

**BOARD OF ADJUSTMENT MEETING
CITY OF FORT LAUDERDALE
WEDNESDAY, DECEMBER 8, 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 | 5 | 2 |
| Michael Madfis, Vice Chair | P | 6 | 1 |
| Caldwell Cooper | P | 7 | 0 |
| Gerald Jordan | P | 6 | 1 |
| Karl Shallenberger | P | 5 | 2 |
| Henry Sniezek | P | 6 | 1 |
| Birch Willey [arrived 7:36] | P | 7 | 0 |
| Alternates | | | |
| Mary Graham | P | 6 | 1 |
| Fred Stresau | P | 6 | 1 |
| Sharon A. Zamojski | P | 3 | 1 |

Staff

Bob Dunckel, Assistant City Attorney
Terry Burgess, Zoning Administrator
Yvonne Blackman, secretary
Cheryl Felder, Service Clerk
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.

Index

| | <u>Appeal</u> | | | |
|----|---------------|---|-----------------|---|
| | <u>Number</u> | <u>Applicant</u> | <u>District</u> | <u>Page</u> |
| 1. | 10-40 | City of Fort Lauderdale | 4 | 2 |
| 2. | 10-41 | Bal Harbour Square LLC | 2 | 4 |
| 3. | 10-42 | James Barnett, Trustee of the James Barnett Revocable Trust | 2 | 6 |
| 4. | 10-44 | 1415 Banyan House, LLC For the Good of the City | 4 | 7 10 |

Call to Order

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

Approval of Minutes – November 2010

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

[Index](#)

1. Appeal No. 10-40

APPLICANT: City of Fort Lauderdale
LEGAL: STRANAHANS SUB LOTS 13 TO 18, BLK 14 FT LAUDERDALE
3-10 D LOTS 6 THRU 17, LESS RD R/WS AS DESC IN OR
8156/401 BLK B
ZONING: RAC-CC (Regional Activity Center- City Center District)
ADDRESS: 100 SE 1 Street
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 249 feet from a Church (First United Methodist), where Code requires a separation of 500 feet.

Mr. Jack Koussevitsky, Slice Pizzeria and Restaurant owner, stated he had submitted the beer and wine application that was denied because of the restaurant's proximity to the church, at which time he had put aside his application. Since then, Empire Pizzeria, had opened at 1500 North Federal Highway, located 270 feet from a local church. He had determined that the Board of Adjustment had allowed this other restaurant to serve alcohol, and he wanted the same consideration. He noted that there was a French café and another restaurant near his store that also served beer and wine. Mr. Koussevitsky said these were his competitors and this was causing him a hardship.

Mr. Koussevitsky stated his pizzeria was currently open from 11:00 AM to 9 PM Monday through Friday and his parking was in the parking garage. Most of his business was lunch served to nearby workers. Mr. Koussevitsky had not contacted the First United Methodist Church regarding this because he believed the City had authority over this.

Chair Centorino opened the public hearing.

Mr. Mark Caldwell, First United Methodist Pastor, said he was speaking on behalf of the church's Board of Trustees, who had discussed this and determined there was no justifiable reason to grant a variance. He stated they operated schools out of the church Monday through Friday. He said they were concerned because they did not know the duration of the variance and "if five, ten years from now, another establishment moved in here, what might be the repercussions of granting this variance at this time." The Board of Trustees did not recommend the variance.

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

Mr. Madfis wondered what the church's objection was. Mr. Caldwell said since the church began here in the 1920's, they had seen their parking lots filled with bottles, cans and other paraphernalia. He stated they were aware of "some of the elements that can come out of this." They were also concerned that the restaurant would stay open until midnight and/or on the weekends. Mr. Caldwell said, "The proposal that we received put the entire City Mall complex within this variance, so there well may be another vendor that comes in there, an establishment that does want to serve beer and wine and stay open 'til midnight." He said they did not want to see this turn into the "budget-minded epicenter between Las Olas and Himmarshee, that maybe it would be other elements that contributed to bringing empty beer bottles on the front steps of the

church when people come to worship or people leaving their garbage around the drive-trough when our families show up first thing Monday mornings to drop their children.”

Mr. Madfis agreed that garbage was a main concern, but he believed that if there were more activity in the downtown activity center, this acted as a deterrent to crime.

Mr. Shallenberger was certain that this landlord and the City would not permit litter in the area.

Chair Centorino disagreed with the idea that allowing more alcohol in the downtown area would make it safer, and the Board should remember that the standard was whether or not this would be contrary to the public interest. Chair Centorino felt that the public most directly affected were those that had appeared at this meeting, who did not believe it to be in their best interests.

Mr. Dunckel reminded the Board that this was not a variance request, it was a special exception, and therefore the variance criteria did not apply. The standard was whether the record demonstrated this was contrary to the public interest.

Mr. Sniezek thought the applicant should have contacted the church, but he did not see how allowing the restaurant to serve wine and beer would disrupt the public good, and said he supported the request. Chair Centorino pointed out that the 500-foot rule was in the code, and wondered under what circumstance they would honor this.

