

**BOARD OF ADJUSTMENT MEETING  
CITY OF FORT LAUDERDALE  
WEDNESDAY, SEPTEMBER 8, 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	P	2	2
Michael Madfis, Vice Chair	A	3	1
Caldwell Cooper	P	4	0
Gerald Jordan	P	3	1
Karl Shallenberger	P	3	1
Henry Sniezek	P	4	0
Birch Willey	P	4	0
<b>Alternates</b>			
Mary Graham	P	4	0
Fred Stresau	P	3	1
Sharon A. Zamojski	P	1	0

**Staff**

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

**Communication to the City Commission**

**Motion** made by Mr. Sniezek, seconded by Mr. Jordan, to recommend that the City Commission direct appropriate Staff to develop comprehensive policy and criteria to address alternative energy generation devices (e.g., windmills, wind turbines) throughout the City; and have the City Lobbyists contact the State Legislators to provide local governments of high density residential areas a greater degree of control over the criteria. By voice vote, the Motion passed unanimously (7-0).

**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>District</u></b>	<b><u>Page</u></b>
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3.	10-14	Lucky 14, LLC	4	<a href="#">7</a>
4.	10-34	Lauren Rotmil	2	<a href="#">7</a>
5.	10-35	Carbogen Corporation	4	<a href="#">9</a>
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		<b>For the Good of the City</b>		<a href="#">12</a>

**Call to Order**

Chair Centorino called the meeting to order at 6:35 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 – August 2010**

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

1. **Appeal No. 10-31**

**APPLICANT:** Hermann U. Wirth  
**LEGAL:** "Lauderdale Beach," P.B. 4, P. 2, Block 11, Lot 23  
**ZONING:** RS- 8 (Residential Single Family/Low Medium Density District)  
**ADDRESS:** 3037 N. Atlantic Boulevard  
**DISTRICT:** 2

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

Requesting a variance to allow an existing carport conversion to a garage, with a 1.10 foot side yard setback, where Code requires a minimum of five (5) foot side yard setback.

Mr. Dory Khater, representative of the applicant, explained the owner had to attend to a business commitment this evening and could not be present. He stated the owner had wanted a new bedroom and cabana bath addition put on the house and had hired Mr. Khater and Tamara Peacock, architect. Mr. Khater had consulted with Mr. Burgess and shown him their research and as-built documents. Mr. Burgess had pointed out that there was a "nonconformity issue" with the carport. If the structure remained a carport, there was no issue because in 1947, when the house was built, the carport was allowed to be set back one foot from the property line. If the structure was a garage, as shown on the as-built, they might need to request a variance.

Mr. Khater said the carport was built with the original house in 1947, per the microfilm records in the City's archives. He had discovered a 1985 permit to install a roof over an enclosed CBS garage. Mr. Dunckel clarified that sometime between 1947 and 1985 the carport had been enclosed. Mr. Khater had not found a permit to enclose the garage.

Mr. Khater said four letters of approval from neighbors regarding the project were included with the Board's packet.

Mr. Khater said during the due diligence for the house closing, the real estate agent had determined there were no code violations or liens against the property from the City. Based on this information, the owner had moved forward with the purchase, knowing he needed a garage for his collectible car.

Mr. Khater said the owner did not cause the hardship, and requiring him to knock down the garage would cause the owner a financial hardship.

Mr. Khater showed photos of the property and remarked that the garage did not obstruct the view of neighboring properties.

Ms. Graham asked if water drained from this roof onto the neighbor's property. Mr. Khater said there was a 1.1-foot setback at the overhead door and a 1.7-foot setback at the end of the garage. He noted the ground next to the garage was dirt, so any water should percolate down.

Mr. Willey had visited the property and tried to see what was in the garage now. Mr. Khater said this was a typical garage with a washer, dryer and sink; there were no living facilities.

Mr. Dunckel drew the Board's attention to the fact that the code indicated a self-created hardship could be attributed to the applicant and his predecessors. Regarding the due diligence pertaining to Code Enforcement violations or liens, Mr. Dunckel said the attorney should have been alerted to a problem when looking at the survey. Mr. Dunckel said there was an encroachment on the property to the north. He asked the Board to read the letter from that neighbor and noted that there was a difference between what that letter indicated and what Mr. Khater had indicated.

