

**BOARD OF ADJUSTMENT MEETING  
CITY OF FORT LAUDERDALE  
WEDNESDAY, MARCH 10, 2010 – 6:30 P.M.  
CITY HALL CITY COMMISSION CHAMBERS – 1ST FLOOR  
100 NORTH ANDREWS AVENUE  
FORT LAUDERDALE, FLORIDA**

<b>Board Members</b>	<b>Attendance</b>	<b>Cumulative Attendance 6/2009 through 5/2010</b>	
		<b>Present</b>	<b>Absent</b>
Diane Waterous Centorino, Chair	P	7	2
Caldwell Cooper	P	9	0
Gerald Jordan	P	8	1
Michael Madfis	P	9	0
Bruce Weihe	P	9	0
Birch Willey	P	8	1
Henry Sniezek	P	7	2
 <b>Alternates</b>			
Mary Graham	P	5	3
Karl Shallenberger	P	8	1
Leo Hansen	P	2	0

**Staff**

Bob Dunckel, Assistant City Attorney  
Cheryl Felder, Service Clerk  
Terry Burgess, Zoning Administrator  
Yvonne Blackman, secretary  
Mohammed Malik, Chief Zoning Plans Examiner  
Wayne Jessup, Deputy Director, Planning and Zoning Department  
Dennis Girisgen, Public Works Department  
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

Chair Centorino called the meeting to order at 6:30 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 – February 2010

**Motion** made by Mr. Jordan, seconded by Mr. Cooper, to approve the minutes of the Board's February 2010 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.**

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#### 1. Appeal No. 09-26 (*Deferred from February 10, 2010 Meeting*)

**APPLICANT:** SVP Las Olas Limited Partnership

**LEGAL:** "NEW RIVER CENTER" 151-15, B POR PAR A DESC AS BEG T WLY MOST NW COR SAID PAR A NE 42.47 E 220.28 SE 42.43, S 110, W 280.05 N 109.94 TO POB

**ZONING:** RAC-CC (Regional Activity Center-City Center District)  
**ADDRESS:** 100 E. Las Olas Boulevard  
**DISTRICT:** 4

**APPEALING:** Section 47-20.22.C.3.c (Temporary parking lots-*Standards*)

Requesting a variance to allow overflow parking of valet vehicles on a vacant property without providing perimeter landscaping, where code requires landscape materials shall be installed and continuously maintained around the entire perimeter of the lot.

**APPEALING:** Section 47-20.22.C.3.d (Temporary parking lots-*Standards.*)

Requesting a variance to allow overflow parking of valet vehicles on vacant property without complying with the minimum landscaping along all perimeters, where code requires landscape area shall have a minimum depths of five (5) feet and an average of ten (10) feet along all perimeters.

**APPEALING:** Section 47-20.22.C.3.e (Temporary parking lots-*Standards.*)

Requesting a variance to allow overflow parking of valet vehicles on a vacant property without providing surface water/drainage plans, where code requires surface water/drainage plans shall be in accordance with the requirements of the Broward County Department of Natural Resource Protection permitting requirements.

**APPEALING:** Section 47-20.22.C.3.g (Temporary parking lots-*Standards.*)

Requesting a variance to allow overflow parking of valet vehicles on a vacant property without providing light fixtures, where code requires any temporary parking lot which will be in operation at any time during the period of one-half ( $\frac{1}{2}$ ) hour after dusk to one half ( $\frac{1}{2}$ ) hour before dawn shall provide a minimum maintained foot candle illumination of two (2) foot candles throughout the lot during this period of time.

Mr. Justin Toal, representative of the applicant, reminded the Board that the major concerns expressed about the project had been lighting and landscaping. They had worked with the Downtown Development Authority to devise a plan that Chris Wren and Chadwick Blue had been considering for many years: the Urban Oasis Project, which would create a 15-foot lighting and landscape barrier around the site. Mr. Toal had sent photos describing this plan to the Board.