Mr. Dunckel said the question was whether the record showed it was contrary to the public interest. If the record showed this was not contrary to the public interest, the applicant would be awarded the special exception.

Mr. Shallenberger felt there was a big difference between this and a full bar that would be open until 2 AM and have dancing.

Motion made by Mr. Madfis, seconded by Mr. Sniezek to grant the request. In a roll call vote, motion **failed** 4 - 3 with Mr. Cooper, Ms. Zamojski and Chair Centorino opposed.

[Index](#)

2. Appeal No. 10-41

APPLICANT: Bal Harbour Square, LLC. (Louis Carosella)
LEGAL: “Carosella Plat” P.B. 170, P. 27, FVS Plat No. 2, P.B. 123, P. 9, 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: B-1 (Boulevard Business)

ADDRESS: 1800 N. Federal Highway
DISTRICT: 2

APPEALING: Section 47-20.17.B (Vehicular reservoir spaces for drive-thru facilities)

Requesting a variance to allow a bank to have four (4) vehicle reservoir spaces for each drive-thru teller service position where the ULDR Sec. 47-20.17.B requires banks to have six (6) vehicle reservoir spaces per drive thru teller service position.

Mr. Robert Lochrie, representative of the applicant, showed depictions of the property. He said the shopping center owners had embarked on an aggressive renovation project focused on the facades, the parking lot and landscaping. An additional Federal Highway curb cut would be added to the parking area as well. As a result, tenants were returning to the shopping center. Mr. Lochrie showed the spot on which Chase Bank wanted to build a branch bank.

Mr. Lochrie explained that City code required 6 stacking spaces behind a teller window, but it did not specify how many lanes were needed. The ITE manual specified that a bank this size required two teller windows, for a total of 12 spaces. This design was in excess of this requirement because they were providing four lanes with four stacking spaces each for a total of 16 stacking spaces.

Mr. Lochrie said this was a large, 10-acre site and cars entering the drive-through line would come from within the site, not the public right-of-way. The owners had commissioned a study to determine the appropriateness of the lane configuration, and the study had determined this was more than sufficient.

Mr. Joaquin Vargas, traffic engineer, TrafTek Engineering, described the study, which determined 12 spaces would be sufficient. He reported the 16 spaces to be provided were more than adequate to accommodate peak queuing at this bank.

Mr. Lochrie stated the parking lot had six more spaces than required, and adding lanes at the bank would result in the loss of more than the six additional spaces, which were more important to the tenants. He added that the Bal Harbour neighborhood association had sent a letter of support. Mr. Lochrie distributed a copy of this letter, an email from the president of the homeowners association and a letter from the City's Economic Development Director stating his support for the variance request.

Chair Centorino opened the public hearing.

Mr. Dan Lindblade, President and CEO of the Greater Fort Lauderdale Chamber of Commerce, said the request's logic was valid and he saw no negative effect on the community. Therefore, the Chamber supported the request.

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

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

3. Appeal No. 10-42

APPLICANT: James Barnett, Trustee of the James Barnett Revocable Trust
LEGAL: Parcel "A excepting the northerly 15' thereof of Block 6, of Resubdivision of Blocks 5 & 6 of Venice, Plat Book 47, Page 26.
ZONING: RS- 8 (Residential Single Family/Low Medium Density District)
ADDRESS: 534 Bontona Avenue
DISTRICT: 2

APPEALING:Section 47-19.2.CC (Accessory buildings and structures, general-Tennis Courts)

Requesting a variance to allow a tennis court accessory to a single-family structure to be located within ten (10) feet of the front property line, where the ULDR does not permit a tennis court to be located in the front yard.

Mr. Robert Lochrie, representative of the applicant, showed photos of the property, and pointed out the existing ficus hedge that would remain. He explained the tennis court would be installed behind the hedge, in a similar location where there had previously been a tennis court. Mr. Lochrie read from the code, which required tennis courts accessory to a single-family dwelling may be permitted within side and rear yards, but not within 10 feet of any property line.

Mr. Lochrie noted that the previous tennis court had been less than ten feet from the property line, and the new tennis court would comply with the side and rear yard setback requirements. The tennis court would be ten feet from the front yard property line but a portion would be within the front yard.

Mr. Lochrie pointed out that the property was very long and narrow, the front yard was approximately 30 feet wide and it was located at the end of a cul-de-sac. He stated the shape of the property was a hardship.

Mr. Lochrie noted there were other tennis courts in the neighborhood, and neighbors to the north and west had indicated they supported this request. He referred to letters these two owners had sent. One of the neighbors had indicated he would not want a wall along the north property line, and the applicant had agreed to this.

Mr. Lochrie said the current plan did not include lighting. He agreed that the hedge would be kept at least 10 feet tall.

Mr. Sniezek asked Mr. Lochrie to confirm that the existing house had been torn down but the new house would have a configuration very similar to the old house.

Mr. Madfis pointed out that there was not sufficient room for a regulation sized tennis court in this space.

