

**BOARD OF ADJUSTMENT MEETING
CITY OF FORT LAUDERDALE
THURSDAY, NOVEMBER 12, 2009 – 7:00 P.M.
CITY HALL CITY COMMISSION CHAMBERS – 1ST FLOOR
100 NORTH ANDREWS AVENUE
FORT LAUDERDALE, FLORIDA**

Board Members	Attendance	Cumulative Attendance 6/2009 through 5/2010	
		Present	Absent
Diane Waterous Centorino, Chair	P	3	2
Caldwell Cooper	P	5	0
Gerald Jordan	A	4	1
Michael Madfis	P	5	0
Bruce Weihe	P	5	0
Birch Willey	P	5	0
Henry Sniezek	A	3	2
Alternates			
Mary Graham	P	3	1
Karl Shallenberger	P	4	1

Staff

Bob Dunckel, Assistant City Attorney
Cheryl Felder, Service Clerk
Terry Burgess, Zoning Administrator
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.

Index

	<u>Appeal</u>		<u>Page</u>	<u>District</u>
	<u>Number</u>	<u>Applicant</u>		
1.	09-30	R J D Corporation- Robert J. Davis	<u>2</u>	1
2.	09-31	Rio Vista Plaza LLC & Grove Rio Vista LLC-James E. Archer	<u>4</u>	4
3.	09-32	LaCuyetunia Seabury Todd	<u>5</u>	3
4.	09-33	Martin L. Zisholtz	<u>6</u>	4
5.	09-34	SCI Oregon Funeral Serv Inc-Lee Longino	<u>7</u>	1
6.	09-35	5691 LLC	<u>8</u>	1
		For the Good of the City	<u>11</u>	

Call to Order

Chair Centorino called the meeting to order at 7:00 p.m. She introduced Board members and described the functions of the Board and procedures that would be followed for the meeting.

Approval of Minutes – October 2009

Motion made by Mr. Cooper, seconded by Mr. Madfis, to approve the minutes of the Board's October meeting. 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.

[Index](#)

1. **Appeal No. 09-30**

APPLICANT: R J D Corporation- Robert J. Davis
LEGAL: Fort Lauderdale Industrial Airpark Sec 1 63-10 B Lot 19
ZONING: AIP (Airport Industrial Park)
ADDRESS: 4987 NW 23 Avenue
DISTRICT: 1

APPEALING: Section 47-14.11 (List of permitted and conditional uses, AIP District)

Requesting a variance to permit product assembly of previously approved materials (steel and miscellaneous) in the Airport Industrial Park District, where the code does not list product assembly of previously approved materials as a permitted use.

Mr. Mark McCartney, representative of the owner, explained that they had been advised to ask for a variance for this specific use. He explained to Mr. Madfis that they fabricated railings, canopies, Bahama shutters and structural steel components.

Mr. Burgess stated staff's concern was the heavy steel for the structural components that would be coming into the plant.

Mr. McCartney reported to Mr. Shallenberger that his business had the approval of Fort Lauderdale Executive Airport.

Mr. McCartney confirmed for Mr. Willey that the only fabrication the company performed was drilling and welding.

Ms. Graham confirmed the proposed location and Mr. McCartney said the hours of shop operation were 7:00 to 4:00 Monday through Friday. He added this was an open-air shop.

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.

Ms. Graham noted that this property was very near Oakland Park, and she did not know if the City notified residents of an adjoining City. She said the perimeter trees had been removed from the nearby golf course and there were condos on the south side of 45th Street, and her vote would reflect her opinion on that.

Mr. Willey asked what the hardship would be, if not economic, and noted that an economic hardship could not be the reason for the variance to be granted. Mr. Brian Herbert, architect, said the hardship they had stated in their application was valid: there was no specific use listed in the ULDR for a business such as this.

Mr. Dunckel said the Board's packet included a list of permitted uses, and the applicant was requesting a use that was not among these. The code provided that any use "not substantially similar to those permitted or accessory uses listed within a district shall be deemed to be prohibited as interpreted by the Zoning Administrator." Mr. Dunckel said the Zoning Administrator must have made this determination.