Mr. Toal requested that the landscaping and lighting requirements be waived in consideration of the implementation of the Urban Oasis Plan, which would allow them to "loosely" comply with "landscaping and lighting and other things" in exchange for allowing the parking to continue. Mr. Toal stated they still did not know when they would construct the new building.

Mr. Chris Wren explained that the Downtown Development Authority had been looking at three sites on Las Olas Boulevard to include in the Urban Oasis Plan until they were

able to redevelop them. This project involved: perimeter landscaping, including oak trees in containers that could be or relocated when the site was developed; wider sidewalks; increased lighting and artwork on the fence that Mr. Wren felt could “almost become an attraction.”

Mr. Wren stated the Downtown Development Authority board had authorized him to implement this plan in partnership with SVP and River House. They had met with representatives of River House, SVP, and FAU, and all had agreed that this plan made sense.

Mr. Toal stated River House was the primary beneficiary of additional parking, but they had also allowed the City to utilize the area for parking for special events. He noted that River House was making a significant economic contribution to make this plan happen.

Mr. Willey thanked Mr. Wren and the college representative for appearing this evening, and remarked that this was “one of the most important things that we’ve faced as far as how our downtown looks in a long time” because it would take years to correct. Mr. Willey asked who would maintain the fence and other components of the Urban Oasis Plan. Mr. Wren said they had entered into an agreement that the day-to-day maintenance would be done by River House, and the artwork on the fence would be updated on a 12-18-month basis.

Mr. Cooper noted there were only two 13-foot light poles on the plan for the site. Chadwick Blue, Downtown Development Authority, explained that there would be approximately 48 “ground effects” lights that would point up and illuminate the banner wraps on the fence; two lamp posts would also be located in the corners of the lot. He said there were also additional lights planned for the gravel parking area that were not shown on the plans.

Mr. Cooper said one of his major concerns was water runoff of car fluids from the gravel parking area into the storm drain system. Mr. Toal stated the site was very pervious, and there had been no drainage issues or runoff. Mr. Cooper insisted the lot could not contain large quantities of rain and felt they should consider a berm to contain water. Mr. Toal said they had monitored the lot during very heavy rains and had been shocked by how little water ran off and how quickly it drained on the site. He did not believe this would be a concern but if it became one in the future, he agreed to address it. Mr. Toal informed Mr. Cooper that the lot was used predominantly for River House, but the City was also permitted to use it for various events downtown two to four times per year.

Mr. Madfis said the fact that there would be more than nine cars located on the lot would trigger the EPA requirement for a paved surface from which water was collected and stored in a licensed storm water drainage system before allowing it to go into the ground or the river. Mr. Toal said they had been concerned about this on the lot, and

they would continue to monitor the lot for runoff. He said the property had already been graded.

Mr. Madfis liked the artwork, and remarked that it could be expensive for this level of detail. Mr. Wren said the artist had been creating mockup renderings that would be turned into a fabric wrap to reproduce a significant level of detail. He said they had budgeted for the panels and for leaves around the panels to create frames to make this an attraction.

Mr. Dunckel said the City needed the Urban Oasis Plan to accurately represent how they would be permitted to deviate from the code, which it currently did not. Mr. Toal admitted that the lighting was not reflected on the plan. He said the lot was sufficiently lit for their purposes right now and they did not want to add a lot of interior lights on the lot because this would create shadows on the fence line; one of the main concerns expressed by FAU and BCC was that they did not want "places for bums to sleep." Mr. Dunckel understood this, but said the Board must have specificity regarding what they would get in exchange for loosening the requirement of the code before granting a variance.

Mr. Dunckel said the City did not mind if responsibility for maintenance was delegated to someone else, such as the River House, but ultimately, the owner would be responsible, and failure to maintain could result in loss of the variance. Mr. Dunckel asked about insurance on the property, in the event there was an accident while the property was being used by the City, and explained the surface water drainage plans were required by the County, not the City, so the City could not grant a variance regarding this. Mr. Dunckel advised the Board to consider an expiration time for the variance.

