

BOARD OF ADJUSTMENT MEETING
City of Fort Lauderdale
Wednesday, June 10 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>6/2009 through 5/2010</u>	
		<u>Present</u>	<u>Absent</u>
Don Larson, Vice Chair	P	1	0
Diane Waterous Centorino	A	0	1
Caldwell Cooper	P	1	0
Gerald Jordan	P	1	0
Michael Madfis	P	1	0
Bruce Weihe	P	1	0
Birch Willey	P	1	0
<u>Alternates</u>			
Henry Sniezek	P	1	0
Karl Shallenberger	P	1	0

Staff

Bob Dunckel, Assistant City Attorney
Cheryl Felder, Service Clerk
Terry Burgess, Zoning Administrator
Mohammed Malik, Chief Zoning Plans Examiner
B. Chiappetta, Recording Secretary, ProtoType Services

Communication to the City Commission

None

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.

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Call to Order

Vice Chair Larson called the meeting to order at 6:34 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 – May 2009

Motion made by Mr. Jordan, seconded by Mr. Weihe, to approve the minutes of the Board’s May meeting. In a voice vote, motion passed unanimously.

The Board agreed to hold elections at the end of the meeting.

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. 09-12**

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APPLICANT: Lauderdale Beach Association, LLC
LEGAL: “Poinsettia Plat,” P.B. 114, P. 43 and “Holiday Beach Plat,” P.B. 27, P. 39
ZONING: RS-4.4 (Residential Single Family Low Medium Density District).
STREET: 3030 Holiday Drive
ADDRESS: Fort Lauderdale, FL

APPEALING: Section 47-5.10 (RS-4.4 Residential Single Family/Low Density District)

Requesting a temporary non-conforming use permit to allow a temporary restaurant in the RS 4.4 zoning category, where Section 47-5.10 does not permit a restaurant use.

Mr. Dunckel reminded the Board that this was an application for a temporary, non-conforming use permit, not a variance, and cited the criterion:

- The granting of a temporary, non-conforming use permit shall not be incompatible with the adjoining properties, or the surrounding neighborhood, or otherwise contrary to the public interest.

Mr. Robert Lochrie, representative of the applicant, explained that the Marriott Harbor Beach was subject to a developer's agreement with the City, which included the pool area and bar. He reported the hotel wished to update the pool area.

Mr. Lochrie stated in January, the City had approved a third amendment to the developer's agreement to make modifications to the pool area, i.e., to remove the existing bar/patio area and replace it with new facilities: an updated restaurant, bar, kitchen and bathroom as well as a kids' club function. He presented an elevation of the proposed design.

Mr. Lochrie said while the upgrade was under construction, the hotel needed facilities to provide food and drinks to guests and this request related to a temporary kitchen and small covered dining and bar areas.

The hotel had received the consent of the neighbors to the west in the Harbor Beach Association as well as the South Beach Alliance of Civic Associations. Mr. Lochrie presented an e-mail confirming this support dated 6/10/09.

Vice Chair Larson opened the public hearing.

Mr. Darren Lyle asked if the temporary kitchen area would have generators that would create noise. Mr. Lochrie stated the kitchen would be hooked up to the existing electric service; it would have no generator.

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

Motion made by Mr. Jordan seconded by Mr. Madfis, to approve.

Mr. Cooper asked about music and noise issues and Mr. Lochrie informed him that there would be no music. Mr. Cooper asked if the kitchen smoke would be controlled. Mr. Lochrie stated the kitchen would comply with all standard health department and City requirements.

Mr. Willey had visited the site and viewed plans, and noted that the hotel wanted to continue what they had been doing while they built the new facility. He did not anticipate the problems they had sometimes experienced in the past: getting properties to stop the temporary uses once they had been granted.

Mr. Weihe drew the Board's attention to letters from Mr. Borman and Mr. Kitano expressing opposition to the request. Mr. Willey pointed out that one of the writers indicated he did not feel the hotel should be permitted to do what the law allowed.

Mr. Dunckel stated the permit was typically for 12 months but the Board had the ability to grant it for a shorter period of time. Mr. Lochrie requested 12 months, and assured the Board that they were applying for permits to build the new facility.

Mr. Lochrie clarified that there would be no music in the tent, but there would be music in the pool area as there had been for 25 years. This was included in the developer's agreement.

Mr. Dunckel explained that per the recently passed Senate Bill 360, two-year extensions could be granted for development permits. He asked Mr. Lochrie if they would waive their rights under this bill to assure the Board that it would be one year, not three. Mr. Lochrie agreed to waive any additional time beyond one year, statutory or otherwise.

