

**BOARD OF ADJUSTMENT MEETING**  
**City of Fort Lauderdale**  
**Wednesday, July 8 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>	<b>Cumulative Attendance</b> <b>6/2009 through 5/2010</b>	
		<u>Present</u>	<u>Absent</u>
Diane Waterous Centorino, Chair	P	1	1
Don Larson, Vice Chair	P	2	0
Caldwell Cooper	P	2	0
Gerald Jordan	P	2	0
Michael Madfis	P	2	0
Bruce Weihe	P	2	0
Birch Willey	P	2	0
 <u>Alternates</u>			
Henry Sniezek	P	2	0
Mary Graham	P	1	0
Karl Shallenberger	A	1	1

**Staff**

Bob Dunckel, Assistant City Attorney  
Cheryl Felder, Service Clerk  
Yvonne Blackman, Secretary  
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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	<b><u>Appeal</u></b>		<b><u>Page</u></b>	<b><u>District</u></b>
	<b><u>Number</u></b>	<b><u>Applicant</u></b>		
1.	09-16	Richard Martell	<a href="#"><u>2</u></a>	4
2.	09-17	David Mesiti	<a href="#"><u>3</u></a>	1
3.	09-20	Birch Crest Condominium Board of Association	<a href="#"><u>6</u></a>	2
4.	09-21	5 <sup>th</sup> Street FTL Partners, LLC	<a href="#"><u>8</u></a>	2
5.	09-22	Tom & Anne Utterback	<a href="#"><u>11</u></a>	2
6.	09-11	Amor Fort Lauderdale, LLC	<a href="#"><u>12</u></a>	2
		For the Good of the City	<a href="#"><u>13</u></a>	

**Call to Order**

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

**Approval of Minutes – June 2009**

The Board noted a correction on page 3.

**Motion** made by Mr. Willey, seconded by Mr. Cooper, to approve the minutes of the Board's June meeting as amended. In a voice vote, motion passed unanimously.

**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.**

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**1. Richard Martell**     *(Deferred from June 10, 2009)*     09-16

**Request:**                      **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.

Legal Description: "River Vista" P.B. 22, P. 38, Parcel G, Block 2, Lot 12 as described in OR 3030/106  
Address: 1700 W. Las Olas Boulevard  
Zoning RS-8 (Residential Single Family Low Medium Density District)  
District: 4

Chair Centorino announced that the applicant had requested a 30-day deferral because the plans were not ready.

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

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**2. David Mesiti**

**09-17**

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

Requesting a variance to allow the installation of a generator sixteen (16) feet from the front property line, where the code requires a twenty five (25) foot front yard setback and to allow a generator in the front yard where the code states that mechanical equipment shall only be permitted in the side or rear yards.

Legal Description "Coral Ridge Country Club," P.B. 36, P. 30, Lot 21, Block "A"

Address: 2839 NE 35<sup>th</sup> Street

Zoning: RS-4.4 (Residential Single Family Low Medium Density District).

District: 1

Mr. Steve Tilbrook, representative of the applicant, presented a site plan, showed aerial and ground level photos of the property and described its location. Mr. Tilbrook explained that the generator the owner had installed was the “enhanced quiet model” that generated sound equivalent to that of an air conditioning compressor.

Mr. Tilbrook stated one unique condition of the property was that it was a waterfront parcel that had been built to the setbacks. He stated the generator had been located on the property for six months and most of the neighbors were unaware it was on the property. When Mr. Mesiti purchased the house in May, he realized the generator had been installed without a permit. As a condition of the closing, he required the property owner to pull the proper permits.

Mr. Tilbrook said another unique condition of the site was the six-foot privacy wall in the front, which provided enough space to locate the generator inside the front yard. He explained that the hardship was, “installing a generator on a waterfront parcel with a house that's built basically built to the setbacks.” Mr. Tilbrook stated there was a water right-of-way in the rear of the house and a road right-of-way in front of the house.