Regarding the lighting, Mr. Toal said the Board had expressed a concern about lighting on the perimeter of the property for the safety and security of pedestrians, not valet personnel and people parking on the lot. He clarified that the only people parking on the lot were valet personnel, not vehicle owners. River House residents, and any people using the lot during a City function must utilize valet parking.

Mr. Toal stated sufficient lighting was a requirement in order to obtain garage keepers insurance. He said they did not want to over-light site. Mr. Toal said they were trying to overcome deficient lighting on the site by lighting the perimeter "exceedingly sufficiently."

Mr. Toal explained that when the City asked to use the site for parking, the vehicle owner's name must be on a list with the valet and the lot would be closed after reaching a certain number of cars. The City also stationed someone at the gate to ensure that no

one other than valet personnel entered the site. This was all covered under their garage keepers insurance.

Regarding the drainage requirements, Mr. Toal said they needed an opinion on that request and they were waiting to see the outcome on the other variances. Ultimately, he said the City had the authority to withdraw the Code Enforcement citation. The County would have the opportunity to cite them in the future. Mr. Dunckel said the City could not authorize use of the property in the manner they intended without a waiver from the County for the drainage requirements.

Mr. Madfis stated the drainage requirement was a federal law imposed through the State and County and it was the City's responsibility to follow up on this and report back to the County. Regarding the lighting requirements, he noted that if there was a mugging on the property, the insurance company could come back to the City because the lighting did not meet code.

Mr. Wren confirmed that the landscape plan was accurate.

Mr. Willey said he wanted to solve this problem, but he did not feel they were "there yet." He appreciated the fact that the Downtown Development Authority supported this, but asked how they could tie the Urban Oasis project to the variance. Mr. Dunckel recommended setting a deadline for completing the landscaping, and paying attention to the representations that the artwork would be changed every 12 to 18 months and that the property would be maintained. The applicant could return next month with a revised lighting plan showing photometric readings. If the conditions of the variance were not met, the applicant would lose the variance. Mr. Dunckel stated another way to ensure that the Urban Oasis project was tied to the variance: when the Board granted a variance, it was considered to be a new component of the code and could be pursued in Code Enforcement matters.

Regarding maintenance, Mr. Toal said the River House was going to maintain the property and they had every incentive to keep the property up the because it was adjacent to their property and because if it was not maintained to the City's satisfaction they would lose the variance and therefore the parking.

Chair Centorino opened the public hearing.

Mr. Bill Pennell, CFO for Broward College, said he had met with SVP and the Downtown Development Authority, and he believed the plan addressed the concerns the college had regarding lighting and pedestrian safety, so they supported this plan.

Mr. Vince Cuchiella, FAU Facilities Director, said they supported this and believed it would be a vast improvement over what had existed at the site for many years.

Mr. Joe Bellavance said the issue was the parking lot, and when SVP appeared before the Planning and Zoning Board in 2009 they had been told they were violating City code and should seek approval for a temporary parking lot, which would require paving landscaping etc. In June 2009, a Special Magistrate heard the case and ordered compliance. In October, the Board of Adjustment had told SVP to come up with a plan. Mr. Bellavance stated they had a plan for the perimeter of the parking lot, but they had not addressed the code violations of the parking lot. He hoped the Board would make a decision so the case would not continue into 2011.

John Quaintance, President of the River House Homeowners Association, confirmed they were committed to maintaining the property. They would also pay for the electricity to run the perimeter lights and water for the irrigation system. He added they were working with the Police Department to install a surveillance system facing Las Olas that he assumed would improve security along the whole corridor.

