

**BOARD OF ADJUSTMENT MEETING  
CITY OF FORT LAUDERDALE  
WEDNESDAY, JANUARY 12, 2011 – 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>
Diana Waterous Centorino, Chair	P	6	2
Michael Madfis, Vice Chair	P	7	1
Caldwell Cooper	P	8	0
Gerald Jordan	P	7	1
Karl Shallenberger	P	6	2
Henry Snizek	P	7	1
Birch Willey	P	8	0
<b>Alternates</b>			
Mary Graham	P	7	1
Fred Stresau	P	7	1
Sharon A. Zamojski	P	4	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.

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	<b><u>Appeal</u></b>			
	<b><u>Number</u></b>	<b><u>Applicant</u></b>	<b><u>District</u></b>	<b><u>Page</u></b>
1.	10-35	Carbogen Corporation	4	<a href="#">2</a>
2.	10-36	Donna & Eddy Korbel	2	<a href="#">5</a>
3.	11-01	McDonalds USA LLC	1	<a href="#">6</a>
4.	10-40	City of Fort Lauderdale	4	<a href="#">10</a>
		For the Good of the City		<a href="#">12</a>

**Call to Order**

Chair Centorino called the meeting to order at 6:33 p.m. She introduced Board members and described the functions of the Board and procedures that would be followed for the meeting.

Chair Centorino noted the recent passing of Gerald Cooper, former Chair of the Board of Adjustment, Planning and Zoning Board and the Code Enforcement Board.

**Approval of Minutes – December 2010**

Board members noted changes to the minutes.

**Motion** made by Mr. Cooper, seconded by Mr. Jordan, to approve the minutes of the Board's December 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. 10-35**

**Appeal No. 10-35 was heard by the BOA on October 13, 2010. On November 10, 2010 the Board adopted a Motion for Reconsideration of 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.

Mr. Dunckel stated the Board had voted to grant the variance at its October meeting, but questions had been raised at their November meeting regarding misrepresentations during the October presentation and the Board had voted there was sufficient reason for reconsideration. Tonight, the Board would listen to the merits of the motion for reconsideration and if they agreed there were material misrepresentations, Board members should vote in favor of the motion for reconsideration and they would begin again with a new presentation.

Ms. Debbie Orshefsky, attorney for the applicant, stated that she had provided a letter from the Dean of Tufts University confirming that the representations made by the applicant and the student at the October meeting were "in fact, the initiative that they are very much involved in." She asked the Board to accept the information so "this senior project can get going sometime during the student's senior year."

Chair Centorino said she did not feel the presentation had "measured up to what I had expected a Tufts University presentation would be", and she had had phoned Tufts University, and spoken to an Assistant Dean who had been unable to answer any of her questions. The University had confirmed that Colin Patterson was a senior there, but

she had been unable to get answers to any of her questions. She had not faxed her list of questions because she was told that the University was on break until January 20.

Ms. Orshefsky said many of the concerns Chair Centorino raised were not related to the variance criteria. She referred to a letter sent to Ms. Blackman that answered many of the questions raised, and stated the University intended to make this an annual challenge project. Chair Centorino said this letter was not signed, but Ms. Orshefsky stated Mr. Wittich had drafted this letter and there were a series of emails between him and the University. Mr. Wittich, a graduate of Tufts, was very involved with the University in educational programs.

Ms. Orshefsky pointed out that this was no different from any other structure the City could approve. It would have to meet and maintain the City's standards.

Mr. Jordan thought it sounded like an engineering student's research experiment and it was not profit making.

Chair Centorino could not determine if this type of turbine had been installed anywhere with Tuft's involvement, and the applicant's representative had not been able to tell the Board what sound issues might exist. Ms. Orshefsky said they would need to comply with the City's noise ordinance and they did not anticipate any problem. Mr. Dunckel reminded the Board that the variance had been granted conditioned upon the project's meeting all standards regard height, size, noise and wind loads.

Mr. Madfis said the evidence provided had addressed his concerns.

Chair Centorino opened the public hearing.

Mr. Paul Flanagan said he owned the building across from this building. The applicant had talked to him about this and he believed the request was legitimate.

