

**BOARD OF ADJUSTMENT MEETING
CITY OF FORT LAUDERDALE
WEDNESDAY, AUGUST 11, 2010 – 6:30 P.M.
CITY HALL CITY COMMISSION CHAMBERS – 1ST FLOOR
100 NORTH ANDREWS AVENUE
FORT LAUDERDALE, FLORIDA**

Board Members	Attendance	Cumulative Attendance 6/2010 through 5/2011	
		Present	Absent
Diane Waterous Centorino, Chair	A	1	2
Michael Madfis, Vice Chair	P	3	0
Caldwell Cooper	P	3	0
Gerald Jordan	P	2	1
Karl Shallenberger	A	2	1
Henry Sniezek	P	3	0
Birch Willey	P	3	0
Alternates			
Mary Graham	P	3	0
Fred Stresau	P	2	1

Staff

Bob Dunckel, Assistant City Attorney
Terry Burgess, Zoning Administrator
Mohammed Malik, Chief Zoning Plans Examiner
Yvonne Blackman, secretary
Cheryl Felder, Service Clerk
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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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 – July 2010

Motion made by Mr. Cooper, seconded by Ms. Graham, to approve the minutes of the Board's July 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. 10-25**

APPLICANT: **Orie and Rachel Legum**

LEGAL: Lot 7, Block 24 of "Unit 3 Rio Vista Isles" according to the plat thereof, as recorded in P.B. 5, P. 23 and according to the Amended Plat thereof in P.B. 7, P. 47, of the public Records of Broward County, Florida, together with the Southerly ½ of vacated South Rio Vista Boulevard lying immediately North of and adjacent to said Lot 7

ZONING: RS- 8 (Residential Single Family/Low Medium Density District)

ADDRESS: 626 S. Rio Vista Boulevard
DISTRICT: 4

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

Requesting a variance to allow mechanical equipment 11.7 feet from the front property line, where the Code states that mechanical equipment, such as air conditioner compressors, generators, lawn irrigation pumps, and swimming pool accessories shall not be allowed in the required front yard.

Ms. Nectaria Chakas, representative of the applicant, said the equipment had been installed in the front yard and the applicants were occupying the property under a temporary Certificate of Occupancy pending resolution of this issue. She explained that the owner had believed the equipment would be installed in the garage but none of the plans reflected where the equipment would be located.

Ms. Chakas displayed a site plan, which showed the location of the pump pad and equipment 11.7 feet from the property line and explained that this was not a typical front yard because it did not abut a street. She believed this was the cause of some of the confusion on the part of the contractor. Ms. Chakas said the error had been discovered during zoning inspection of the final survey.

Since the house was completed, Ms. Chakas said there was little room to re-locate the equipment elsewhere on the property and to install it in the garage would require extensive work to replace the plumbing. She said it was not practical to locate the unit in the rear of the property either because the pump was for a fountain in the front yard.

Ms. Chakas believed this request met the criteria for a variance:

- a. That special conditions and circumstances affect the property at issue which prevent the reasonable use of such property;

Ms Chakas said this was an oddly shaped property that did not abut a right-of-way. The equipment was 30 to 40 feet away from the right-of-way. She showed a photo of the property and noted the equipment was located behind a large bush and could hardly be seen from the right-of-way. Ms. Chakas displayed additional photos of the unit and noted the equipment was not large.

- b. That the circumstances which cause the special conditions are peculiar to the property at issue, or to such a small number of properties that they clearly constitute marked exceptions to other properties in the same zoning district;

Ms. Chakas said this was a unique situation that only affected this property and the property on the either side of the vacated street. This meant that the Board need not worry about setting a precedent.

Ms. Chakas said her narrative addressed all of the criteria. She was aware that the Board had received letters of support and objection. She displayed a map showing the location s of the property owners who supported and objected to the variance request. Ms. Chakas noted that one owner who opposed the requested owned two rental properties that had no view of the equipment or the hedge. The other owner who objected could not see the pump equipment or pad or the hedge that camouflaged it.

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.

Ms. Graham had been surprised that the architect had not supplied a site plan or floor plan in the Board's packet and questioned whether this was an oversight or "by design." Ms. Graham said now that she realized this was just a pump for a fountain, "eliminate the fountain in the front yard and your pump problem goes away." She remarked on how the lot had been maxed out to the site setbacks, allowing no room to locate the pump. She did not feel there was a hardship.

Motion made by Mr. Cooper, seconded by Mr. Willey to approve the variance request.

Mr. Dunckel advised the Board that the variance could be specific to the equipment for the fountain; they might also consider adding that the variance was conditioned upon maintenance of a camouflaging hedge. Mr. Cooper and Mr. Willey agreed to add this to the motion.