Mr. Fred Stresau said he had followed this item very closely because not too long ago he had supported a project similar to this that had resulted in that applicant's request being turned down and closing the lot. He noted that the Downtown Activity Center had specific rules governing surface parking lots, and he thought that these were going to be prohibited. Mr. Stresau thought the applicant was close to providing what needed to be done and by the time they were through with Broward County drainage, they would end up paving the lot and maybe they did not need the variances they were requesting. Mr. Stresau said if they provided the plan they had shown, there was an opportunity to have something that would be a benefit for the downtown.

Mr. Stresau pointed out that SVP was collecting money from the valet service, and this was money "that they could have spent on the improvements that they're talking about, that they should have put in their building to begin with." Mr. Dunckel said the parking was being provided free of charge. Mr. Stresau wondered why the City was using the lot occasionally because he thought the City would want people to use City parking garages to produce revenue.

Mr. Toal confirmed that the River House was not paying anything for use of the lot. He said money was tight, and they could not afford to install drains and perform excessive construction on the lot. He said they barely had the money for this plan.

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. Madfis said he was impressed with the applicant's effort but was not prepared to approve this tonight because of his concerns about the drainage and lighting.

**Motion** made by Mr. Weihe, seconded by Mr. Jordan, to approve the variance request regarding Section 47-20.22.C.3.c with the plans as provided.

Mr. Willey said he understood that the landscaping plan they had seen was the proper landscaping and the Downtown Development Authority and the colleges agreed it was adequate.

Mr. Dunckel advised the Board to add a time element for the variance. Mr. Weihe amended his motion to limit the variance to 24 months, and to specify that the artwork on the fence would be refurbished every 18 months

In a roll call vote, motion **passed** 6 – 1 with Mr. Cooper opposed.

**Motion** made by Mr. Weihe, seconded by Mr. Jordan, to approve the variance request regarding Section 47-20.22.C.3.d with the plans as provided, with the same conditions noted for the first request. In a roll call vote, motion **passed** 5 - 2 with Mr. Cooper and Mr. Madfis opposed.

Regarding the third variance request, Mr. Dunckel reiterated that the City did not have the authority to vary the County's requirements.

**Motion** made by Mr. Weihe, seconded by Mr. Jordan, to approve the variance request regarding Section 47-20.22.C.3.g with the plans as provided, with the same conditions noted for the first two requests. In a roll call vote, motion **failed** 2 - 5 with Mr. Willey, Mr. Madfis, Mr. Sniezek, Mr. Cooper and Chair Centorino opposed.

**Motion** made by Mr. Willey, seconded by Mr. Madfis, to state the denial of the request regarding Section 47-20.22.C.3.g was without prejudice and the intent was to allow the applicant to return with a better lighting plan.

Mr. Dunckel advised Mr. Willey to add that the intent was not to apply the 24-month delay before re-applying. Mr. Willey added this condition to his motion. In a roll call vote, motion **passed** 7 - 0.

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## **2. Appeal No. 10-03**

**APPLICANT:** Stephen L. Goldstein  
**LEGAL:** "Coral Ridge Isles", P.B. 45, P. 47, Block 43, Lot 37  
**ZONING:** RS-8 (Residential Single Family Low Medium Density District)  
**ADDRESS:** 1448 NE 55<sup>th</sup> Street, Fort Lauderdale, FL  
**DISTRICT:** 1



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

Requesting a variance to allow a 23-foot front yard setback, where Code requires a minimum of 25 feet.

Mr. Madfis asked if these were the issues being addressed by the ongoing neighborhood compatibility study. Mr. Burgess said this was possible, but they were not sure the study would be approved.

Mr. Jason Ables, representative of the applicant, drew the Board's attention to the plans, and noted that the site plan indicated the building would be 28 feet from the setback. The photos showed the home was built at the 25-foot mark, and the cantilevered carport roof beam protruded two feet out from the building. Mr. Ables said according to the plans, the building was not supposed to have the cantilevered roof beam.

