

**BOARD OF ADJUSTMENT MEETING  
CITY OF FORT LAUDERDALE  
WEDNESDAY, JULY 14, 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 6/2010 through 5/2011</b>	
		<b>Present</b>	<b>Absent</b>
Diane Waterous Centorino, Chair	A	1	1
Caldwell Cooper	P	2	0
Gerald Jordan	P	1	1
Michael Madfis	P	2	0
Karl Shallenberger	P	2	0
Henry Sniezek	P	2	0
Birch Willey	P	2	0
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<b>Alternates</b>			
Mary Graham	P	2	0
Leo Hansen	A	1	1
Fred Stresau	A	1	1

**Staff**

Bob Dunckel, Assistant City Attorney  
Cheryl Felder, Service Clerk  
Terry Burgess, Zoning Administrator  
Yvonne Blackman, secretary  
Mohammed Malik, Chief Zoning Plans Examiner  
B. Chiappetta, Recording Secretary, Prototype Inc.

**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>Number</u></b>	<b><u>Applicant</u></b>	<b><u>District</u></b>	<b><u>Page</u></b>
1.	<b>10-18</b>	Robert Prager	1	<a href="#"><u>2</u></a>
2.	<b>10-15</b>	Louis James	3	<a href="#"><u>3</u></a>
3.	<b>10-20</b>	Raymond Vanderheyden	1	<a href="#"><u>7</u></a>
4.	<b>10-21</b>	Michael Rahael	4	<a href="#"><u>8</u></a>
5.	<b>10-22</b>	Bay Colony Exxon	1	<a href="#"><u>9</u></a>
6.	<b>10-24</b>	Alan Hooper	4	<a href="#"><u>10</u></a>
		<b>For the Good of the City</b>		<a href="#"><u>11</u></a>

**Call to Order**

Mr. Madfis called the meeting to order at 6:30 p.m. He introduced Board members and described the functions of the Board and procedures that would be followed for the meeting.

**Approval of Minutes – June 2010**

**Motion** made by Mr. Cooper, seconded by Ms. Graham, to approve the minutes of the Board's June 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. 10-18**

**APPLICANT:** Robert N. Prager  
**ADDRESS:** 4321 NE 28<sup>th</sup> Avenue  
**DISTRICT:** 1

The Applicant is requesting an appeal from an interpretation, application or determination made by an administrative official in the enforcement of the ULDR of the following sections:

**APPEALING: Section 47-19.1.B Accessory Uses, Buildings, and Structures \ General requirements.**

Appealing the interpretation of Section 47-19.1.B - No accessory structures to be located in required yard.

**APPEALING: Section 47-19.2.R Accessory Uses, Buildings, and Structures. Accessory buildings and structures, general (*Light fixtures, freestanding.*)**

Appealing the interpretation of Section 47-19.2.R - Light fixtures accessory to a nonresidential use shall be subject to yard requirements.

**APPEALING: Section 47-25.3.A.2 Neighborhood compatibility requirements. (*Smoke, odor, emissions of particulate matter and noise*)**

Appealing the interpretation of Section 47-25.3.A.2 - Requirement of documentation development will not exceed maximum level of noise.

**APPEALING: Section 47-25.3.A.3.c Neighborhood compatibility requirements. (*Design and performance standards. Setback regulations*)**

Appealing the interpretation of Section 47-25.3.A.3.c. - Additional setback requirements.

**Withdrawn.**

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**2. Appeal No. 10-19 (*Deferred from June 9, 2010 Meeting*)**

**APPLICANT:** Louis James

**LEGAL:** Lots 1-4, less the Right-of-Way for Sistrunk Blvd. together with Lots 47-50, Block 4 of Lincoln Park corrected Plat, according to the Plat thereof, as recorded in Plat Book 5, Page 2.

**ZONING:** RC-15 (Residential Single Family/Cluster Dwellings/Low Medium Density District) & CB (Community Business District)

**ADDRESS:** 1447 NW 6<sup>th</sup> Street

**DISTRICT:** 3

**APPEALING:** Section 47-21.9.A.4.c (Landscape requirements for vehicular use areas – *Peninsular and island landscape areas*)

Requesting a peninsular landscape area of a minimum of 5 feet in width on the east side of the property, where Code requires an 8-foot width minimum.