In a roll call vote, **motion passed** 7 – 0.

2. Appeal No. 09-13

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APPLICANT: Stanley Britt Sikes & Tiffini N. Sikes
LEGAL: "C.J. Hector's Re-Subdivision of Rio Vista" P.B. 1, P. 24, Block 8, Lot 23 & E ½ of Lot 22
ZONING: RS-8 (Residential Single Family Low Medium Density District)
STREET: 1009 SE 6th Street
ADDRESS: Fort Lauderdale, FL

APPEALING: Section 47-19.2.B (Accessory buildings and structures, general- *Architectural features in residential districts*)

Requesting a variance to allow a 24 inches overhang into a (5) five-foot setback, where Code allows 1/3 of the overhang extending into the side yard setback not to exceed 20 inches.

Mr. Robert Lochrie, representative of the applicant, stated this request related to an additional four inches on the overhang. He presented a rendering of the property and pointed out the areas on the east side that required the variance. Mr. Lochrie explained that when the house was built, it was set back 5.2 feet from the property line, instead of the planned 5.7 feet. Since this was still within the setback requirements, neither the City inspector nor contractor had made it an issue. Consequently, a small portion of the overhang extended farther into the setback than was permitted.

Mr. Lochrie said this was no fault of the property owners; it was the result of an error made in the field when the house was built. Mr. Lochrie presented letters from residents in the area stating support for the variance.

Vice Chair Larson opened the public hearing.

Mr. David Zwick stated his support for the request and said the house was a tremendous enhancement to the area.

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

Motion made by Mr. Weihe seconded by Mr. Madfis, to approve. In a roll call vote, motion passed 7 – 0.

3. Appeal No. 09-14

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APPLICANT: Kevin Merrigan
LEGAL: "Placidena First Unit", P.B. 2, P. 44, Block 1, Lot 6
ZONING: ROA (Limited Residential Office District)
STREET: 112 Rose Drive
ADDRESS: Fort Lauderdale, FL

APPEALING: Section 47-5.60.D.6.a (Residential office zoning districts - *Yards*)

Requesting a variance to permit a front yard setback of 23 foot10 inches, where Code requires front yard shall be a minimum of twenty-five (25) feet.

APPEALING: Section 47-5.60.D.6.b (Residential office zoning districts - Yards)

Requesting a variance to permit a side yard setback of 4 foot 11 inches, where Code requires side yard setback to be a minimum of 10 foot setback or half the height of the tallest building, whichever is greater.

APPEALING: Section 47-5.60.D.6.b (Residential office zoning districts - Yards)

Requesting a variance to permit a side yard setback of 5 foot 2 inches, where Code requires side yard setback to be a minimum of 10 foot setback or half the height of the tallest building, whichever is greater.

Mr. Mickey Marrero, representative of the applicant, said this was request for an adaptive reuse of an office building to a day care facility. He stated the ROA zoning permitted day care facilities; the appeal was required just for the three legal nonconforming setbacks.

Mr. Marrero reminded the Board that it had been difficult for Ms. Stearns to find appropriate property for the day care facility, but they believed this location was suitable.

Mr. Marrero described 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

Any use other than an office would require demolition and reconstruction of the building either within the setbacks or with a variance. Ms. Stearns liked the building in its current form and therefore sought the variance. Mr. Marrero distributed letters of support from neighbors.

- 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. Marrero stated there were no buildings in the area that would be more suitable for a childcare facility. This was the location they had found that would require the fewest number of variances.

- 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. Marrero reminded the Board that the ULDR permitted childcare facilities in the ROA zoning district. He explained that this was not profit-driven, and he felt it would be good public policy to have this type of facility in the neighborhood

- 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. Marrero said this was a legal nonconforming structure; they were not requesting to increase the size of the building.

- 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. Marrero said this was the absolute minimum variance needed to have this use at this property.

Mr. Madfis said the underlying land use was Regional Activity Center, and he felt this would be an appropriate location. He wondered why a variance was required when the code specified that uses increasing the intensity required nonconforming structures to be brought up to code. Mr. Burgess stated because this was a use other than office, it had to meet code requirements. Mr. Dunckel thought staff was relying on the ROA section of the code, which allowed for the conversion of a home to an office with nonconforming setbacks but did not allow conversion to anything other than an office.

Mr. Willey said his only objection was that the overhang on the west side of the house extended to the property line. Mr. Marrero said these overhangs were not important to the prospective tenant and they would look into removing these if the Board desired. Mr. Larson wondered if these structures had been permitted.