Mr. Dunckel started the neighbor, Aleksandra Jesniak, had conveyed the property to the current owner. Because there was no permit for the garage, it was not entitled to any grandfather status and now that it had been caught, it must be brought up to current Zoning and Building code standards. Mr. Dunckel said the neighbor to the north had complained about water draining onto his property, which Mr. Dunckel said was the fault of the structure that encroached too far into the setback.

Mr. Khater said they had a response to the neighbor's letter.

Mr. Sniezek noted that the letter from the neighbor to the north objected to a roof, the driveway, the garage, pool pumps and remodeling. Mr. Khater said during due diligence, the attorney had closed all open permits for these items prior to the owner's purchase.

Mr. Sniezek wondered how converting the garage back into a carport would solve the drainage issue. Mr. Burgess said there was a requirement to maintain runoff on one's own property, even if the variance were granted. Mr. Dunckel said this could be the subject of Code Enforcement action.

Chair Centorino opened the public hearing.

Ms. Aleksandra Jesniak said she had owned this house for 11 years. When she purchased it, she was unaware the enclosed garage was not permitted. She said there had been no problem pulling a permit to re-roof the garage while she owned the house. Ms. Jesniak said she had never experience a problem with water on the neighbor's property.

Ms. Taylor Mattis, owner of the property to the west, remarked that a financial hardship to the owner was not justification for a variance. She said her property visibility did suffer as a result of the encroachment. Ms. Mattis said allowing "one after another of these variances" amounted to "spot zoning" which was unconstitutional. Ms. Mattis said she heartily opposed this application.

Ms. Tracey Prazer said she lived catty-corner to this property and remarked, "Any variance that is granted without hardship provided is going to escalate the non-visibility and the non-airflow and the non-cohesiveness of a neighborhood feeling." Ms. Prazer said a variance was not appropriate.

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. Khater said the setback to the west was 15 feet. Currently, the house was set back 34 feet and if they added the setback to the west side of the garage, it was 53 feet from the west property line. This did not obstruct the west neighbor's view.

Mr. Khater said he had an affidavit from Mr. Wirth that the property owner to the north had requested an "incentive" to write a letter of support. They also had voicemails from this neighbor requesting they "settle this" prior to the hearing or he would attend and rally the other neighbor to oppose the garage. Mr. Khater submitted the affidavit into the record.

Mr. Dunckel reminded the Board that a financial hardship was not a basis for a variance. Mr. Wirth's desire to keep a collectible car in a garage was also not a hardship that ran with the land.

Mr. Shallenberger did not feel the voicemails or the affidavit were germane to the application and he cautioned Mr. Khater against submitting these into the record.

Mr. Cooper said the roof was legal and FPL had hooked up the power and the discussion became whether or not the enclosure was legal because the microfilm made it appear it had been done with a permit at some point in time.

Mr. Dunckel said in 1947, a carport was not considered an encroachment into the setback but it had been decided later on that they could not encroach. He reminded the Board that this case was not about the roofline; it was about the enclosure of the garage because there was no evidence that it was done legally.

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

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2. **Appeal No. 10-32**

**APPLICANT:** Richard Rubin  
**LEGAL:** "Las Olas By The Sea", P.B 3, P. 8, Block 10, Lot 11  
**ZONING:** RS- 8 (Residential Single Family/Low Medium Density District)  
**ADDRESS:** 3303 NE 15<sup>th</sup> Court  
**DISTRICT:** 2

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

Requesting a variance to permit a 6 foot wood fence to be installed with a zero (0) foot front yard setback, where Code requires a minimum average of three (3) foot setback when abutting a street.

Mr. Richard Rubin, applicant, said he was requesting the variance to accommodate the certified endangered tree on the property line. He said the property was also a nuisance because people used the empty lot to walk their dogs. Mr. Rubin had provided letters from adjacent property owners stating they did not object to his request.

Ms. Graham asked why the fence did not just jog around the tree. Mr. Rubin stated this would still have allowed people to use the remaining property outside the fence to walk their dogs. Ms. Graham thought allowing people to erect fences to prevent dog owners' utilizing the property for walks would set a new precedent.

Chair Centorino said this was a very attractive street and it was "jarring" to see this fence. She understood the issue but did not believe this was a hardship.

Mr. Cooper was also taken aback by the fence. He said the fence posts had also been installed on eight-foot centers instead of four-foot centers as required by code so he knew it had been done without a permit.

Chair Centorino opened the public hearing.

