had recently shopped for SUVs and had created a spreadsheet of dimensions. He recalled an average length for mid-sized SUVs of 14 – 15.5 feet. Mr. Larson said the average length of a car was 16 feet.

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. Goldman said he would oppose the driveway if it could not fit a car, but it was 17 feet long and therefore could accommodate a car.

Motion made by Mr. Goldman, seconded by Mr. Larson, to approve the requests.

Chair Strawbridge explained to Ms. Centorino that moving the garage door would be “extremely difficult and expensive and disruptive...” He believed it could also cost \$20,000 to \$30,000.

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

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Mr. Jordan stated accusations had been made that Mr. Goldman had a conflict of interest in the nurtury case. Mr. Dunckel advised Mr. Jordan to raise this issue when the case was heard. He explained that under Chapter 112, a conflict arose when a Board member’s vote would “inure to your pecuniary gain or interest...” and such conflict would disqualify a member from voting. He noted that there was a constitutional conflict as well, which was based on due process grounds regarding a Board member’s ability to provide a fair hearing.

Mr. Jordan said he had heard from the neighbors that Mr. Goldman had opposed the bank next door and they felt he was “up here just to spite them.” Mr. Jordan stated his intention to bring this up at the next meeting, and said he wished Mr. Goldman would recuse himself “just to save me bringing this up.”

Mr. Dunckel reminded the Board that Florida Statute specified a Board member could *not* recuse him/herself “unless you rise to the dignity under 112 of that conflict of interest involving some pecuniary gain or loss. The next threshold is much, much more difficult, and it’s not just because of finances; it can be from a myriad of things. The bottom line question is: can he grant them a fair and impartial hearing, can he be an impartial judge. We’ll take it up at the next meeting.”

Mr. Jordan pointed out that he had not attended the meeting when a neighbor’s request was heard. Mr. Dunckel remarked, “Oftentimes, that’s the better discretion.” Mr. Jordan stated, “Just consider it, David. Maybe you don’t want to show up that night, or just recuse yourself.”

Mr. Weihe felt there were many times when mistakes were made by Building Department staff and/or architects. He felt there was “an opportunity for somebody to come in and say, ‘Well, I need a variance, the building’s already built and nobody’s

going to force me to tear it down and I've got buddies over there in the Building Department that might sign off on these things.' And ...something smells bad sometimes."

Chair Strawbridge said the reason he had joined this Board was because he had a personal experience with a mistake City staff had made that caused him to request a variance based on plans. The request was denied, and the Chair of the Board of Adjustment at the time had advised him. "It's too bad you hadn't built it first, because we probably would have given you a variance then." Chair Strawbridge stated, "You'd been a lot better off begging forgiveness than asking permission."

Chair Strawbridge believed the Board had tried to get design professionals to be more responsible, and remarked that according to the law, it was 100% the design professional's obligation to present a perfect plan.

There being no further business to come before the Board, the meeting was adjourned at **7:50 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