In a roll call vote, motion **failed** 4 - 3 with Mr. Jordan, Mr. Sniezek, and Ms. Graham opposed.

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2. Appeal No. 10-27

APPLICANT: Aline and Neil Tucker
LEGAL: "Progresso", P.B 2, P. 18, Block 17, Lot 24
ZONING: RS- 8 (Residential Single Family/Low Medium Density District)
ADDRESS: 1700 N.E. 17th Street
DISTRICT: 2

APPEALING: Section 47-19.1.H (Accessory buildings and structures, general requirements)

Requesting a variance to allow a generator to be placed 5 feet 6 inches within the corner yard setback, where the Code states that no accessory use or structure shall be located on a corner lot within fifteen (15) feet of any side street property line.

Ms. Aline Tucker, applicant, explained that they had purchased a generator in 2006 and the mechanic had informed her that he had pulled a permit, but this was not true. She said they wanted to put the generator next to two air conditioning units. She displayed photos of the generator.

Dr. Neil Tucker, applicant, said they had purchased a Glen Wright house and had found someone to install the generator, who said he had pulled a permit. After receiving notice that the generator must be moved, the installer had put it on wheels and informed the Tuckers that it did not require a permit. The tires had gone flat and the installer had moved it to a pad in the rear of the property.

Dr. Tucker said an engineer had made suggestions for the best location, which was where the generator sat now.

Ms. Graham again noted that when the site was built to the maximum regarding the setbacks, there was no room left to locate a generator. The logical space for the generator would have been the south side of the garage. Ms. Graham said there was space on the north side of the garage where a walkway was located. She said as in the previous case, she could not support locating any mechanical equipment outside of a setback.

Ms. Tucker drew Ms. Graham's attention to the current survey that depicted the generator. Ms. Graham felt an architect could identify an appropriate site for the generator.

Mr. Stresau remarked that the survey was different from the consulting engineer's drawing. He wondered why the air conditioner was acceptable to the City in its location.

Mr. Jordan suggested locating the generator in the northwest corner next to the garage. He said the Board must start thinking about allowing people to put generators on their properties.

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.

Motion made by Mr. Stresau, seconded by Mr. Cooper to approve the variance request. In a roll call vote, motion **failed** 1 - 6 with Mr. Willey, Mr. Sniezek, Ms. Graham, Mr. Stresau, Mr. Cooper and Mr. Madfis opposed.

3. Appeal No. 10-28

APPLICANT: William C. McCulloch
LEGAL: "Palm Aire Village Sec. 3, Add 4", P.B. 94, P. 12, Block 6, Lot 141
ZONING: RS- 8 (Residential Single Family/Low Medium Density District)
ADDRESS: 6760 N. W. 21st Terrace
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 corner yard setback, where Code requires a minimum of three (3) foot setback when abutting a street.

Mr. William McCulloch, applicant, explained that the 2005 hurricane had blown down the fence and he had reinstalled it in the same location. Mr. McCulloch stated there was significant mature foliage on the property. He presented a letter from the president of the homeowners association supporting leaving the fence where it was currently installed.

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.

Ms. Graham noted that across 21 Avenue was industrial/commercial. She said because of the location of the property at the entrance to the development, she did not object to leaving the fence in its current location.

Mr. Cooper said he was concerned because a 10 – 12-foot section of the fence was encroaching on City property because foliage was pushing on it. Mr. Cooper had noticed that the entire 50 – 60 section of fence seemed new, and asked if this had all been permitted. Mr. McCulloch said the fence had been permitted prior to the City's incorporating the property and there were zero setbacks. Mr. McCulloch said the fence had been installed after the pool had been installed in 1998.

Mr. Stresau felt the owner had a legitimate hardship because of the existing palm trees that screened the house and the sheds. He said adding landscaping, as they had called for in the past, would satisfy the intent of the 3-foot fence setback. Mr. Stresau said they should require continuation of the low-level landscaping along the street side of the sidewalk, and advised incorporating this into the motion.

Ms. Graham said this area had been incorporated 10 or 12 years ago and explained that when changes were made to the property, all of it must be brought up to the new standards.

Mr. Stresau suggested requiring the applicant to install landscaping similar to what was already there and to maintain it at the same height. Mr. Willey wondered if the City would approve landscaping in the City swale. Mr. Stresau said he had discussed this with Mr. Gennaro, Chief Plans Examiner, and he thought this was a viable solution. Mr. Brewton said he must discuss this with Mr. Gennaro.

Motion made by Ms. Graham, seconded by Mr. Sniezek to approve the variance request.

Mr. McCulloch clarified for Mr. Dunckel that he maintained the existing shrubbery and lawn outside of the property line.