Mr. Ables said the owner wanted to enclose the carport, following the line of the concrete roof beam. He pointed out that all but one other home in the area had been built with a garage or had enclosed their carports. Mr. Ables stated the owner wished to secure his car and night and provide storage.

Mr. Ables explained that building the garage wall at the 25-foot setback line, leaving the protruding beam, would not comply with the required 18-foot clearance required by code in the garage. Mr. Able informed Mr. Madfis that the clearance inside the garage would be 17' 10" if it were built at the 25-foot setback line.

Mr. Ables had submitted photos from many neighbors who had enclosed garages, accompanied by letters of support from several homeowners.

Mr. Jordan said he had seen this situation before, and advised that the garage door should be mounted to the beam for proper support.

Mr. Ables informed Mr. Weihe that there was no homeowners association to review this project.

Chair Centorino opened the public hearing.

Mr. Frederick Goldstein, brother of the property owner, said his brother would like the garage for safety and aesthetics.

Mr. Sniezek informed Mr. Ables that there was a homeowners association in Coral Ridge Isles, but it was not very active.

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

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### **3. Appeal No. 10-04**

**APPLICANT:** Bruce and Loren Harlan  
**LEGAL:** "South New River Isles Sec. D", P.B. 40, P. 5, Lot 109  
**ZONING:** RS-8 (Residential Single Family Low Medium Density District)  
**ADDRESS:** 1301 Orange Isle  
**DISTRICT:** 4

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

Requesting a variance to allow a 23 foot 6 inches rear yard setback on the waterway, where Code requires a minimum of 25 feet.

Mr. Bruce Harlan, applicant, said he wanted to put in a screen porch to be able to enjoy his backyard and avoid mosquitoes. He distributed a photo of the property and explained he intended to use the existing 10-foot slab in the rear of the building. Mr. Harlan his porch was more than 25 feet from what he thought was the property line, but he had learned that his property line actually extended five feet into the canal. They now needed an 18-inch variance.

Mr. Burgess confirmed for Mr. Madfis that the dimension was taken to the wet face of the sea wall, even though his property extended into the canal.

Mr. Harlan explained to Mr. Jordan that he had discovered the problem when he applied for a permit; the porch screening had not been installed yet. Mr. Jordan asked what the hardship would be. Mr. Harlan said without the additional space, the room would only be 7 feet 9 inches wide, and they would like to put furniture in the porch. He added that this would also be the easiest way to access the home in wheelchair.

Ms. Loren Harlan, applicant, said Mr. Harlan was currently using a cane and a walker, and was concerned he might need a wheelchair someday. She said the additional space would give him room to maneuver a wheelchair.

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. Cooper did not feel there was a hardship.

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

Mr. Dunckel recommended adding a condition that the variance applied to the planned screen enclosure only. Mr. Cooper amended his motion to include this condition. In a roll call vote, motion **passed** 5 – 2 with Mr. Jordan and Mr. Cooper opposed.

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#### **4. Appeal No. 10-05**

**APPLICANT:** Villaggio Di Las Olas, Inc.  
**LEGAL:** "Beverly Heights", P.B. 1, P. 30, Block 21, Lots 3-6, 13 & 14  
**ZONING:** B-1 (Boulevard Business District)  
**ADDRESS:** 1109 E. Las Olas Blvd.  
**DISTRICT:** 4

**APPEALING:** **Section 5-26(b) (Distance between establishments)**

Requesting a Special Exception to allow alcohol sales that is incidental to the sale of food in a restaurant that is within 98 feet from (Tuscan Grill) and 112 feet from another establishment (Trata Greek Taverna), where Code requires a separation of 300 feet.

Mr. Leon Brill, representative of the applicant, stated there had been a restaurant at this location before with a wine and beer license, and they were requesting the same. Mr. Weihe asked if the landlord had assured him he would be permitted to sell alcoholic beverages on the site when he signed the lease. Mr. Brill said this had been discussed but he did not believe it was in the contract.