**APPEALING: Section 47-21.9.A.2.a (Landscape requirements for vehicular use areas – *Perimeter landscape area*)**

Requesting a perimeter landscape area, which varies between 1 foot 3 inches and 4 foot approximate dimensions along the East and South perimeters, where the parcel abuts the streets, where Code requires a minimum of 5 foot; a maximum of 28 feet; and an average of 10 feet.

Mr. Madfis said he had received a call from the attorney indicating they might be deferring. Mr. Dunckel advised postponing the case to later in the agenda.

**Motion** made by Ms. Graham, seconded by Mr. Jordan to hear this case later in the meeting. In a voice vote, motion passed 7 – 0.

Mr. Don Arpin, representative of the applicant, stated the area at issue was the buffer south of the handicapped ramp where the border was reduced from five feet to 1.3 feet. He pointed out the five-foot sidewalk north of the handicapped ramp and said that could be reduced and the ramp and parking space could be moved 1.5 feet to get additional green space. Mr. Arpin pointed out the right buffer area that had been reduced from five feet to four. He said they would lose seven parking spaces if they could not use a four-foot buffer. Mr. Arpin noted the buffer to the north of those spaces that had been reduced from eight feet to five feet.

Mr. Arpin stated the hardship was that the Engineering Department would probably not allow the three street parking spaces because an adjacent property owner had back-out parking onto Sistrunk Boulevard. Losing these spaces would require them to have 18 spaces on site for their building.

Mr. Cooper remembered at the previous meeting that Mr. Arpin had indicated he had the blessing of the District Commissioner and members of the community. Mr. Arpin said it had been the tenant who indicated he had the support of the community and the Commissioner. Mr. Arpin distributed a map and stated this was in the Durrs Homeowners Association area. He said there were people present from the neighborhood.

Ms. Graham did not understand how the trade-off for the landscaping was justified by the vehicular area or the parking. She said the handicapped space could be located at the southeast corner of the parking lot. Then the property could meet the frontage landscape requirement. Ms. Graham said the applicant could apply for a parking reduction. She said, "You cannot use the basis of that handicapped location to drive the solution that's been presented, at least to convince me to vote yes."

Mr. Jordan agreed with Ms. Graham that the handicapped space should be moved. Mr. Arpin said if the request were turned down, they would apply for a parking reduction.

Mr. Madfis opened the public hearing.

Ms. Laronda Ware, President of the Dorsey Riverbend Civic Association, said the Association did not support this project and they had fought for 30 years to prevent any additional grocery stores in this neighborhood. She said they had met with Mr. James and they thought that this was going to be a restaurant, but this was almost a full-scale grocery store. Ms. Ware said she had been livid when she heard that the tenant had said the Association supported this project and the City Commission was "gung-ho" about it.

Ms. Ware said "Tony" had promised to close the store/restaurant at 11 p.m. during the week and at midnight or 1 a.m. on the weekends, but he had not done this. She said people who supported Tony were being used because he made promises he did not keep. Ms. Ware said she had spoken with 65 residents, and all of them did not want this request granted until they knew whether this was a restaurant or a grocery store. She stated crime was on the increase in this area and they were concerned for the neighborhood's safety.

Ms. Ware informed Ms. Graham that the property had been a restaurant and the neighborhood had been told that the owner would get the proper permits to enhance the property and the landscaping. Ms. Ware had been in the store several times and noted it was more of a grocery store than a restaurant.

Ms. Joan Hinton said she had lived in this neighborhood her entire life. She had visited the store, and said all types of people frequented it. Ms. Hinton said the area of concern was 15 Avenue and Sistrunk. She said the store was beautifying and giving back to the neighborhood.

Mr. Mickey Hinton, President of the Durrs Homeowners Association, said there would have to be sacrifices made on Sistrunk because there was not enough room.