Mr. Cooper requested the motion include the requirement that at no point along the fence line would the fence encroach onto the City sidewalk or City property. He was specifically referring to the fence section he had mentioned earlier. Mr. McCulloch agreed to move the portion of fence back onto his property.

Ms. Graham restated her **motion**: to approve the request as submitted providing the fence was on the property line and not encroaching outside of the property line. Mr. Sniezek reiterated his second of the motion.

In a roll call vote, motion **passed** 6 - 1 with Mr. Stresau opposed.

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4. **Appeal No. 10-29**

APPLICANT: Robert and Ellen Spector
LEGAL: "Harbor Beach Unit 1 Resub.," P.B. 19, P.10, that PT of Block 3 F/P/A Lot 5, Block 3, "Harbor Beach Unit 1," less there from PT Desc in PAR 104 of CA 79-22304
ZONING: RS-4.4 (Residential Single Family Low Medium Density District)
ADDRESS: 1243 Seabreeze Boulevard
DISTRICT: 4
APPEALING: Section 47-19.5.B (Fences, walls and hedges)

Requesting a variance to permit a six foot high pre-cast concrete wall to be installed with a zero (0) foot front yard setback, where Code requires a minimum of three (3) foot setback when abutting a street.

Mr. Robert Spector, applicant, said the house had been built in 1951 when A1A had been a two-lane road with a swale on the side that stopped at the 17th Street Causeway. He said they believed there was a hardship because of the inverse egress to the property and the circular driveway because of the position of the carport. He said there was no on street parking or parking nearby. Decreasing that area would make it difficult for cars to turn into the northern driveway.

Mr. Spector said 16 of the 22 homes on either side of Seabreeze just past the next light had walls on the property line with zero setbacks.

Mr. Spector believed the wall would make the property safer, preserve the parking and provide safe ingress/egress.

Ms. Ellen Spector, applicant, said the parking in the driveway was very limited and building the wall in the proper place would make the situation worse. She remarked that most of the houses nearby were inhabited by renters or were vacant. Ms. Spector wanted the wall to keep the house safe for themselves, their children and grandchildren.

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. Stresau said the fences on the north and south property lines could easily move back three feet. He said. "I'm not so sure that this wall couldn't follow the edge of the driveway and create some landscaping..." Mr. Stresau felt that "the view along Seabreeze, along A1A with these six-foot walls on the back of the sidewalk is one of the worst conditions that you could possibly have in the City of Fort Lauderdale and these people do have some alternative here, at least on the south and the north end, to move that back into the landscaping that's there." Mr. Stresau said installing a wall on the back edge of the sidewalk would prevent anyone exiting the driveway from seeing oncoming traffic.

Ms. Graham believed the wall foundation could not be put under the existing sidewalk and must be installed "inboard" west of the sidewalk and the face of the wall would not be up against the sidewalk. Ms. Graham said she would be willing to go along with Mr. Stresau's suggestion.

Mr. Cooper asked about the hardship and Mr. Spector said the primary problem was the parking and turning issue that would result from installing the wall in the proper place.

Ms. Spector said the landscaping on the property was often littered, as were most properties with landscaping. Mr. Spector said, "While I understand the greenery issue, the reality is that you're not going to get people along A1A who already have walls to magically put up green space because it would look better."

Mr. Spector informed Mr. Cooper that his architect had looked at the property and told him this was the best solution to maximize the amount of parking. Mr. Cooper said he had spoken with Ms. Peacock, the architect, and she had informed him she had never visited the site. Ms. Spector said someone from Ms. Peacock's office had visited the property.

Ms. Graham noted that the plans lacked dimensions and the Board could not use the plans to hold someone responsible. She said the drawing was "schematic at best" and the terminations depicted encroached on the vehicle turn space.

Mr. Sniezek said he felt the loss of parking was the Spectors' best case for a hardship, but he saw no indication of exactly how much parking, if any, would be lost.

Mr. Willey said he knew why the Spectors wanted a wall, but he was concerned about the traffic safety hazard the wall would present.

Mr. Madfis felt there might be a compromise solution "where you don't necessarily have to come the full three out/back for the entire length of this fence but maybe you could present an area where you're going actually back further than three feet and some areas where you need to come further forward but still maintain some minimum setback, maybe a foot..." He said such a suggestion would be a reasonable case for the Board to weigh.

Mr. Stresau said the code specified that a fence/wall must be set back an average of three feet. If they were willing to set it back on the north and south sides sufficiently, they could install the wall on the back of the sidewalk in the half-moon area. He suggested Mr. Spector have the architect do some design work.

Mr. Dunckel advised Mr. Spector that if the request were denied, he must wait two years with this design. He advised Mr. Spector he may want to get together with the architect, as the Board had suggested. Mr. Spector said he would take a continuance.