Mr. Tilbrook said the applicant had solicited support from several neighbors, and had letters of support from the four directly adjacent neighbors. The homeowners association had expressed support, but had not held a meeting to officially act upon this. He presented the letters of support into evidence. Mr. Tilbrook said they believed the best location for the generator on this site was in the front, behind that six-foot privacy wall. He felt the unique conditions of the site warranted the variances and stated they had done their best to solicit community input and to mitigate impacts.

Mr. Tilbrook confirmed for Mr. Weihe that the generator had been installed before the property was put up for sale. He could not say whether it was known at the time it was installed that the generator was not allowed in its current location. Mr. Burgess stated the owner had recently applied for the permit, which had triggered this item's being placed on the Board Of Adjustment's agenda.

Chair Centorino opened the public hearing.

Dr. Sylvia Flores, the neighbor located across the canal, remarked that the way these houses had been built, they did not always “accommodate our new needs.” She mentioned that Coral Ridge Country Club had stricter rules than the City of Fort Lauderdale. Dr. Flores said this would set a precedent for others to do the same thing, and she opposed it. She explained it was not a matter of whether or not the unit could be seen; it was a matter of abiding by the rules of the association.

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

Mr. Tilbrook agreed that variances should not be granted lightly, but pointed out that there were special circumstances under which a variance was warranted, and he believed this was one such case. He reiterated that the home had been built to the setback line, which created a problem for locating the generator. Mr. Tilbrook said, "This is not a precedent-setting situation; this is a unique situation at a new unique parcel for a unique home and for unique health concerns of the new owners."

Mr. Burgess informed Mr. Willey that portable generators were allowed after a storm. Mr. Willey believed this issue would come up again and they must consider how they could accommodate this as the best way for homeowners to protect their investments. He felt they should consider restrictions for generators regarding hours of operation and when they could be utilized.

Mr. Tilbrook stated the wall existed before the generator was installed. He said the owner would be willing to abide by whatever restrictions the Board suggested.

Mr. Cooper remarked that there were many properties in the City that had been built to the setback lines and 20 years ago there were not many generators available that would run an entire home. He said he supported this request, even though it did not fit within the code, and recommended the City Commission consider permitting these generators on properties.

Mr. Larson noted that gasoline powered, portable generators presented a fire hazard. He felt the Board must try to determine what was best for each house on each piece of property for each case that came before them.

Mr. Jordan agreed that a gas generator a homeowner purchased would be worse than this generator. He felt the homeowner associations should discuss where generators could be located on a property built to the setback. Mr. Jordan noted that in this neighborhood, houses were already far part and there was sufficient area to install landscaping to buffer the sound.

Mr. Madfis felt this was unique situation that met the criteria for a variance.

Mr. Larson wanted to require that the wall remain in the front yard as long as the generator remained.

Mr. Weihe pointed out that the ordinance currently forbade this and the owner could resolve the issue by purchasing a portable generator.

**Motion** made by Mr. Madfis seconded by Mr. Cooper, to approve with the condition that the wall remain in place. In a roll call vote, with Mr. Weihe opposed, motion passed 6-1.

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**3. Birch Crest Condominium Board of Association**

**09-20**

<b>Request:</b>	<b>APPEALING: Section 47-12.5.B.1.b.ii (District requirements and limitations)</b> Requesting a variance to permit zero (0) rear yard setback for new parking canopy, where Code requires 20 foot rear yard setback
<b>Legal Description:</b>	Portions of Section 1, Township 50 South, Range 42 East and Section 6, Township 50 South, Range 43 East, as more particularly described in the application for a variance for Appeal No. 09-20, on file with the Clerk of the City of Fort Lauderdale Board of Adjustment
<b>Address:</b>	336 N. Birch Road
<b>Zoning:</b>	ABA (A-1-A Beachfront Area)
<b>District:</b>	2

Mr. Bruce Bromley, representative of the applicant, explained that the association had spent millions of dollars to beautify the condominium and to bring it up to code. They wanted to use solar heating for the new pool but could not locate the heaters on the roof. The only place to locate the solar units was on an elevated carport in the rear of the building. Mr. Bromley stated these carports would be located a minimum of 250 feet off Birch Road and the carport structure would be well concealed.