Mr. Bill Puzio said if Mr. Rubin wanted to put the fence around the tree, he would need to back up some distance because of the root system. Mr. Willey advised Mr. Rubin to install the fence at the sidewalk line to go around the tree and then bring it back three feet to the north and east.

Mr. Burgess said according to the code, 30% of the fence could be at the property line, provided the rest of the fence averaged three feet from the property line, so the fence would probably need to come in more than three feet in order to average three feet.

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. Dunckel said they could continue the case and Mr. Rubin could return with something specific or find a solution that did not require a variance. Mr. Rubin requested 90 days.

The Board agreed unanimously to grant a 60-day continuance.

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**3. Appeal No. 10-14**

**APPLICANT:** Lucky 14, LLC  
**LEGAL:** "Colee Hammock", P.B. 1, P. 17, Block 33, Lots 15 & 16  
**ZONING:** B-1 (Boulevard Business)  
**ADDRESS:** 1415 E. Las Olas Blvd.  
**DISTRICT:** 4

**APPEALING:** **Section 5-26(b) (Distance between establishments)**  
On May 12, 2010 the BOA approved a variance from ULDR Section 5-26(b) - Requesting a special exception to allow the sale of alcohol at a distance of 150 feet from another establishment (Smith & Jones) that sells alcohol, in its approval the Board imposed conditions of approval. Applicant is requesting to amend Condition #1 stating that the last seating would be no later than 10:00 p.m.

**This item had been deferred.**

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**4. Appeal No. 10-34**

**APPLICANT:** Lauren Rotmil  
**LEGAL:** The N. 60' of Lots 13 & 14, Calders Resub., Block "D" Stranahan's subdivision of SE ¼ of SW Section 2, Township 50S, Range 42E, P.B. 2, P. 63, Public Records of Miami-Dade County, said lands situate, lying and being in Broward County

**ZONING:** RC-15 (Residential Single Family/Cluster Dwellings/Low  
Medium Density District)  
**ADDRESS:** 104 NE 13<sup>th</sup> Avenue  
**DISTRICT:** 2

**APPEALING:Section 47-5.33 (Table of dimensional requirements for the RC-15 district)**

Requesting a variance to allow the conversion of a 160 Sq. ft. carport to a family room and kitchen, with a 17 foot 7 inch front yard setback, where Code requires a minimum of twenty-five (25) foot front yard setback.

Ms. Lauren Rotmil, applicant, said a previous owner had enclosed the carport into living space several years ago. She said the owner had tried to obtain an after-the-fact permit in 2002. Ms. Rotmil said her real estate attorney had informed her of this issue just a few days before the closing.

Ms. Rotmil said she had installed an irrigation system and landscaping and she had plans to install a Spanish tile roof. She listed the following reasons why the Board should grant the variance. When the house was built in 1959, the carport was set back in line with the rest of the house. She noted that converting the carport back would only allow one car to use the carport and there would always be a car in the driveway. Ms. Rotmil stated this was an irregularly shaped lot that was not as deep as other lots in this zone. Her lot did not protrude farther than the neighboring adjacent lots. She said the side setbacks were about eight feet, which was more than the code required. Ms. Rotmil said the enclosed carport had existed for many years and did not affect any of the neighbors. She had included letters from the adjacent neighbors stating they favored the variance.

Ms. Rotmil said she wanted to restore this cottage, but if the family room were removed, there would not be much left to the house.

Mr. Jordan said he did not have a problem with the request.

Ms. Graham said the Board saw one of these cases per month. She had visited the Property Appraiser's website and noticed that the previous owner was Hendricks Developers. Ms. Graham had found the Hendricks Developers' permits, one of which was an air conditioning permit that Ms. Rotmil had hired Hendricks to do. Ms. Graham said it had been Hendricks Developers who had opened the after-the-fact carport conversion permit for the person who owned the house previous to Hendricks in 2002.

Mr. Burgess said he had found the after-the-fact permit had been denied in 2003; it had never passed Zoning.



Chair Centorino opened the public hearing.

Mr. Joe Rotmil, the applicant's father, said they had not realized that Hendricks had done the work for the previous owner. Ms. Graham confirmed that Hendricks had been hired "to do an illegal carport conversion to the garage only." Mr. Rotmil said Mr. Hendricks denied any knowledge of the violation.

