

**BOARD OF ADJUSTMENT MEETING
CITY OF FORT LAUDERDALE
WEDNESDAY, OCTOBER 13, 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
Diana Waterous Centorino, Chair	P	3	2
Michael Madfis, Vice Chair	P	4	1
Caldwell Cooper	P	5	0
Gerald Jordan	P	4	1
Karl Shallenberger	P	4	1
Henry Sniezek	P	5	0
Birch Willey	P	5	0
Alternates			
Mary Graham	A	4	1
Fred Stresau	P	4	1
Sharon A. Zamojski	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
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

Chair Centorino called the meeting to order at 6:31 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 – September 2010

The Board noted changes to the September minutes.

Motion made by Mr. Cooper, seconded by Mr. Willey, to approve the minutes of the Board’s September 2010 meeting as amended. 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. 10-14 (Deferred from September 8, 2010)**

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.

Mr. William Osborne, representative of the applicant, said his client was concerned about condition #1, and noted that this would be the only restaurant on Las Olas that had a defined closing hour and the owner wished to discuss this with the Board with the goal of doing "something better."

Mr. Jordan said Mr. Flanigan had met with the Colee Hammock Homeowners Association board, and they approved of his request to amend. Mr. Osborne requested a change to "whatever the City allows for the beer and wine license" with no additional restrictions from the Board of Adjustment. Chair Centorino remembered Mr. Jordan had been concerned because there were so many dining establishments, and asked if it was going smoothly with this one. Mr. Jordan said Colee Hammock was happy with this establishment.

Mr. Willey was confused about the specific request and Mr. Jordan said the homeowners association had voted for closing the doors at midnight, with the last seating at 10 p.m. Mr. Madfis stated this was the original restriction.

Motion made by Mr. Madfis, seconded by Mr. Cooper, to eliminate the previous restriction of any hours of operation and to follow the standards set by the other regulatory agencies that regulated liquor and beverage licenses and any other City ordinances in place regarding noise and time of operation.

Mr. Cooper said he had been concerned at the last meeting about restricting this owner from being able to do business like every other business on the street. Mr. Willey thought the Board had not discussed why they were restricting. Mr. Jordan said the concern expressed at the homeowners association had been parking, and this was when Mr. Osborne had suggested closing at midnight. Mr. Osborne said the City required 12 parking spaces for this building and they had 12.

Mr. Madfis restated his motion and Mr. Jordan pointed out that the motion meant that the "deal that the neighborhood worked out, Richard, is gone." Mr. Richard Flanigan, applicant, said he believed the permitted closing time, per the Division of Alcoholic Beverages, in that neighborhood was 2 a.m.

Mr. Carl Karmen, attorney and part owner of this and the adjacent property, said the closing requirement was 2 a.m. He confirmed that this would have been the only restaurant on Las Olas that would have a closing requirement. He felt a restriction would cause this tenant to be “set...towards failure” due to the competition in the area. Mr. Karmen noted that only this and the adjacent property had their own parking, and despite this, other venues were permitted to operate all night long. Mr. Madfis was concerned that closing this property while other nearby properties were open might have an effect on adjacent property because it would be a “blank spot,” which was not desirable in a pedestrian atmosphere.

Mr. Jordan reiterated that this was not what had been agreed to at the homeowners association. Mr. Karmen said when Mr. Flanigan had agreed to the restrictions, he was not familiar with this street and what went on at the businesses there.

Mr. Cooper reminded everyone that they were allowing a liquor license within 150 feet of another establishment where code did not allow it. He said he felt they had “given an inch and I kind of feel like they’re trying to take a mile at this point.” Mr. Cooper wished the item to come back with a representative of the homeowners association present.

Mr. Flanigan confirmed that at the homeowners association, he had said he would like to change to 10 p.m., but someone had said, “can you live with midnight.” He said he did not intend to stay open late, but Mr. Osborne and Mr. Karmen did not want the restriction on the property.

Mr. Shallenberger said homeowners associations did not make agreements for the City; they acted as advisory boards to City boards. He said he understood what the neighborhood said, but this had no control over the Board of Adjustment and he therefore wanted to move forward.

Mr. Willey suggested limiting the closing restriction to this business; if another restaurant moved in, it could revert to the standard procedure for the street.

Mr. Madfis amended his motion to retain the 10 p.m. – 12 midnight restriction as requested and as approved by the association for this tenant; if this tenant left and a new tenant came in, it would revert to the regular standards imposed by the City and regulatory licensing agencies. Mr. Cooper accepted the amended motion.