Mr. Shallenberger said he had worked with Mr. Hinton for many years and he asked if it was important to the Durrs Association that this was a restaurant or a convenience store. Mr. Hinton said he understood that it could not be both and they wanted to find out which it would be. Mr. Hinton said the Association would be comfortable with a take-out restaurant.

Ms. Vivian Williams said it did not matter if this was a restaurant or a store. She said this store was good for the neighborhood and the operator respected people who went

in. She agreed the parking situation needed to be addressed. Ms. Williams explained to Ms. Graham that people in cars would park in another parking across the street and walk to the store.

Mr. Gary Register, area resident, said the store served a purpose for the young people and there was no crime or drugs at the store. He agreed the parking situation must be addressed.

Professor John Hill said he would like to see the store have a chance. Mr. Madfis reminded Professor Hill that the Board was only concerned about the applicant's landscape request; how he operated his business was not the Board's concern.

Mr. Willey said neighbors wanted Sistrunk to become a prime boulevard like it used to be. He said if they kept granting the variances, Sistrunk would never come back and be the street it should be. Mr. Willey agreed that granting the variance for this project would improve what was already there, but he hated to see variances granted along Sistrunk that did not bring a property up to code. Mr. Willey said at some point, people who wanted to improve Sistrunk needed to improve it "first class." Mr. Madfis agreed, and remarked that if zoning needed to be changed to make development work on Sistrunk, then it should be changed.

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

Mr. Cooper had spoken with Commissioner DuBose, who had expressed concern about the vision of the street. Mr. Cooper said the Commissioner had urged him not to make any concessions regarding beautification of the street but to uphold the code.

Ms. Graham asked if staff ever advised applicants to seek a parking reduction rather than appear twice to request a variance. Mr. Burgess explained that staff advised applicants of all possible processes. He said in the CRA, a parking reduction was handled at the staff level.

Mr. Arpin reiterated that they would lose eight parking spaces if they did not receive the variance. He said the Board may consider granting a smaller variance that would result in the loss of fewer spaces.

Mr. Sniezek said he was not seeing a hardship.

Mr. Arpin said the problem with the parking had arisen when there was a change of use from a sit-down restaurant to the convenience store.

Mr. Shallenberger said he could not vote against this issue while waiting to see what changes would occur on Sistrunk Boulevard. He said he understood the objections but the community had indicated this was what they wanted and needed.

**Motion** made by Mr. Jordan, seconded by Mr. Shallenberger to approve the variance request. In a roll call vote, motion failed 2 – 5 with Mr. Willey, Mr. Snizek, Ms. Graham, Mr. Cooper and Mr. Madfis opposed.

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### 3. Appeal No. 10-20

**APPLICANT:** Raymond Vanderheyden  
**LEGAL:** "Coral Ridge Galt Add. No. 1", P.B 31, P. 37, Block 41, Lot 1  
**ZONING:** RS-4.4 (Residential Single Family Low Medium Density District)  
**ADDRESS:** 2808 Bayview Drive  
**DISTRICT:** 1

**APPEALING:** **Section 47-19.5.B (Fences, walls and hedges)**

Requesting a variance to permit a fence to be installed with a zero (0) foot front yard setback, where Code requires a minimum of 3 feet setback when abutting a street.

Mr. John Scott Conner, architect, explained that all other fences in the area were at zero lot line. He said setting the fence back would result in a "different character or look as of everyone else."

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

Mr. Conner informed Mr. Cooper that the Zoning Department had alerted him that it must be presented to the Board of Adjustment when the fencing contractor had pulled the permit and started the installation on the lot line. Mr. Cooper said he wondered what the hardship was. Mr. Conner said installing the fence in the proper place would reduce landscape area and the width of the driveway. Mr. Conner said because of the gate encroachment, a car could be parked on the U-shaped drive but could not be turned inside the gate.

Ms. Graham asked if anything like this had been heard and approved in the past. Mr. Dunckel could not recall a request for a zero setback in the front yard. Mr. Burgess explained that previously, if there were obstructions, property owners were granted relief, but when the code was re-written, that portion had been left out. Mr. Dunckel

recalled the Board granting a variance for a wall with a zero lot line. Mr. Willey recalled granting a variance in Victoria Park.