Mr. Jordan said this was in his neighborhood and the previous business there, Cathode Ray, had generated many noise complaints. Mr. Brill stated they would have no bands or loud music at the restaurant.

Mr. Jordan said Beverly Heights Homeowners Association had not been notified of this request. Mr. Burgess said it was difficult to meet homeowners association's agenda notification deadlines. Mr. Jordan stated they were watching how many restaurants and bars were opened on Las Olas, because they did not want this to become a food court.

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

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**5. Appeal No. 10-06**

**APPLICANT:** Judy Sanchez  
**LEGAL:** "Rio Vista Isles", P.B. 7, P. 47, Block 27, Lot 3  
**ZONING:** RS-8 (Residential Single Family Low Medium Density District)  
**ADDRESS:** 908 SE 9<sup>th</sup> Street  
**DISTRICT:** 4

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

Requesting a variance to allow a 6-foot rear yard setback, where Code requires a minimum of 15 feet.

**APPEALING:Section 47-19.2.A.5.a (Accessory buildings and structures, general – Accessory dwellings)**

Requesting a variance to permit an existing accessory dwelling on a 6,250 square foot lot, where Code requires a minimum parcel size of 10,890 square feet.

Mr. Raymond Doumar, attorney for the applicant, distributed a photo of the accessory dwelling and stated this was a "very unique situation." He explained that when Ms. Sanchez purchased the property in 2003 she had utilized the City's pre-sale inspection program. The City inspector had filed his report, a copy of which Board members had, that did not indicate this was a violation.

Mr. Doumar explained that the buildings were moved onto the property in the 1940s or 1950s as a duplex. The duplex had later been converted to a single-family dwelling and then an accessory dwelling.

Mr. Doumar said this was a true hardship because Ms. Sanchez had purchased the property based on the inspector's report. He stated every nearby neighbor had signed a petition in support of this request; no objections were on file with the City. Mr. Doumar stated this hardship was created by the City, not the applicant. He said the accessory dwelling was surrounded by an 8-foot fence and could not be seen from the street. He felt it would be a tragedy if they had to tear down the accessory dwelling.

Mr. Weihe said the Board had not received a copy of the inspector's report in their packet. Mr. Doumar showed the report to the Board and also had a transcript of what

he believed the report said. He stated in the inspector had identified code violations at the property, but not the issue before the Board this evening.

Mr. Burgess stated the document presented by Mr. Doumar was not a City of Fort Lauderdale pre-sale inspection report. Mr. Madfis thought the report listed the addition of kitchen cabinets in the garage to make it a dwelling unit. He thought perhaps this was allowed as a garage, but not as an accessory dwelling unit.

Mr. Dunckel noted that the report was coded CE, meaning it was a code enforcement case, and it was signed by Mr. Bob Pignataro, a former Code Enforcement inspector. Mr. Burgess said Inspector Pignataro had performed presale inspections, but he did not believe the City conducted pre-sale inspections in 2003.

Mr. Doumar stated Ms. Sanchez had purchased the property in May 2003. Mr. Burgess said he had just discovered in the computer a Code Enforcement case based on a presale survey conducted for the previous owner. Mr. Dunckel had a copy of this and distributed it to the Board. Mr. Dunckel said Ms. Sanchez had purchased the home between May 12 and May 19. Mr. Weihe said the report was dated May 17.

Mr. Cooper said Ms. Sanchez had gone through with the sale aware of the violations. Mr. Dunckel clarified that a presale inspection was conducted on May 12, but they did not have a copy of it to know what it said. They also knew an inspection report was issued on May 17, but they did not know if that was delivered to the buyer. Mr. Doumar insisted the code violations listed were not those for which Ms. Sanchez was requesting a variance.