Mr. Snizek wondered if the homeowners association would be happy if this business failed and a new business opened that would be open until 2 a.m. Mr. Jordan admitted they probably would not be happy and would want to talk to any business coming into the neighborhood. He stated, “We had an arrangement worked out and apparently it’s being twisted right now...an arrangement was worked out in good faith.”

Given the motion on the floor, Mr. Dunckel asked Mr. Flanigan if he waived any rights to appeal or any rights to contest this in the subsequent action. Mr. Flanigan said he and Colee Hammock had agreed to “first 10 o’clock and then 12 o’clock, like the last seating in case of, like the boat weekend or whatever.” Mr. Flanigan agreed to waive the right to appeal or contest.

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

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2. Appeal No. 10-35 (Deferred from September 8, 2010)

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 17th 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.

Chair Centorino recalled that Mr. Stresau had asked the City Commission to turn its attention to this issue and asked staff for an update. Mr. Burgess said staff had performed research and this item would be discussed at the next Commission conference meeting.

Mr. Madfis thought a solar collector would be a more appropriate comparison. Mr. Burgess noted the code talked about mechanical equipment, and so was this. Mr. Madfis remarked that a solar collector was allowed to be exposed, and that was not referenced in this appeal.

Chair Centorino stated the two signs on this property were both on SE 16 Street and had not increased the visibility. Mr. Burgess was not sure the building abutted SE 17 Street. He had informed the applicant to put the signs along the alley and “all around the building” and that was all he could do.

Mr. Willey wanted the Board to be “very specific as we listen to them tonight” and he was not sure the Board should not “kick this football and give it to the City staff and let Planning and Zoning come up with ordinances to regulate this before we do too many, if we do any variances.” He wanted the applicant to be aware that “what I’m going to hear from them, it’s going to be bouncing off of that backboard; is this the proper place to be at the proper time as well as what they want, is it proper on top of that building.”

Mr. Dunckel agreed that the Planning Department and the City Commission should take a longer, more intensive look at, but in the absence of a zoning in progress inquiry, the application was properly before the Board and they had an obligation to entertain it.

Mr. Colin Patterson, Tufts University student and representative of the applicant, explained that this was a vertical spinning turbine that was small, lightweight and quieter than the existing air conditioner on the building. He said it would not be visible from the street and the power produced would be consumed behind the meter, which was more efficient than piping it back to the grid.

Mr. Cooper was concerned with the audible effects from high winds passing through the turbine and with squeaking the unit might generate as it aged. Mr. Patterson said the wind energy industry had standardized noise measurements and this unit was rated at 38 decibels at 25 mph wind speed. He pointed out that the air conditioner they were listening to currently produced 60 decibels. Regarding possible squeaks as the unit aged, Mr. Patterson explained the unit was made of fiberglass and carbon fiber, so it was very light and used stainless steel bearings that were extremely resistant to corrosion. Mr. Patterson said the turbine would be approximately 10 feet taller than the air conditioning units. Mr. Patterson showed a photo of the building from the adjacent street and parking area and noted that one would not be able to see the unit from the street.

Mr. Madfis said, “I think this concept of restricting this any differently than we would restrict a solar collector or any other piece of mechanical equipment that is part of the operation of the building is absurd and I think that there should be no reason why we should be not looking at every opportunity to conserve energy as long as it doesn’t fall outside the standards of the code and if you look at the standard for other alternate energy producers such as a solar panel, it’s not required to be screened.”

Mr. Cooper asked what would happen in a hurricane. Mr. Patterson said the turbine was rated to withstand over 100 mph winds with the blades on; it was designed for the blades to be removed easily in the event of a hurricane.

Mr. Jordan approved of this, and said 14 feet tall was not very tall. He added that this was in a mostly industrial area and did not know how this could impact anyone. He felt if they kept saying no to everything, they "might get in trouble."

Chair Centorino opened the public hearing.

Ms. Donna Mergenhagen said 16th Street was the divider between residential and commercial in this area and all of the residential in the area were two-story buildings. When she first heard of this request, she had thought it was about time. She had later heard LEED certified architects discussing wind energy on National Public Radio and this had made her "rethink what I might actually be looking at or experiencing when I sat on the deck of my condominium." She thought she would be able to see the turbine from her balcony. She said it was not clear to her what she would be hearing because "yes, there are standards, but there is no City standard in place that I'm aware of and would I hear it two hours a day, eight hours a day, 24 hours a day..." She also was unsure of: whether there was an accommodation in the noise ordinance for this; if there were code requirements for upkeep; if there were guidelines for obsolescence and removal; what requirements existed for securing the structure in a hurricane; if there would be guy wires and what requirements pertained to those; what the liability was of damage to other structures in a storm; what the uniform building code requirements were; if the system was approved by FPL and if the unit met the professional industry standards.