Mr. Conner said this was not a high-crime neighborhood. The concern was not security, but the encroachment into the driveway area. Mr. Madfis wondered why one needed a motorized gate in a low-crime area. He felt there was a method that would work within the code. Mr. Burgess said the owner had informed him that he had small children and this was a high-traffic area and setting the fence back farther would interfere with the driveway.

Mr. Madfis believed that “building this canyon of protective gates, fences and walls and destroying the front yards of our homes and changing the whole nature of the streetscape, I think we’re increasing the traffic and the...concern of the drivers that go through that neighborhood.”

Mr. Raymond Vanderheyden, applicant, explained that they wanted the gate to protect his family and his dogs. Mr. Vanderheyden stated there was 26 feet of right-of-way.

**Motion** made by Mr. Cooper, seconded by Mr. Jordan, to approve the variance request. In a roll call vote, Board approved 6 – 1 with Mr. Madfis opposed.

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#### **4. Appeal No. 10-21**

**APPLICANT:** Michael G. Rahael

**LEGAL:** Lots 1 and 3 in that certain unnumbered block lying S. of Block “C” and the E. of Block “F”, commonly known as Block “D” of “Geo M. Phippen’s Subdivision”, of Lots 3-6 in Block 1, and Lots 3-10 in Block 14, as more particularly described in the application for a variance for Appeal, on file with the Clerk of the City of Fort Lauderdale Board of Adjustment

**ZONING:** RAC-CC (Regional Activity Center- City Center District)

**ADDRESS:** 15 N. 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 287 feet from a place of worship (First Baptist Church), where Code requires a separation of 500 feet.

Ms. Heather Thomas, representative of the owners of the café, stated they wanted to be sure there was no opposition to their beer and wine license.



**Motion** made by Mr. Sniezek, seconded by Mr. Jordan, to grant the request. In a roll call vote, Board approved 7 – 0.

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**5. Appeal No. 10-22**

**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 47-23.9.A.1 (Interdistrict corridor requirements)**

Requesting a variance to permit a 10-foot front yard setback, where Code requires a twenty (20) foot yard setback when abutting N. Federal Highway between Sunrise Blvd. and the Northern city limits.

Mr. George Morgan, applicant, said he had met with most of the members of the Board of Adjustment, Commissioner Roberts and Mayor Seiler to make sure they were addressing people's concerns. Mr. Morgan said the Starbucks project had fallen through, and now they proposed a Burger King for the site. He explained that the variance was necessitated by the triangular shape of the property. The drive-through had been relocated to lessen the impact on the nearby residential community and the dumpster had been moved as far from the residential community as possible. Mr. Morgan said the parking lot lights would be shielded to prevent spillover and the poles had been lowered to 12 feet. The landscaping on the east side of the property had been increased as well.

Mr. Morgan stated the hardship had been caused by the proposed 20-foot interdistrict corridor. He stated action was pending to reduce the corridor.

Mr. Madfis opened the public hearing.

Ms. Grace Gardiner, neighbor, asked the Board to maintain the required 20-foot setback, stating there was no community support for changing that code. She asked how many businesses along the corridor had a setback of less than 20 feet. Mr. Burgess was unaware of any recent reductions of the 20-foot corridor. Mr. Dunckel recalled one at Bayview Cadillac and one across from Coral Ridge Presbyterian to allow a sign. He stated the City had erroneously issued a permit for the Edwin Watts building

to be built within 10 feet. The City had gone to court and Edwin Watts had moved the building back to 20 feet.

Mr. Sniezek asked Ms. Gardiner's position when this was proposed to be a Starbucks. Ms. Gardiner admitted she would prefer a Starbucks, but said she would still oppose a variance.

Mr. Hugh Gardiner, neighbor, said a lot of thought and work had been put into the Federal Highway corridor and he saw no reason to grant a variance. He stated the majority of neighbors opposed the Burger King. Mr. Cooper noted the difficulty in developing this odd parcel, and asked if the neighborhood would prefer "a vacant lot for the next 20 years with overgrown weeds on it." Mr. Gardiner said he had discussed a possible use of the property by Coral Ridge Presbyterian Church or the Seminary who would "love to have the property if the pricing was better." Mr. Gardiner suggested there were lots of other businesses that could make use of the property.