Mr. Madfis remarked that when the land use had been changed to Regional Activity Center, it was meant to encourage this type of active use to help reduce crime. He believed the code allowed for conversion to this type of use.

Mr. Dunckel advised the Board they could specify that the variance would be limited to the setbacks shown on the existing floor plan because it did not show the overhangs to which Mr. Willey had referred. Mr. Marrero agreed to this.

Mr. Marrero explained there would be a maximum of 50 children allowed in this 1,700 square foot building. He added that parents dropped their children off at childcare; they did not park.

Vice Chair Larson opened the public hearing.

Ms. Jenessa Stearns, prospective tenant, explained she was unsure how long the childcare facility would stay at this location.

Mr. Steve Clifton stated this was not a crime-ridden area; it was a lovely neighborhood. Mr. Clifton was concerned about the number of cars that would use the road to drop off and pick up children. He remarked on the traffic already generated by the nearby Gilda's House.

Mr. Paul Briggs, representing Charlie Collier, the property owner, did not want to see the area become any more commercial than it currently was, and noted the road was very narrow. Mr. Briggs did not feel this was the right place for a childcare center. Mr. Briggs stated the Colliers only intended to rent the building for one year until they could move here and live in it. He stated the Colliers had sent a letter opposing this request to Mr. Burgess.

Mr. David Hered, who had lived in the house as a child, felt the childcare facility would generate too much traffic. He also believed this would increase the noise in the neighborhood.

Mr. Madfis understood the traffic could be an issue, but pointed out that this use would allow the building to be preserved as it was. He said this was an area that would go through adaptive reuse, and would hopefully preserve some of the structures and allow some continued residential use. Mr. Madfis added that light rail would be constructed very near this area in the future.

Vice Chair Larson asked if they were considering limiting the number of students. Mr. Marrero said they would be willing to limit the number of students to 40. Ms. Stearns said she expected to have no more than 35 students.

Mr. Weihe asked Ms. Stearns if she would be willing to limit the age of students to five years and she agreed.

Mr. Marrero pointed out that events at Gilda's House typically were scheduled for nights and weekends when the childcare center would not be operating, so there would not be combined traffic impact on the neighborhood. He added that there would be more noise generated from peacocks who inhabited the area than from children in the childcare facility.

Regarding criterion E, Mr. Dunckel noted that the sole goal of the City's land-use plan was preservation of neighborhoods. He therefore believed that land use was a consideration. Mr. Madfis felt the land-use plan was not necessarily to protect neighborhoods; it was really an economic plan that substantiated the justification for land taxes. If an owner was not allowed to develop property to economically sustain the burden, he believed something was wrong with the comprehensive plan and land-use plan.

Mr. Burgess confirmed for Mr. Willey that the childcare facility was a permitted use, if the variances were obtained from the side yard setbacks.

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

Motion made by Mr. Madfis, seconded by Mr. Sniezek, to approve, with the following conditions:

- The age of the children would be limited to up to five years
- The number of children would be limited to 40
- The variance would be limited to the footprint shown on the survey [without the overhangs]
- The variance would be limited to the daycare facility use

Mr. Sniezek asked if the variance would be tied to this specific use. Mr. Dunckel said the Board could make this a condition of the variance. Mr. Burgess agreed that if the use converted back to office, that would probably be a legal, non-conforming setback. Mr. Marrero agreed to limit the variance to the childcare facility or office use. Mr. Madfis noted that if the use converted from childcare back to office, staff could revisit the issue and consider this a more intensive use. Mr. Dunckel stated the office use would not be grandfathered in after the childcare facility use.

The Board agreed that the motion pertained to all three of the appeals.

In a roll call vote, motion passed 5 – 2 with Mr. Jordan and Mr. Cooper opposed.

4. Appeal No. 09-15

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APPLICANT: Las Olas Boulevard Ltd.
LEGAL: "Leaird & Pellets Resub. Colee Hammock", P.B. 7, P. 36, Block 13, Lots 6-10
ZONING: B-1 (Boulevard Business)
STREET: 1010 East Las Olas Boulevard
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 40 feet from the (Mark's Las Olas) and 240 feet from another establishment (Mancini's) that sells alcohol, where Code requires a minimum of 300 feet separating establishments that sell alcoholic or intoxicating beverages.

Mr. Dunckel reminded the Board that this was an application for a special exception, not a variance, and cited the criterion:

- Unless it is shown to be contrary to the public interest, the special exception should be granted.