Ms. Mergenhagen said she was not opposed to this but they needed guidelines and code for installation, operation and maintenance.

Mr. Madfis said he shared some of these concerns, but many of these issues were building code issues, and he believed these would be addressed as the project went forward in permitting. Mr. Madfis felt it was important to move forward with this project, because they could monitor it in order to learn from it. He was convinced that the noise would not be any greater than the noise of an air conditioner or lawn mower. He added that noise ordinances for mechanical equipment did exist in the City.

Ms. Mergenhagen said if this was truly an experiment, she encouraged the Board to add strong data and performance parameters to ensure the unit would be removed if it were not used.

Ms. Karen Anderson was ambivalent about this project as well. She said she would like to see a wind noise curve showing noise at 10, 40 and 50 knots. Ms. Anderson asked

about the real dimensions of the unit and where it would be located on the roof. She said as long as the unit was safe, she would support it.

Mr. Jordan liked the fact that Tufts University was going to do more research through this project.

Mr. Shallenberger thought the presentation had not effectively addressed the questions raised.

Mr. Peter Wittich, president of Carbogen, said he had attended Tufts University, and he believed that the people making the applications to the Board of Adjustment in the future would be students like Mr. Patterson. As part of the study, they had permitted Mr. Patterson to make the presentation for experience. Mr. Wittich said this device was specifically selected for Fort Lauderdale's lower wind speeds. He said this technology created jobs and reduced dependence on foreign energy sources.

Regarding the signage, Mr. Wittich said the signs had been installed on three sides of the building twice. Mr. Wittich said the unit was selected for Fort Lauderdale's conditions and would be installed properly.

Mr. Cooper asked if Mr. Wittich would agree the unit would not exceed a certain noise limit at 125 feet from the property and Mr. Wittich agreed. Mr. Sniezek asked if this was an experiment. Mr. Wittich said it was an experiment because one could not order a prefabricated windmill; data and practical engineering had to be done. Mr. Sniezek asked if there was an endpoint. Mr. Wittich said the project would be a success if there were no noise complaints and if device ran consistently and saved costs on power.

Ms. Vicki Eckels said she was very interested in sustainability and had solar panels on her roof. She was very excited about this opportunity to determine what kind of energy production they could realize from wind.

Tom Greco, project general contractor, explained that everything had been designed by a structural engineer to 2007 Building Code and to withstand wind loads. Mr. Greco displayed a rendering of the project. Mr. Patterson stated the unit was approximately six feet in diameter. Noise within three meters at 7 to 10 meters per second was 45 decibels and at 10 to 13 meters per second would be approximately 50 decibels. Mr. Patterson remarked the unit was incredibly quiet.

Mr. Patterson said these turbines were in use in New York State. Chair Centorino said, "You are asking me to subject the residents of that neighborhood to something that we have no way of knowing what it's going to be like and with an awful lot of unanswered questions." Mr. Patterson pointed out that many of the answers were contained in the documents provided. He said the units that were already in use had been tested

extensively and they were purchasing an off-the-shelf turbine; they were not altering it in any way, so it would meet the design specs.

Mr. Patterson explained that the average air conditioner operated at approximately 60 decibels. He said the farther one was from the turbine, the less noise one would hear. Mr. Cooper wanted the applicant to agree that noise from the unit would not be above 40 decibels at 125 feet away as a condition of his approval. Mr. Madfis said the information in the package indicated the decibel rating was within nine meters of the unit.

Motion made by Mr. Madfis, seconded by Mr. Jordan, to approve, provided that all standards within the package regarding height, size, noise and wind loads were met. Mr. Cooper requested that the motion specify that the sound level 125 feet away would be no more than 50 decibels. Mr. Shallenberger asked why they should do this when they had the design specifications and the City's noise ordinance. Mr. Cooper withdrew his request for an amendment. Mr. Dunckel wanted to clarify that the variance applied to this equipment only. Mr. Madfis agreed the variance was specific to the package presented this evening in all respects.

In a roll call vote, motion **passed** 6 – 1 with Chair Centorino opposed.