Chair Centorino referred to a letter from Steve Glassman, president of the Central Beach Alliance, that the Board had just received. In the letter, Mr. Glassman stated the neighborhood association had not been notified by the City that this item was on the Board of Adjustment agenda. The association had never been notified by the applicant to suggest the request be discussed. Mr. Glassman requested that the Board defer the item until the applicant could meet with the neighborhood association.

Mr. Willey and Chair Centorino had both been confused about what material the canopy would be made of, based on the application. Mr. Willey had thought the canopy would be canvas. Mr. Bromley explained this would be the same type of canopy that had been approved on the 1200 block of A1A.

Mr. David Atkisson, Coastal Construction, agreed this would be the same structure as had been installed at the 1200 Club and for which they had received a variance. The structure would also provide a place to install the solar panels. Mr. Atkisson reminded the Board that Fort Lauderdale was encouraging Green building and energy conservation.

Mr. Bromley explained that several condominium owners in this building belonged to the Central Beach Alliance, and he had presented this request to them prior to applying for the variance, but he was never informed that the request should be taken to the Central Beach Alliance. Mr. Atkisson confirmed that the proper signage had been provided regarding the request.

Mr. Cooper said he had visited the property and wondered what happened to the landscaping. According to the City, a permit for landscaping on the pool deck had expired months earlier. Mr. Bromley said there had been several inspections on the property and he was unaware any permits had expired. He presented photos of the pool area and remarked that there were many trees around the perimeter.

Mr. Michael Pirich, landscape architect, said another permit application had been submitted to re-asphalt the parking lot area; additional landscaping would be part of this improvement package. Mr. Pirich and Mr. Bromley were unsure how much of the landscape plan had been submitted to the City. Mr. Atkisson confirmed that they would submit a landscape plan with the asphalt plan.

Mr. Bromley stated there would be two solar units: one to provide electricity for common area lighting and one to heat the pool water. Mr. Madfis questioned the proposed location of the solar unit, and Mr. Bromley insisted that the solar consultants had determined this was the best location. Mr. Madfis believed there was another solution.

Mr. Dunckel noted that the photo voltaic cells could be put on the building roof, and asked what portion of the canopy would be utilized for the pool heating solar units. Mr. Willey felt the request for the solar panels might be an excuse to get covered parking. Mr. Dunckel reminded Mr. Bromley that one criterion was that the minimum variance was being sought.

Mr. Bromley drew the Board's attention to pages in the plans that showed the parking area that would have unobstructed sun between 10 a.m. and late afternoon. Mr. Atkisson explained that solar panels equaling 80% of the pool area measurement were needed for heating the pool. This would take up most of the parking area they were discussing. He stated that this placement was the smartest and most economical. Mr. Atkisson agreed that there might be a better, more efficient system, but this was the system they could afford now.

Mr. Madfis suggested a shade structure could be built on the pool deck on which the solar units could be mounted. Mr. Atkinson explained this would create too much shade on the pool deck and the residents would not approve this.

Mr. Jordan said he thought the site looked fine, and he did not believe any adjacent neighbors would be affected. He did not want to make it any more difficult for property owners to utilize solar power.

Mr. Larson agreed that the parking canopy would affect no one because of where it would be located. He reminded the Board that the City wanted residents to generate as much of their own energy as possible.

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

Mr. Burgess reported they had received one letter of protest about the project, which was included in the Board's package.

Mr. Madfis was unsure the environmental/energy argument was valid in this request, and was unsure they should even consider it or whether they should simply consider the setback issue.

Mr. Weihe hoped the canopy structure would be more attractive than the surface parking lot.

**Motion** made by Mr. Weihe, seconded by Mr. Larson, to approve. In a roll call vote, with Mr. Cooper and Mr. Madfis opposed, motion passed 5-2.