Mr. Burgess explained that when Mr. McCartney applied for an occupational license Zoning had reviewed the application and denied it based upon the use.

Ms. Madfis acknowledged that not every use could be listed, but that should not necessarily qualify as a hardship. He felt the use was probably appropriate in this case, but was unsure the Board had a clear enough case to rule without opening the door to other issues.

Ms. Graham drew the Board's attention to a letter of opposition sent by a resident to Mr. Burgess. She said she objected to this request based on the possible noise that could be generated. Ms. Graham also feared that additional services, such as painting, would be offered in the future. Mr. Weihe felt this business would generate no more noise than some of the other listed uses.

Burgess explained if the Board overruled his interpretation, this would "go City-wide" and manufacturing would be allowed on any AIP-zoned property. Mr. Dunckel clarified that this would apply to the manufacturing process in which this company was involved. Mr. Madfis said a variance would apply to only this property.

Mr. Willey said this was not a new situation; these permitted uses had been at the Executive Airport for a long time and he was having difficulty with the fact that "someplace along the line, nobody thought enough about the Airport Advisory Board and those people connected with it on a day-to-day, week-to-week basis to come and say whether this is a drastic departure from what we have talked about in the past and what we tried to do there and how we've built Executive Airport into a very nice facility as opposed to oh, this is just something that got left off. And there is an economic situation to what they're asking for because if they don't get it, they can't build it and that, in my mind, is economic..."

Motion made by Mr. Weihe, seconded by Mr. Madfis, to approve. In a roll call vote, motion **failed** 3 - 4 with Mr. Cooper, Mr. Willey, Ms. Graham and Chair Centorino opposed.

[Index](#)

2. Appeal No. 09-31

APPLICANT: Rio Vista Plaza LLC & Grove Rio Vista LLC-James E. Archer
LEGAL: CROISSANT PARK 4-28 B LOT 1 LESS R/W FOR U.S. 1, LOTS 2,3,21,22 & 23, LOT 24 LESS R/W FOR U.S. 1 BLK 62-L
ZONING: B-1 (Boulevard Business District)
ADDRESS: 1571 South Federal Highway
DISTRICT: 4
APPEALING: Section 5-27(b) (Distances of establishments from Church or School)

Requesting a special exception to allow alcohol sales that is incidental to the sale of food in a restaurant that is within 325 feet from a school, where Code requires a separation of 500 feet.

Mr. Peter Leto, representative of the owner, explained that the restaurant was near a vacant school building that was previously used for adult education. He noted that the request was for a beer and wine license, not hard liquor.

Mr. Ramon Gonzales, business owner, said the School Board had voiced no objection. Mr. Gonzales said the previous business here had also had a beer and wine license.

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

[Index](#)

3. Appeal No. 09-32

APPLICANT: LaCuyetunia Seabury Todd
LEGAL: GOLDEN HEIGHTS HOMES 40-28 B LOT 3 BLK 7
ZONING: RS-5 (RESIDENTIAL)
ADDRESS: 2550 NW 16 Court
DISTRICT: 3

APPEALING: Section 39-275 3(g) (Broward County Zoning Code-General provisions)

Requesting a variance to permit a shed located one (1) foot two and three quarter (2 $\frac{3}{4}$) inches from principal structure, where Broward County Zoning Code requires a minimum of ten (10) feet from any principal and accessory buildings on the same plot.

Ms. LaCuyetunia Seabury Todd, applicant said she was seeking a variance because it appeared the property records from Broward had not been transferred to the City after the property was annexed in 2000 and the County distance separation was being cited.

Mr. Burgess said he was unsure whether the area had been rezoned and until it was, the City used the County code. He could not say if this area would maintain County-type codes instead of adopting City codes.

Ms. Todd informed Mr. Weihe that the shed had been installed over the summer. She said her mother had built the house in 1963 and she had lived there since 1998. Ms.