Motion made by Ms. Graham, seconded by Mr. Jordan to defer the case. In a voice vote, Board approved 7 – 0.

5. **Appeal No. 10-30**

APPLICANT: George M. Irvine, Jr.
LEGAL: "Rio Vista Isles Unit 4," P.B. 6, P. 19, Block 32, Lots 28 & 29
ZONING: RS-4.4 (Residential Single Family Low Medium Density District)
ADDRESS: 1750 S.E. 7th Street
DISTRICT: 4

APPEALING: Section 47-5.30 (Table of dimensional requirements for the RS-4.4 district)

Requesting a variance to allow the conversion of a carport to a garage, with a 24 feet 7 inches front yard setback, where Code requires a minimum of twenty-five (25) foot front yard setback.

APPEALING: Section 47-5.30 (Table of dimensional requirements for the RS-4.4 district)

Requesting a variance to allow the conversion of a carport to a garage, with a 5 feet 9 inches side yard setback, where Code requires a minimum of ten (10) foot side yard setback.

Mr. Ray Luhta, general contractor, said the owner wanted to enclose the carport into a garage. He explained that the setback dimensions were not on the original survey. Mr. Luhta said there was 25' 2" from the property line to the front of the slab but they were short on the side, which was 5 " 9" instead of 10 feet.

Mr. Luhta said the owner desired the carport for security, protection of his vehicles from the elements and a better aesthetic appearance for the neighborhood.

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.

Ms. Graham said there was a lot of new construction in this area but this house was original. She said she did not see an issue with enclosing the carport.

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

Mr. Cooper had noted that a concrete slab at the west end was undermined by several feet in depth and height. He wondered if the variance would be to "re-pour that concrete slab into the side yard setback if it's not usable when they go to build a wall on top of that slab and the architect or engineer comes back and says, hey, this is now going to be a load bearing wall on top of the slab and we need a footer or some extra

pilings. Are we then allowing the applicant to cut that slab back or do what they need to do to re-pour it in the side yard setback?"

Mr. Luhta said the plan had been approved by the City. Mr. Cooper reiterated his question. Mr. Luhta said if the variance for the 5' 9" were granted, this would give him 18 inches from where it was now.

Mr. Madfis did not see the carport on the original plans. Mr. Luhta referred to a section that showed the carport. Mr. Madfis said the original carport seemed to be three bays and had been encroached upon by an addition to the home.

Ms. Stresau stated they were voting on a variance for this structure only, not a structure built in the future. Mr. Sniezek confirmed that this was the intent of his motion.

Mr. Dunckel asked if the Board was concerned about conversion of the garage into living space in the future. Mr. Sniezek agreed to add the condition that the garage was not for habitable space.

Mr. Madfis said they had determined that the front yard setback was in compliance, so the appeal regarding the front setback was withdrawn.

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

Communication to the City Commission

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None

Report and for the Good of the City

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Ms. Graham said there was no way to caution a homeowner, architect or builder about the lack of space for equipment when they planned to max out a site. She wanted the Commission to be aware of this.

Regarding the property in the first case, Mr. Madfis asked Mr. Burgess how the front yard was defined. Mr. Burgess said it was between the house and the right-of-way. He pointed out that the survey for that case did not indicate that the street had ever been vacated.

Regarding the first case, Ms. Graham wondered why no drawings from the design professional had been provided to the Board. Mr. Burgess said the original plan had the fountain information, but the fountain pump was supposed to be in the garage.

Mr. Stresau agreed there was concern when a site was designed to maximize all the setbacks, but on the other hand, he had “a pool pump, an irrigation pump and pipe for a fountain pump in my garage because I thought about it ahead of time. And these people obviously didn’t do that and the reason they wanted to put that pump in what was defined the front yard is because they don’t want to saw cut the slab in the garage in order to put it inside the garage.” He said it was possible to install the fountain pump in the back yard but the owners just did not want to do this. Mr. Stresau did not feel the need to alert the Commission to this situation because “it’s the design professional that submits the plans.”

Mr. Brewton confirmed for Mr. Willey one could get around the side yard setback by installing a pump underground.

Mr. Cooper pointed out that notices for some cases were posted in places not easy to find. He asked if owners were advised where the notices must be posted. Mr. Brewton said the rule was the sign must be visible from the street. Mr. Stresau said it must be readable for the adjacent right-of-way. He said staff should be telling people where to post the sign. Mr. Cooper suggested the City write specific sign requirements, but Mr. Burgess said instructions were provided to applicants.

There being no further business to come before the Board, the meeting was adjourned at 8:27 p.m.

Vice Chair:

Michael Madfis

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.