[The Board took a five-minute break]



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**4. 5<sup>th</sup> Street FTL Partners, LLC**

**09-21**

<b>Request:</b>	<b>APPEALING: Section 47-13.14 (List of permitted and conditional uses, Regional Activity Center – Transitional Mixed Use (RAC-TMU) District)</b>
	Requesting a variance to permit a hand car wash in a RAC-EMU zoning district, where Code does not permit this use
<b>Legal Description:</b>	“Holmburg & McKees Subdivision”, P.B. 1, P. 112, Block 5 less road right-of-way, Lots 2, 3, 6 & 7
<b>Address:</b>	490 N. Federal Highway
<b>Zoning:</b>	RAC-EMU (Regional Activity Center- East Mixed Use)
<b>District</b>	2

Mr. Bob Snider, representative of the lessee, explained this would be a fine, hand car wash. He had already designed and installed these in South Beach and Aventura. He stated an aluminum fence with columns and landscaping would be located around the perimeter of the property. He added they would utilize all Green products. Mr. Snider informed Mr. Larson the water would be recycled and reused.

Chair Centorino opened the public hearing.

Mr. Ted Fling, president of the Victoria Park Civic Association, explained that the Association had five committees, and when a project was proposed, the developer was invited to make a presentation to the five committee heads. The project was then brought before the entire association for a vote. Mr. Fling said notice had been received on July 1 for this request, the same day they held a meeting, and the project had been discussed. Mr. Fling reported only one person had voted in favor of the project; the rest of the membership had opposed it.

Mr. Bob Oelke stated the person who had voted in favor of this at their meeting had indicated that the use would be temporary until a better use was determined for the property. At present, the property was an eyesore, so this would be an improvement. Mr. Oelke stated hand car washes were allowed only as a conditional use in the B2 and B3 zoning districts in the City, and this required a level III site plan review. He was unsure if this would be treated as a conditional use or if the use would be allowed if a variance were granted. They would prefer that any safeguards the code had in place would be applied to this project and the safeguards would not be bypassed by the granting of a variance.

Mr. Oelke said they would also prefer if the entrance to the car wash was located on 5<sup>th</sup> Avenue instead of from Federal Highway. He asked that if the Board granted the variance, it would put conditions on the project to treat it as a conditional use, subject to level III site plan review, and that there would be no curb cuts on Federal Highway. Mr. Oelke wanted to know if the variance would be permanent or temporary, since the applicant had indicated he would clean up the property for three or four years.

Mr. Oelke stated the Association did not believe there was a hardship that required a variance. The hardships seemed to be self-created by the desire to use the property for the car wash.

Mr. Dan Taylor, representative of an adjacent property, said his client's office property provided a buffer between the residential area and the commercial area. Mr. Taylor did not believe this use met any criteria for a variance and was counter to the City's plans for development along Federal Highway. Mr. Taylor added that the use was not compatible with the new neighborhood that was being created in the area. He asked the Board not to approve the variance.

Mr. Steve Wigod, neighbor from the nearby Ellington townhouse complex, said the neighborhood had been steadily improving but this project would be "just the opposite." Mr. Wigod was very concerned that the project would bring even more traffic to this congested neighborhood. He said he and his neighbors would rather wait for "the right project" than rush to put the wrong project in and have to live with it forever.

Ms. Alisha Dahling, resident of the Ellington townhouse complex, stated her main concern was noise from the traffic and the machines. Her secondary concern was the additional traffic. She also felt this was not the type of development they wanted in this area where there was new residential development going in.

Mr. Christopher Whiting, resident of the Ellington townhouse complex, agreed with the other residents, and noted there was another hand car wash right down the street, so he did not see the need for another one.

Mr. Snider explained to Mr. Weihe that the property owner had plans to build a condo on the lot but this was five or six years from now. He could not say what the hardship was on the property.

Regarding Mr. Oelke's comment about the site plan review, Mr. Dunckel stated when the Board had been presented with a variance request in the past that would otherwise be treated under a conditional use process, they usually attached a condition to the motion that the project must go through the conditional use site plan level III process. He advised the Board that the applicant was seeking an interim use for the property but if the variance were granted it would run with the land forever.

Mr. Madfis said he could not support this use

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

**Motion** made by Mr. Madfis, seconded by Mr. Weihe, to approve, with the conditions that the variance only run as long as this use was in place, and that the project would be treated as a conditional use and would go through the Planning And Zoning Board's site plan level III review.