Todd informed Mr. Madfis that this issue had come up when she applied for the shed permit.

Mr. Burgess confirmed that the only issue was the shed's distance from the principal structure.

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. Shallenberger said he was unhappy that the City had not moved forward with this area's annexation after all this time. Mr. Burgess admitted the City was behind in this process.

Ms. Todd remarked on what a "horrible" experience this application process had been, and asked the City to consider a simpler process for homeowners.

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

[Index](#)

4. Appeal No. 09-33

APPLICANT: Martin L. Zisholtz
LEGAL: FT LAUDERDALE B-40 D LOTS 11 LESS N 18, LOT 12 LESS ST TOGETHER WITH THAT PT OF W1/2 OF VAC'D ALLEY LYING E OF & ADJACENT TO SAID PROP BLK 17
ZONING: H-1 (HISTORIC PRESERVATION DISTRICT)
ADDRESS: 327 SW 2 STREET
DISTRICT: 4

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 within 142 feet from the Entertainment District that sells alcohol, where Code requires a minimum of 300 feet separating establishments that sell alcoholic or intoxicating beverages.

Mr. Stephen Tilbrook, representative of the applicant, described the location of the restaurant, and explained that the special exception was required due to the restaurant's proximity to the Special Entertainment district, not to another restaurant. Mr. Tilbrook said the sale of beer and wine were essential to the success of the restaurant.

Mr. Tilbrook said the Special Entertainment District actually surrounded this site and the border was 150 feet from the door to this establishment. Mr. Tilbrook read from the Code Section, which indicated the Board could grant a special exception provided they found the approval would not be contrary to the public interest.

Mr. Tilbrook described this as a “fine dining South Florida cuisine restaurant focusing on pizza pies” that was needed to accommodate residents and patrons of the Broward Center for Performing Arts since so many of the restaurants in the area had been replaced by night clubs. Mr. Tilbrook said the Riverwalk Trust Master Plan Committee had given them a verbal endorsement and the Chair of the Himmarshee Village Association had indicated their support.

Mr. Willey asked if the restaurant would sell beer and wine or if they intended to sell all types of alcoholic beverage. Mr. Tilbrook said the special exception was for the ability to sell alcoholic beverages. The current menu was limited to beer and wine, but in the future, they wished the flexibility to sell to sell other alcoholic beverages.

Mr. Rodney Eli, business owner, explained to Ms. Graham that his intent was to be open until 10 p.m. on weeknights and until midnight on the weekend, with flexibility to suit the hours of the Broward Center.

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. Madfis, seconded by Mr. Willey, to approve. In a roll call vote, motion passed 6 – 1 Mr. Cooper opposed.

[Index](#)

5. Appeal No. 09-34

APPLICANT: SCI OREGON FUNERAL SERV INC-LEE LONGINO
LEGAL: POWERLINE ROAD INDUSTRIAL CENTER 65-8 B LOT 14
ZONING: I - (INDUSTRIAL ZONING DISTRICT)
ADDRESS: 796 NW 57 STREET
DISTRICT: 1

APPEALING: Section 47-3.1.B.1 (Nonconforming use)

Requesting a variance to expand a non-conforming crematory, where code states a nonconforming use shall not be enlarged or extended nor shall the building it occupies be enlarged, extended or rebuilt such that the use would occupy a greater area of land than was occupied by the use on the effective date (June 28, 1997) or amendment of the ULDR which causes the use to become nonconforming, nor altered in any way so as to extend or enlarge the scope or area of its operation.

Ms. Melissa Pitalo, representative of the applicant, explained that this was currently a human crematorium and they wanted to expand to provide crematorium services for pets. Mr. Geronimo Mena, manager of Gold Coast Crematory, explained they wanted to serve the needs of families, including their desires to have their pets cremated.

Ms. Pitalo explained to Ms. Graham that they would need to build a smoke stack for the animal crematorium if this were approved. She added that if someone bought the entire parcel now, this use would not be permitted. Mr. Burgess agreed that this property had been part of the County when Ms. Pitalo purchased it; this was why the use had been permitted there. The City did not permit this use anywhere in the City today.