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

Motion made by Mr. Cooper, seconded by Mr. Madfis to approve the variance request, including the provision that there would be a ficus hedge of at least 10 feet on the north property line and that no wall would be constructed on the north property line, as long as the tennis court was there. In a roll call vote, motion **passed** 7 - 0.

4. Appeal No. 10-44

APPLICANT: 1415 Banyan House, LLC
LEGAL: The North 70 Feet of Lots 9 and 10, Block 48 of "Colee Hammock" according to the plat thereof, as recorded in P.B. 1, P. 17
ZONING: RS- 8 (Residential Single Family/Low Medium Density District)
ADDRESS: 314 SE 16th Avenue
DISTRICT: 4

APPEALING: Section 47-3.2.B.1 (Nonconforming structure)

Requesting a variance to allow a garage to be altered to a bedroom, where the Code prohibits altering of non-conforming buildings.

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

Requesting a variance to permit a garage to be converted to bedroom with a nineteen (19) foot front yard setback, where the Code requires a twenty-five (25) foot front yard setback.

Mr. James Curry, owner, said the home was formerly owned by Sophie Curson and her sisters. Mr. Curry believed a variance had been granted for this property in 1950 when it was built, and that the enclosed garage space had been permitted in 1953. He stated the documents related to the variance and garage had been lost by the City.

Mr. Curry showed the Board the original property survey submitted for the 1950 building permit, and noted the house's closest point to the front property line was 18.5 feet, when code required 25 feet. He stated the City had issued three building permits in 1950 while the home was in violation of the code. This was why he believed a variance had been issued.

Mr. Curry said the garage had been converted to a study in 1953 by the owner, who was a licensed architect. Mr. Curry produced the blueprint from the conversion, and said he assumed a building permit had been granted for the conversion, even though he could not find the permit.

Mr. Curry stated in 1973, a new central air conditioner had been installed and the City had issued a permit for the air conditioner based on plans that included the enclosed garage. Mr. Curry said the setback rules for Colee Hammock could not be found, so they were unsure what it had been, but two architects and a surveyor had indicated it had always been 25 feet from which one could conclude that a variance had been granted in 1950.

Regarding the variance criteria:

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

Mr. Curry said the structure had been approved by the City to be built as it was, and that approval conflicted with the City's setback rules and prohibited proper use of the property.

- 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

Mr. Curry stated no other property in Colee Hammock had less than a 25-foot setback, which rendered the property unique.

- c. That the literal application of the provisions of the ULDR would deprive the applicant of a substantial property right that is enjoyed by other property owners in the same zoning district. It shall be of no importance to this criterion that a denial of the variance sought might deny to the owner a more profitable use of the property, provided the provisions of the ULDR still allow a reasonable use of the property

Mr. Curry stated, "Taken to its extreme, the applied provisions would render the entire structure non-confirming because it's in violation of the setback."

- d. That the unique hardship is not self-created by the applicant or his predecessors, nor is it the result of mere disregard for, or ignorance of, the provisions of the ULDR or antecedent zoning regulations

Mr. Curry said the hardship was that the City had approved the house where it was in 1950.

- e. That the variance is the minimum variance that will make possible a reasonable use of the property and that the variance will be in harmony with the general purposes and intent of the ULDR and the use as varied will not be incompatible with adjoining properties or the surrounding neighborhood or otherwise detrimental to the public welfare.

Mr. Curry noted this variance would create zero additional structural footprint other than what was originally approved by the City.

Mr. Curry presented letters of support from the Colee Hammock Homeowners Association and Robert Vick, his architect.

Mr. Madfis said the record of the survey indicated it was an as-built survey, not a proposed location plan and had probably been prepared during or after the permit. Mr. Curry said they had a timeline indicating the survey had been drawn prior to the permits' approval by the City. Mr. Madfis asked about the sewer easement indicated on the survey. Mr. Curry referred to the 1920 plat showing two lots, and explained that they had been purchased by a builder in 1950 and he had substantially changed their configuration. The sewer easement concerned the sewer line needed for what was now Mr. Curry's property. He said as a result of way the sewer line was installed, they had needed to push the house forward and tilted it to the northwest.

[Mr. Willey arrived at 7:36]

Mr. Shallenberger complimented Mr. Curry on the amount of research he had done.

Mr. Burgess confirmed the variance did not exist but the permits existed. He agreed that the converted garage was shown as a study in the air conditioning system permit diagram.

Mr. Jordan said he was the President of the Colee Hammock Homeowners Association and he had looked at the house. He stated he had also experienced difficulty looking up records at the City. Mr. Burgess confirmed there had been a flood that destroyed some City records years ago.

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

Mr. Madfis asked Mr. Dunckel if there was any use the room could be put to that they should restrict because that use would make the home "even more non-conforming." Mr. Dunckel could not name one.

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

Communication to the City Commission

[Index](#)

None.

Report and for the Good of the City

[Index](#)

Chair Centorino wished everyone Happy Holidays.

There being no further business to come before the Board, the meeting was adjourned at 7:48 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.