Mr. Shallenberger said he had spoken with Commissioner Roberts, who had received just one negative comment about this proposal. Mr. Gardiner felt people were "so naïve, we don't know how to go about" voicing their opposition because they did not "have any funds, we don't have any organization, we don't have an attorney working with us on this." Ms. Graham recalled residents in this area showing up during workshops of the U.S. 1 corridor in 2006.

Mr. Willey stated the Board was acting to represent citizens who did not attend the hearing.

Mr. Don Aquido, neighbor, agreed with Mr. Gardiner that many neighbors objected to this proposal. He asked if a traffic study had ever been conducted for the possible impact of a Burger King on the nearby residential area. Mr. Morgan said two traffic studies had been conducted. The studies had shown that this use would generate less traffic than the gas station previously located on the property.

Mr. Morgan felt that the reason properties on Federal Highway were not being renovated in this area was because there was "no space."

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

**Motion** made by Mr. Cooper seconded by Mr. Jordan, to approve the request. In a roll call vote, motion passed 5 – 2 with Mr. Willey and Mr. Jordan opposed.

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**6. Appeal No. 10-24**

**APPLICANT:** Alan Hooper  
**LEGAL:** New River Trading Post Condo, Common Area 26 Units AKA The Barefoot Mailman 152-32 B Parcel A  
**ZONING:** RAC-AS (Regional Activity Center- Arts and Science District)  
**ADDRESS:** 330 SW 2<sup>nd</sup> Street, #101  
**DISTRICT:** 4

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

Requesting a special exception to allow the sale of beer and wine incidental to the sale of food at a distance of 125 feet from (Original Fat Cat's), 140 feet from (Ultimate Sports Bar), 245 feet from (Briny Riverdance), and 250 feet another establishment (Coyote Ugly), that sells alcohol, where Code requires a minimum of 300 feet separating establishments that sells alcoholic or intoxicating beverages.

Mr. Jeremiah Buchanan, owner of Blue Jay's Café, requested the ability to sell beer and wine, and stated they had no need to be open until 4 a.m. The hours of operation were until 9:30 during the week and 10:30 on the weekend. Mr. Buchanan stated they might remain open until midnight in the future.

Mr. Madfis acknowledged a letter of support from the Board of Directors of the Riverwalk Trust.

**Motion** made by Mr. Jordan, seconded by Mr. Cooper, to approve the request. In a roll call vote, motion passed 7 – 0.

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**Communication to the City Commission**

None

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

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Mr. Dunckel recalled a case years ago when the City “really got its hand slapped by the 11<sup>th</sup> Circuit Court of Appeals because the City did something where everybody stood up and they wanted it” but the Court had determined that they were “not in the business of government by applause meter.” He agreed that the Board’s decision should not depend on how many people spoke in favor of or against an item; the record should show whether or not the criteria were met.

Mr. Dunckel suggested that the Board should have evaluated the Bay Colony Exxon case not on the basis of this being a permitted use, because this zoning had four pages of permitted uses, many of which did not require a drive-through. Mr. Dunckel said he could have suggested that this was a self-created hardship when they decided to put a Burger King on the site and then request flexibility on the 20-foot corridor. He remarked that the 20-foot corridor had been one of the most dramatic improvements implemented in the City.

Ms. Graham remembered the workshops for the corridor. She pointed out that this was a difficult parcel and the developer had taken several steps to make the site work. Mr. Dunckel said he was suggesting that there were many other development opportunities that would not require a drive-through or the additional space.

Mr. Willey recalled a charrette regarding Federal Highway years ago where they were warned that if they did not implement the 20-foot set backs, it would resemble State Road 7.

There being no further business to come before the Board, the meeting was adjourned at 8:24 p.m.

Vice Chair:

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Michael Madfis

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. Opperee, Prototype Inc.