Ms. Pitalo said the east side of the building, where they intended the pet crematorium to be, was vacant. She explained they wanted to expand their occupational license and to differentiate the pet crematorium from the human crematorium because of the sensitivity of their business.

Ms. Pitalo agreed with Mr. Madfis that she had purchased the property believing the use would continue to be allowed.

Mr. Mena confirmed for Ms. Graham that another stack would need to be installed to serve the animal crematorium. Mr. Mena informed Mr. Cooper that the expansion of the business would result in no neighborhood nuisance.

Mr. Burgess informed Mr. Willey that the code would not permit a new crematorium to operate at this location today.

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. Willey remarked that this was the expansion of a non-conforming use on the City of Fort Lauderdale.

Motion made by Mr. Cooper, seconded by Mr. Weihe, to approve. In a roll call vote, motion passed 6-1 with Mr. Willey opposed.

[Index](#)

6. Appeal No. 09-35

APPLICANT: 5691 LLC

LEGAL: CORAL RIDGE ISLES 45-47 B LOT 11 & THAT POR IF
PLANTING STRIP LYING E & ADJ TO NE 14 AVE BET N & S
PROP LINES OF LOT 11, 12 N 97 BLK 2
ZONING: I – (INDUSTRIAL ZONING DISTRICT)
ADDRESS: 5691 NE 14 AVENUE
DISTRICT: 1

APPEALING: Section 47-19.9.A.2.a (Outdoor uses)

Requesting a variance to permit a solid opaque fence for a contractor's yard, where code requires outdoor storage of goods and materials must be completely screened from abutting residential property and all public rights-of-way by a wall constructed in accordance with the requirements of Sec. 47-19.5, Fences, Walls and Hedges. Such wall shall be a minimum of six and one-half (6 1/2) feet in height and a maximum of ten (10) feet in height.

APPEALING: Section 47-19.9.A.2.b (Outdoor uses)

Requesting a variance to permit a solid opaque fence for a contractor's yard, where code requires outdoor storage of goods and materials must be completely screened from abutting nonresidential property by a wall in accordance with the requirements of Sec. 47-19.5, Fences, Walls and Hedges. Such wall shall be a minimum of six and one-half (6 1/2) feet in height and a maximum of ten (10) feet in height.

Mr. Bob Smith, representative of the applicant, said the request related to a specific type of fencing material. He stated the proposed use of the vacant lot was as a vehicle staging area. Mr. Smith stated they desired the fence instead of a masonry wall because they hoped the property would be developed in the future. He said they would meet the intent of the code using another material.

Mr. Ted Hessel, managing partner, explained they had purchased the property in 2007 with the existing chain link fence. They had discovered the need for the wall when they applied for the asphalt permit. He noted there was an exception in the code, with Board approval, to use an opaque wood fence instead of the wall.

Mr. Smith stated this would be a standard 6.5-foot fence, four-foot on center with four-by-fours. It would surround the property except for an opening where the existing building formed a wall.

Mr. Stuart Weinstock, tenant, explained they were a repossession company.

Chair Centorino opened the public hearing.

Mr. Jack Abdo, owner of the south adjacent property, showed a photo of the business operating on the property, and said he vehemently objected to this use to generate income on a vacant property without complying with the code. Mr. Abdo reminded the

Board that impound yards, a similar use, were required to have concrete walls. He added that this was taking place within 100 feet of residential property. Mr. Abdo stated the fence on the property was “abysmal” and was falling down and there was constant activity on the property. He informed the Board that this use should not be permitted because there was no landscaping outside the fencing and no asphalt, so oil from the vehicles was leaking and creating environmental issues. Mr. Abdo felt it was “crazy to consider allowing this to take place in our city where we have the codes to prevent it.” He explained that the trucks unloaded the cars on the street because the lot was full.