Mr. Rotmil believed this case met the criteria for a variance. This was an irregular lot. Mr. Rotmil said the carport conversion presented no infringement on neighboring properties. He said reconverting the carport would not allow two cars to park on the property, which would violate another code. Mr. Rotmil felt that most important was the fact that "the property should be able to be used in a reasonable way, consistent with the neighbors and consistent with the intended use of the property." Mr. Rotmil said denying the variance would make the house unlivable and require Ms. Rotmil to tear this house down and build another, or sell the property.

Mr. Rick Golon, neighbor, said he could not imagine the house with a carport and he favored the house remaining the same.

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.

Ms. Graham said they did not know when the work had been done. Mr. Burgess thought when the carport was converted, it was probably submitted for conversion to a living space. Ms. Graham pointed out that more had been done inside the house than just to convert the carport, walls had been removed. Approving the conversion for the carport to a garage was a small part of this because "there's a lot of other things inside now that nobody has any ownership or accountability on."

Mr. Sniezek thought the owner had made a good case for the request based on the configuration of the lot and how it related to the surrounding lots. He said he would support this request.

Mr. Shallenberger suggested they grant the variance, but require the owner to bring everything else up to code. Ms. Rotmil said it was her plan to bring the building up to code.

Chair Centorino said she thought the house was appropriate for the lot and Ms. Rotmil had raised issues in her presentation that convinced her to vote in favor of it.

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

5. **Appeal No. 10-35**

**APPLICANT:** **Carbogen Corporation**  
**LEGAL:** **The North 87.50 feet of Tract "D", "Lauderdale Harbors Shopping Center," according to the plat thereof; as recorded in P.B. 48, P.19**  
**ZONING:** **B-1 (Boulevard Business)**  
**ADDRESS:** **1041 SE 17<sup>th</sup> Street**  
**DISTRICT:** **4**

**APPEALING:Section 47-6-11 (List of permitted and conditional uses, Boulevard Business (B-1) District**

Requesting a variance to install a wind turbine generator, 14 foot 5 inches above the roof of a 3-story commercial building, with an overall height of 62 feet 2 inches above grade, where Code does not list it as a permitted accessory use or structure.

**APPEALING:Section 47-19.2.Z (Accessory buildings and structures, general – Roof mounted structures)**

Requesting a variance to install a wind turbine generator, 14 foot 5 inches above the roof of a 3-story commercial building, with an overall height of 62 feet 2 inches above grade, where the Code states that roof mounted structures such as air conditioners and satellite dish antennae shall be required to be screened with material that matches the material used for the principal structure and shall be at least six (6) inches high above the top most surface of the roof mounted structure.

[This item was heard out of order]

Chair Centorino said some residents had expressed concern about not being able to attend this evening when this case was heard due to Rosh Hashanah. Mr. Dunckel said the relevant civic association had only received notice one or two days ago and was not prepared. Also, two civic association members wished to celebrate Rosh Hashanah and had requested the case be continued. Mr. Dunckel said in the past, they had sometimes postponed the meeting when it coincided with Rosh Hashanah. He recommended this case be continued to the Board's October meeting.

**Motion** made by Mr. Cooper, seconded by Ms. Graham, to continue this case to the Board's October meeting. In a voice vote, motion passed 7 – 0.

**6. Appeal No. 10-36**

**APPLICANT:** Donna and Eddy Korbel  
**LEGAL:** The South 10 feet of Lot 12 and all of Lot 13, Block 3, "Hall's Addition to Fort Lauderdale FLA.", according to the plat thereof as recorded in P.B. 1, P. 134  
**ZONING:** RS- 8 (Residential Single Family/Low Medium Density District)  
**ADDRESS:** 501 NE 12<sup>th</sup> Avenue  
**DISTRICT:** 2

**APPEALING: Section 47-19.5.B.2 (Fences, walls and hedges)**

Requesting a variance to permit a 5-foot chain-link 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.

Ms. Donna Korbel, applicant, said the fence had been installed using an inaccurate survey. She stated the neighbors did not object to this request, and moving the fence would bring it too close to the pool, which had been installed after the fence with a permit.

Mr. Burgess said the fence could not remain where it was because it encroached almost five feet into the right-of-way. The variance would be to allow the fence to move back to the property line. To be code compliant, the fence would have to be moved back eight feet.