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3. Appeal No. 10-37

APPLICANT: Island House East/Michael Amrich
LEGAL: Island House East Condominium, Lot 53, Island No. 4, Nurmi Isles,
P.B. 24, P. 43
ZONING: RMM-25 (Residential Mid-Rise Multifamily/Medium High
Density)
ADDRESS: 40 Isle of Venice Drive
DISTRICT: 2

APPEALING: Section 47-21.10.3 (Landscape requirements for all zoned districts)

Requesting a variance to reduce the required 35% landscape area to 20% to provide three (3) additional parking spaces.

Mr. Michael Amrich, applicant, explained they wanted to reduce the 35% landscape area to 20% to accommodate three guest parking spaces that already existed on the property. The paver contractor had discovered when applying for the permit that the original driveway was for 16 unit parking spaces and no guest parking. At some point since 1961, someone had reduced the landscape areas to install the three guest spaces. Mr. Amrich remarked that parking was "horrific" on Isle of Venice and some

elderly residents had home health workers, they also had deliveries and guests at the property. Mr. Amrich confirmed for Chair Centorino that they wanted to replace the existing asphalt area with pavers.

Mr. Jordan felt the landscape requirements had probably changed to require more over the years.

Mr. Madfis suggested they create as much pervious space as possible to make up for the percentage they were paving; he believed using pervious concrete or reducing the depth of the parking spots might accomplish this.

Mr. Shallenberger said he favored this request, and this was one of only two streets in Fort Lauderdale for which approve of less landscaping and more parking. He remarked on the congestion and cars on Isle of Venice. Mr. Shallenberger reminded Mr. Amrich that the property must retain the first inch of water, and suggested the condo board rethink the guest spots.

Mr. Cooper asked if the condo would be required to install catch basins to retain water. Mr. Burgess replied this would be an Engineering question, not a Zoning question.

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

Mr. Willey asked if the Board wanted to specify one of the caveats mentioned by Mr. Madfis. Mr. Burgess confirmed for Mr. Shallenberger that this was what Engineering would do. Mr. Willey feared that something might slip through if they did not specify what should be done. Mr. Burgess was concerned that the parking spaces might already be non-conforming. Mr. Madfis hoped the condo's engineer would determine what must be done.

Mr. Madfis said pavers did well in replacing some of the aesthetics lost when they reduced landscaping, but they did not necessarily provide the pervious conditions they were seeking.

Mr. Amrich stated their plans had been approved by every department but landscaping already. Mr. Shallenberger did not believe the property would retain the first inch of water and he was concerned because "maybe the department that I'm relying on to give a permit for specific things that Birch is concerned about isn't doing that." Mr. Shallenberger did not wish to amend his motion. He stated, "No matter what we say, no matter what we do here as the Board of Adjustment, it's going to be up to the engineering people and code compliance people to do something productive on Isle of Venice."

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

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4. **Appeal No. 10-38**

APPLICANT: FL Grande, LLC
LEGAL: Situated in the County of Broward, State of Florida, and known as being a part of Government lot 1, Section 14, Township 50 South, Range 42 East, and also part of Government Lot Nine, Section 13, Township 50 South, Range 42 East, and 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: RMH-60 (Residential High Rise/High Density District)
ADDRESS: 1881 SE 17th Street
DISTRICT: 4

APPEALING: Section 47-22.4.C.3.A (Maximum number of signs at one location and special requirements in zoning districts-Special regulations)

Requesting a variance to allow two (2) signs measuring 144 sq. ft. in area, where the Code allows a maximum of 15 sq. ft. in area for each street front sign as an accessory to hotels, motels, located on the same lot.

APPEALING: Section 47-22.3.G (General regulations – Flat signs/wall signs)

Requesting a variance to allow two (2) wall signs measuring 385 sq. ft. in area on two (2) building facades, where the Code permits a maximum of 300 sq. ft. of sign area.

[This item was heard out of order]

Chair Centorino said there had been a request for a deferral for the applicant to meet with the neighborhood.

Motion made by Mr. Jordan, seconded by Mr. Madfis, to defer the appeal to the Board's November 10, 2010 meeting. 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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Mr. Jordan said the City Commission had discussed the flooding in the Isles and the Engineering Department was considering installing traps to hold water back at high tide.

Mr. Shallenberger said there was almost nothing to be done because of the maintenance issues. He said he hoped the floodgates would work.

Mr. Shallenberger announced he could not attend the Board's next meeting.

There being no further business to come before the Board, the meeting was adjourned at 8:34 p.m.

Chair:

Diana Centorino

Attest:

ProtoType Inc.

A digital recording was made of these proceedings, of which these minutes are a part, and is on file in the Planning and Zoning offices for period of two years.

Minutes prepared by: J. Opperlee, Prototype Inc.