Mr. Jordan pointed out that there was no hardship, the property was not zoned for this, and the use was not compatible.

In a roll call vote, with Mr. Weihe, Mr. Madfis, Mr. Jordan, Mr. Cooper, Mr. Larson and Chair Centorino opposed, motion **failed** 6 – 1.

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**5. Tom & Anne Utterback**

**09-22**

<b>Request:</b>	<b>APPEALING: Section 47-5.30 - (Table of dimensional requirements for the RS-4.4 district)</b> Requesting a variance to allow a 17.65 foot corner yard setback, Where Code requires 1/4 of lot width which is equal to 22½ foot
<b>Legal Description:</b>	The East 90 feet of lot 1 "Sea Island," Unit 5, according to the Plat thereof, as recorded in Plat Book 29, Page 50 of the Public Records of Broward County, Florida
<b>Address:</b>	2552 Aqua Vista Boulevard
<b>Zoning:</b>	RS-4.4 (Residential Single Family Low Medium

Density District)  
District: 2

Mr. Tom Utterback, applicant, explained to the Board that a variance had been granted in 1989 for a portion of the east side of the house which was reflected on the survey he presented. He was requesting that the rest of the east side of the house be granted the same variance, which would allow him to create additional bedroom space. He pointed out that the one-story structure would not impose on the street and there was considerable landscaping on the east side of the home.

Mr. Utterback informed Mr. Madfis that the hardship was he needed more bedroom space for his family.

Mr. Burgess informed Mr. Cooper that the current side yard setback in that neighborhood was 10 feet.

Mr. Willey wanted to ensure that no additional stories would be added to the house if they granted the variance. Mr. Utterback stated this was not his intention.

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

**Motion** made by Mr. Weihe, seconded by Mr. Larson, to approve, with the condition that the structure would remain one-story. In a roll call vote, motion passed 7 – 0.

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**6. Amor Fort Lauderdale, LLC**

**09-11**

**Request:** **APPEALING: Section 47-6.20 (Table of dimensional requirements)**

Requesting a variance to allow a rear yard setback of 14 foot 9 inches, where Code requires a minimum of 25 foot rear yard setback when contiguous to residential property

**Legal Description:** A portion of the Southwest one-quarter (S.W. ¼) of Section 35, Township 49 South, Range 42 East, Broward County, Florida, being more particularly described in the application for a variance for Appeal No. 09-11, on file with the Clerk of the City of Fort Lauderdale Board of Adjustment

**Address:** 1375-1379 Progresso Drive

Zoning: B-3 (Heavy Commercial/Light Industrial Business)

District: 2

Mr. Richard Boemermann, director of Amor Fort Lauderdale LLC, said the change of use required the property either come into compliance with existing code or obtain a variance to maintain the setback. He said he intended to build a small hotel on the property.

Mr. Boemermann informed Mr. Larson that he owned the lot next door. He explained that this was a 37,000 square foot lot with a 9,200 square foot building on it. If he had to comply with the 25-foot setbacks he would lose 15% of the building. He was requesting a variance just for the building that was already there.

Mr. Madfis said he agreed that the variance should not extend beyond the existing building, and when this building was torn down, new development would respect the setback.

Mr. Cooper stated he had received a phone call from Tim Smith about this, and he had informed Mr. Cooper that the people who had sent letters of opposition had retracted their complaints.

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

**Motion** made by Mr. Larson, seconded by Mr. Madfis, to approve, with the condition that when the existing building was torn down, the variance would go away.

Mr. Dunckel advised Mr. Larson to specify that if 50% of the rear of the building was demolished, the variance would go away. Mr. Larson and Mr. Madfis agreed to this amendment of the motion.

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

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### **Report and for the good of the City**

Mr. Madfis requested that the minutes of the Board's meetings be forwarded to the Winter Group that was making the neighborhood code adjustments.

There being no further business to come before the Board, the meeting was adjourned at **9:19 p.m.**

Chair:

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Vice Chair Don Larson

Attest:

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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