Mr. Dunckel said in 1984, the fence would have been permitted on the property line; it was sometime after 1997 that the code changed to require the three-foot setback. Mr. Dunckel said the applicant could apply to the Property and Right-of-Way Committee for a revocable license that would give her permission to keep the fence where it was. The most the Board of Adjustment could do would be to allow the fence to be installed on the property line.

Mr. Shallenberger recommended Ms. Korbel apply to the Property and Right-of-Way Committee.

Mr. Willey said if the Board were voting to approve the request, he would ask for an amendment specifying that the variance would last only "as long as it stayed in the family's name."

Mr. Dunckel confirmed that the Board of Adjustment could vote on this variance request and Ms. Korbel could still apply to the Property and Right-of-Way Committee.

Chair Centorino confirmed that if the variance were granted, the fence must be moved back to the property line. Mr. Shallenberger felt Ms. Korbelt would be more likely to prevail with the Property and Right-of-Way Committee if the Board of Adjustment had not rejected a variance.

**Motion** made by Mr. Willey, seconded by Mr. Jordan, to table the application for 120 days. In a voice vote, motion passed 7 – 0.

### **Communication to the City Commission**

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Mr. Stresau referred to applications for windmills that had been presented, and said he had sent a communication to the City Commission requesting feedback regarding what they wanted to do about windmills. Mr. Stresau said the two previous windmill applications had not provided the information they were asked to provide and as a result, they were turned down. Mr. Dunckel stated there was a State statute that gave “a very strong impetus towards having a windmill, but we were able to justify, within the case law and the State statute, that they hadn’t met the criteria within the case law and the State statute.” He remarked, “They’ll get smarter and smarter and smarter and one day they’ll get what they need to get.” Mr. Stresau said this would result in “a 65-foot windmill in a single family neighborhood.” He had suggested to the City Commission that they need to “make some kind of decision as to what to do about it and in my opinion, they need to instruct the planning staff and the Planning and Zoning Board to get together and try to come up with some rationale for either approving it or not having it come before the Board.”

Mr. Dunckel said the Commission “should be urged to work with their lobbyists to change the State legislation; it’s one thing to have windmills out in rural areas where you’ve got five units per acre, but with the density factors that you have in South Florida, it just doesn’t make sense in a lot of our residential areas, and there needs to be some criteria by which local government could take some control of that issue.”

Mr. Stresau had received no response from any of the Commissioners, and suggested the Board “develop some kind of question to the Commission as to how to deal with windmills.”

Ms. Graham said Mr. Stresau was right, and stated as they became more sustainability conscious, this was where everything was heading. She thought “the right people need to put something together for the City Commission because we don’t want to be challenged on it because we didn’t approve it.” She suggested they discuss this again when Mr. Madfis was present, because he was an architect she believed he was LEED certified. Ms. Graham recommended Mr. Stresau prepare something for the

Commission as well. Ms. Graham said. "They encourage the architects to do this and there's nothing wrong with a backup to be off the grid if we lose power, if we have a hurricane and you can generate a few things in your house."

Mr. Willey pointed out that a water tower on top of a building must now have a protective, visual fence "so it doesn't look bad from people who look up there from the street." He wondered if a windmill would be required to have a similar fence, which would interfere with its operation. He agreed they should suggest the City must decide how to handle this.

**Motion** made by Mr. Sniezek, seconded by Mr. Jordan, to recommend that the City Commission direct appropriate Staff to develop comprehensive policy and criteria to address alternative energy generation devices (e.g., windmills, wind turbines) throughout the City; and have the City Lobbyists contact the State Legislators to provide local governments of high density residential areas a greater degree of control over the criteria. By voice vote, the Motion passed unanimously (7-0).

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

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Mr. Willey asked that staff indicate when an item, such as the fence in the last application, was existing. Mr. Burgess said in that application, the request was to move a fence, and it did not matter that it was existing in another location.

Regarding the application from Carbogen, Mr. Willey said the address had been very difficult to locate. He stated there was only one posting, and it had been on the cross street. Chair Centorino agreed, and said she had called Ms. Blackman about this. Mr. Burgess said the applicants could request as many signs as they wished, but staff should provide an applicant with more than one sign for a corner lot. He agreed to relay this to staff.

Mr. Stresau remarked that the sign for the Lucky 14 LLC application was posted in the property window, 75 feet back from Las Olas. He said staff should be telling applicants exactly where to place the signs.

There being no further business to come before the Board, the meeting was adjourned at 8:40 p.m.

Chair:

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Diane 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 Inc.