Mr. Tristan Bourgoignie, representative of the applicant, said this location had been a restaurant for several years. He believed this would be in the public interest, as it would bring more of the public down to the Las Olas Blvd. area. Mr. Bourgoignie remarked that these were French nationals trying to make a business work in difficult economic times and "it's difficult to have your Brie without the red wine."

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

Mr. Jordan said he lived in the neighborhood and did not object to this.

Motion made by Mr. Weihe seconded by Mr. Madfis, to approve. In a roll call vote, motion passed 7 - 0.

5. Appeal No. 09-16

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APPLICANT: Richard Martell
LEGAL: "River Vista" P.B. 22, P. 38, Parcel G Block 2, Lot 12 as described in OR 3030/106

ZONING: RS-8 (Residential Single Family Low Medium Density District)
STREET: 1700 W. Las Olas Boulevard
ADDRESS: Fort Lauderdale, FL

APPEALING: Section 47-5.31 (Table of dimensional requirements for the RS-8 District)

Requesting a variance to allow a side yard setback of 15 feet, where Code requires side yard shall be a minimum of twenty-five (25) feet when abutting a waterway.

Mr. Bill Laystrom, representative of the applicant, said the owner wanted to construct a covered walkway and a sauna along the southwest corner of the property. Mr. Laystrom displayed a rendering of the project and described where the walkway and sauna would be located. He said they had obtained approvals from neighbors across the canal to the south and on West Las Olas Boulevard and other nearby streets. He noted neighbors had been provided with of diagram of the proposed construction. Mr. Laystrom stated, "For once, I have the criteria, I believe, met, of a unique property with the triangular shape..."

Mr. Laystrom agreed that roofing and exterior materials of the walkway and sauna would be similar if not identical to the existing structure.

Mr. Dunckel worried that if the variance were granted as the application was written, the owner would be able to build in all of the buildable space. He advised the Board to "grant variances with respect to that portion of the structure that encroaches beyond the 25-foot setback." Mr. Laystrom agreed to this.

Mr. Madfis remarked that "the three-story might be nice to help you look down the waterway from your home, but it's pretty much a large obstruction..." He stated this was a "planned structure right in the setback," and the only criteria this request seemed to fit was the fact that the lot was unique. He did not see that denial of the variance would deny a reasonable use of the property in any way, or that the house was any different from other typical houses in the neighborhood, or any other criteria for a variance. Mr. Madfis believed someone could be creative enough to provide the owner the square footage and entranceway without increasing the nonconformity of the structure. Mr. Laystrom agreed to "take a condition that the portion of the property you were indicating out the tower not be within whatever variance this Board granted."

Mr. Cooper had researched this request and cited Section 47-19.2.Y of the ULDR he felt was applicable. Mr. Cooper said per this section, "you can have your porch, you can have it within the setback, but you can't have your sauna." Mr. Laystrom said the variance would allow the sauna, as well as the walkway, within the setback.

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

Mr. Madfis wished they could see a three-dimensional view to see the impact the construction would have on neighbors' views.

Mr. Willey stated, "It might be a really nice thing but they want to put it where it doesn't belong."

Mr. Laystrom offered to return to the Board's next meeting with a conceptual drawing.

Motion made by Mr. Weihe, seconded by Mr. Madfis, to approve.

Mr. Cooper felt this was a self-imposed hardship that did not meet the criteria, and he could not approve it. Mr. Madfis agreed. Mr. Weihe advised the applicant to request a deferral to find ways to address the Board's concerns.

Mr. Weihe and Mr. Madfis withdrew the motion and second.

Mr. Laystrom requested deferral to the Board's next meeting.

Motion made by Mr. Willey, seconded by Mr. Jordan, to table to the Board's next meeting. In a roll call vote, motion passed 7 – 0.

Report and for the good of the City

Mr. Cooper said he had felt uncomfortable when he visited the properties to investigate, and wondered if owners could be alerted that Board members wished to inspect their properties prior to hearing their cases. Mr. Willey said he brought the Board agenda along with him when he visited properties. Mr. Weihe suggested the Board be provided with a contact number for each case. Mr. Burgess informed the Board that the phone numbers on applications were public record, so these could be provided.

Board Elections

Mr. Weihe nominated Ms. Centorino for Chair, seconded by Mr. Cooper. In a voice vote, Board unanimously approved.

Mr. Jordan nominated Mr. Larson for Vice Chair. Mr. Madfis nominated Mr. Jordan for Vice Chair. By a show of hands, Mr. Larson was elected Vice Chair 5 - 2.

There being no further business to come before the Board, the meeting was adjourned at **8:40 p.m.**

Chair:

Diane Waterous Centorino

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