Mr. Weihe asked if Mr. Abdo would prefer the existing chain link fence to the requested fencing. Mr. Abdo did not believe the property was currently code compliant with the chain link fence with barbed wire, and the lack of landscaping and maintenance. Mr. Burgess confirmed that the property had been cited by Code Enforcement and the chain link fence was not code compliant.

Mr. Smith said they intended to replace the chain link fence and to landscape the property. He said this use was allowable and the surface would meet EPA requirements.

Ms. Graham wondered if the business was allowed to offload the vehicles on the side street. She felt the wood fence would not be secure, and thought they were avoiding a financial hardship. Mr. Smith said it was not a financial hardship; if they were not granted a variance they would build a wall. He explained that the trucks stayed off the site because they might get stuck in the unpaved lot. Once they improved the lot, the trucks would be pulling in to offload the cars.

Mr. Willey stated the applicant did not want to spend the money to build a wall that was to code and this constituted an economic hardship. Mr. Madfis said this may appear to be a financial hardship in a normal environment, but they should consider future demolition of a concrete wall and its impact on the environment. He stated, “That might be an angle for the hardship as not being financial but being more of a hardship to the community in terms of its impact on the environment.”

Mr. Burgess confirmed for Mr. Dunckel there was a provision in the code allowing substitution of wood for concrete masonry. Mr. Dunckel said to Mr. Madfis, “You’re talking about substituting the wood for what the scriveners of the code said was concrete. Following that line of reasoning, you are now substituting your judgment for that of the City Commission and rewriting the code, and as you know, that’s something we’re supposed to avoid.” Mr. Madfis said he was trying to grant a variance based on a hardship he interpreted to be a community impact, not a financial impact.

Mr. Abdo said he did not understand how an exception could be made for a use that would be temporary. He said allowing a 6.5-foot fence would be a “code enforcement nightmare” and said he would be calling Code Enforcement every day and the City

would waste taxpayer money sending inspectors to the property to respond to complaints about trucks unloading in the street, or vehicles that were above the sight line of the walls.

Mr. Dunckel reminded the Board of a case regarding the U.S. Concrete site, when the City limited the height to which the pipe could be stored so it could not be seen from outside the property.

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. Cooper said, "When you've got an active business, you've got to play by the rules."

Chair Centorino did not believe the applicant had stated a hardship that was not economic.

Motion made by Mr. Weihe, seconded by Mr. Cooper, to approve both requests. In a roll call vote, motion failed 1 - 6 with Mr. Willey, Mr. Weihe, Mr. Shallenberger, Ms. Graham, Mr. Cooper and Chair Centorino opposed.

[Index](#)

Report and for the Good of the City

Mr. Shallenberger nominated Mr. Weihe for Vice Chair, seconded by Ms. Graham. In a voice vote, Board unanimously approved.

Mr. Shallenberger complained about the delay with the annexations and asked staff to give the Board a progress report. Mr. Burgess agreed to provide a list at the Board's next meeting describing areas that had been annexed and those that were in the process. Mr. Willey wanted to encourage the Mayor to work with the County to resolve County/City issues.

Mr. Cooper referred to the contentious meeting the previous months, and suggested they limit the length of public comment to reduce long meetings. He also noted the "repetitive comments" made during public comment. Chair Centorino explained that since she assumed the case the previous month would result in litigation, she wanted to be sure that neither side could say the public had been denied input that could have affected the Board's vote.

Mr. Weihe recommended enforcing the 3-minute limit for each speaker, but cautioned that they could not deny the applicant due process.

Mr. Willey said he felt that the Board was “all that the public has” and enforcing a three-minute rule or imposing other limits “until we absolutely have to” would be doing the public a disservice.

Mr. Madfis referred to the comments made by Ms. Todd regarding the difficulty of the variance application process, and said there should be a way to help individuals who could not hire an architect or an attorney.

Ms. Graham remarked that coming before the Board was “serious business” but she doubted there would be a two-track process for business and homeowners. She suggested adding information with residents’ water bills warning them against doing work without permits.

There being no further business to come before the Board, the meeting was adjourned at **9:11 p.m.**

Chair:

Chair 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