Mr. Doumar confirmed for Chair Centorino that the notice dated May 17, 2003, made Ms. Sanchez aware of some violations, but not the violations regarding the setbacks and accessory dwelling. Mr. Cooper said if Ms. Sanchez had applied for permits to remediate the violations, these issues would have been discovered.

Mr. Burgess informed Mr. Weihe that the code regarding accessory dwellings was the same in 2003. He said the presale inspection program was meant to put a prospective purchaser on notice of code violations and this was the type of violation that should have been mentioned in the report.

Mr. Dunckel said the garage was a legal nonconforming structure and use. But given the lot size and the fact that it was only 6 feet back from the property line it could never have been permitted for conversion into a living unit. He thought the code inspector may have been thinking it needed to be converted back to a garage.

Mr. Madfis explained that during the permitting process, additional problems could be discovered. He realized this could be confusing to a property owner. Chair Centorino

thought the placement of this “antique building” on this property was the elephant in the room. She felt a reasonable person could assume that if there were a huge violation like an entire structure on the lot, it certainly would have been listed on the report. Chair Centorino had visited the property and said she had found the building to be attractive and not a blight on the neighborhood. Mr. Madfis agreed that if an owner had not gone the next step to remediate the violations, she would not be aware of possible additional violations. He stated this was the level of detail typically included in the notice.

Mr. Weihe said Ms. Sanchez believed she was commissioning this report to make her aware of any problems or code violations at the property she intended to buy.

Mr. Doumar presented a letter from the owner of the adjacent property stating he had lived there from 1971 to the present, and a previous owner had purchased it in the late 70s and converted the duplex to a single-family residence and the garage to a studio/guesthouse. Subsequent owners had used the converted garage as a guesthouse occasionally.

Ms. Sanchez, informed Mr. Willey that she was the only owner of the property. Mr. Willey thought a reasonable solution would be to grant the variance for as long as Ms. Sanchez owned the property. Mr. Doumar said this would have a “chilling effect on the sale of the property.”

Ms. Judy Sanchez, owner, said when she purchased the property in 2003, she had purchased it because of the guesthouse. She had kids in college, and this was a place they could stay when they came home. Her parents were also ill and visited occasionally and would stay here instead of in a hotel. Ms. Sanchez said she had used the City's presale inspection, and she understood that the sink had been installed not to code and the garage door had been installed not to code and must be redone. The inspector advised her to pull after-the-fact permits to have this work done.

Ms. Sanchez said the previous owner had approved having the inspection done, and was supposed to hire a contractor to get an estimate for the work. She said the contractor had not visited the home for quite some time and in the meantime she had closed on the property. When she closed on the property, the attorney had given her a check “for the total amount of the repairs” and informed her that it was her responsibility to work with the contractor. Ms. Sanchez had notified the contractor, but not heard from him until May of the following year. At that point, she was in the middle of a divorce and was selling a home in Minnesota, and had decided not to have the work done.

Ms. Sanchez said Inspector Gerry Smilen had inspected the property as part of a neighborhood audit. He had informed her that she must either convert the building back to a garage or remove it.

Ms. Sanchez informed Mr. Dunckel that she had an attorney during the sale of property: Lawrence Judd. He had suggested she have the presale inspection done since this was an old building.

Ms. Sanchez said Inspector Smilen had visited the property in July 2009. Until that time, no inspector had bothered her. Mr. Dunckel requested the flyer regarding the presale inspection be entered into the record. Ms. Sanchez said it had been her decision to have the inspection done. She said there had been no disclosure in the real estate listing of any defects on the property, and the appraisal listed the property as a three-bedroom three-bath.

Chair Centorino opened the public hearing.

Mr. Emerson Allsworth, representative of the next-door neighbor, said there had been two owners of the property since the garage was converted to a dwelling. Mr. Allsworth clarified that there were no existing code violations at the time Ms. Sanchez purchased the property, only an inspection report. He listed the neighbors who had signed the petition indicating support for Ms. Sanchez' request for a variance. Mr. Allsworth said the denial of the variance would mean either the building must be converted back to a garage or it must be demolished. He felt either of these alternatives would be a travesty.

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. Weihe, seconded by Mr. Jordan, to approve.

Mr. Weihe read the flyer for the presale survey that promised a potential buyer would be made aware of existing building or City code violations, and specifically mentioned illegal rental units. The flyer also promised the owner would receive a description of the violations and the actions necessary to correct them. Mr. Weihe said the inspector had failed to provide Ms. Sanchez with the guidance she was seeking when she contracted for the survey.

Mr. Cooper said it was clearly stated in the report that the garage door had been illegally blocked up. Mr. Weihe noted that the survey did not mention a violation regarding the size of the structure. Mr. Cooper said it did state that after-the-fact permits were required for a number of items, among them the garage door. Mr. Dunckel felt the fact that an after-the-fact permit was suggested indicated the building could be made legal.

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

**6. Appeal No. 10-07**

**APPLICANT:** Bay Colony Exxon, Inc.  
**LEGAL:** 12-49-42 W  $\frac{3}{4}$  OF SW  $\frac{1}{4}$  OF SE  $\frac{1}{4}$  LYING E OF FED HWY AS  
DESC IN OR 3525/146; AND 13-49-42 W  $\frac{3}{4}$  OF W  $\frac{1}{2}$  OF NE  $\frac{1}{4}$   
LYING E ST RD & N OF NE 55 CT  
**ZONING:** B-1 (Boulevard Business District)  
**ADDRESS:** 5556 N. Federal Highway  
**DISTRICT:** 1

**APPEALING:**Section 47-20.5.C.6.c (General design of parking facilities – Adjacent to trafficway)

Requesting a variance to allow one (12' x 22') stacking area adjacent to a traffic way, where the Code requires two (12' x 22') stacking areas.

Mr. Greg Wolf, representative of the developer/contract purchaser, explained this was a proposed Burger King. He explained the hardship was the shallow depth of the property at the access point. Mr. Wolf said City staff had recommended approval of his request.

Mr. Wolf had a traffic study related to previous development plans for the property that indicated most incoming traffic would enter at the 55th Court access point, not the US 1 access point. He stated the parking spaces immediately east of and adjacent to the access point were farthest away from the restaurant and would therefore rarely be utilized. Mr. Wolf said there was more than sufficient stacking in the drive-through, which would alleviate the potential for stacking onto US 1 at that access point. Mr. Wolf added Broward County had approved the site plan. He also had a letter from FDOT approving the curb cut and the site plan.

Mr. Wolf confirmed for Mr. Dunckel that the variance request was for the Federal Highway entrance.

Mr. Wolf informed Mr. Madfis that the County had approved the entire site plan and FDOT had approved this configuration.

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. Jordan said Linda Bird, president of Lake Estates, had sent a letter with requests: keep the property clean, install additional buffer landscaping and trees and lower light poles to prevent light spillage into the residential neighborhood. Mr. Wolf said he had



spoken with Ms. Bird and shown her the landscaping plan and the photometric plan. He was not sure if Ms. Bird understood that trees would be flush across the buffer landscape area. He had also informed her that they would create a 200-foot wide buffer before the neighborhood property line started, and offered to install additional light shielding. Mr. Wolf said he had spoken with Ms. Bird on approximately February 5; Mr. Weihe said Ms. Bird's letter was dated February 10. Mr. Wolf informed the Board that they had received a "ringing endorsement" from the condo property directly to the east.

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

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

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Mr. Madfis said buyers should be "at the least told perhaps they should consult with a professional" when purchasing property. He said most buyers did not perceive the language in the violation notice as "having that much weight."

There being no further business to come before the Board, the meeting was adjourned at 9:30 p.m.

Chair:

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Chair Diane Waterous Centorino

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