Ms. Donna Mergenhagen said she lived across the street from this building, and a letter had been sent from the Harbordale Civic Association, of which she was Vice President. Ms. Mergenhagen noted how she and the Harbordale residents supported Green initiatives. She acknowledged that wind turbines offered many applications for residential and commercial areas. Ms. Mergenhagen noted the requirements the Board had specified at their October meeting for an applicant wishing the reduction of one parking space, and said the turbine application seemed "a pretty significant thing compared to the loss of a parking space" and should at least require a presentation to the neighborhood around the petitioner. Ms. Mergenhagen asked the Board to require that the applicant comply with the Harbordale Civic Association's request that a presentation be made to them before the variance was granted. She stated surrounding cities had this requirement prior to petitioning for a 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. Sniezek recalled that the Board had entertained full discussion of this item in October, when he was present. In November, he had not been present, and the Board had raised two issues: whether the project was associated with Tufts and whether Mr. Patterson was a student, as he represented. He felt the Board had evidence confirming these facts, and he would therefore not support a new hearing. He also agreed the City should change the rules regarding coordination with homeowners associations.

Mr. Cooper agreed that the Board's issues had been addressed. He felt this project was a milestone for the City and he supported it.

Mr. Madfis agreed with Mr. Cooper. He remarked that this Board's meeting was a great venue for public involvement, which he encouraged. He said the Board had been asking the applicant to return to the Board with the right information so they could qualify it.

Mr. Willey wanted the public to realize that the Board had brought this item back because they wanted the request to be properly documented.

Chair Centorino remarked on how important it was for the public to come to the meetings and not rely on the applicant to visit the neighborhoods.

**Motion** made by Mr. Shallenberger, seconded by Mr. Cooper, to reconsider the variance approval. In a roll call vote, motion **failed** 0 – 7.

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**2. Appeal No. 10-36 (Deferred from September 8, 2010)**

**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 high 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, stated she had appeared before the Property and Right-of-Way Committee and this had gone well. Mr. Dunckel confirmed that the Property and Right-of-Way Committee had “blessed” the fence from the property line to the right-of-way; the Board of Adjustment must approve the area the chain link fence encroached into the setback. He clarified that when the permit had been applied for originally, the survey incorrectly showed the property line to be five feet away from where it really was.

Mr. Willey thought the Board had discussed stipulating that the variance should stay with the family; if the family sold the property the variance would disappear. Mr. Dunckel advised the Board should make it a stipulation that the variance would continue only with the current owners and any of their children.

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. Willey, seconded by Mr. Shallenberger to approve the variance request, with the condition that the variance did not carry with the land, but only with the current husband, wife and their children. In a roll call vote, motion **passed** 7 - 0.

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### 3. Appeal No. 11-01

**APPLICANT:** McDonalds USA LLC  
**LEGAL:** The Northerly 150 feet of Lot 7 in Block 61 of “Coral Ridge Galt Addition No. 1”, according to the Plat thereof as recorded in Plat Book 31, at Page 37 of the public Records of Broward County, Florida  
**ZONING:** B-1 (Boulevard Business)  
**ADDRESS:** 2700 N. Federal Highway  
**DISTRICT:** 1

**APPEALING:** Section 47-23.9.A.1 (Interdistrict corridor requirements)  
Requesting a variance to permit four (4) parking spaces within the twenty-foot (20') yard abutting Federal Highway, where the Code states that no parking shall be permitted within the twenty-foot (20') required yard.

**APPEALING:** Section 47-23.9.A.1 (Interdistrict corridor requirements)  
Requesting a variance to allow 9.5 foot yard abutting Federal Highway, where the Code states that a twenty-foot (20') yard shall be required for any development on property which abuts North Federal Highway between Sunrise Boulevard and the Northern City limits.

**APPEALING:** Section 47-20.17.A (Vehicular reservoir space for drive-thru facilities)  
Requesting a variance to allow 20 x 8.5 foot vehicle reservoir spaces, where the Code requires that vehicle reservoir spaces shall be twenty (20) feet long by ten (10) feet wide.

**APPEALING:** Section 47-21.9.A.2.b (Landscaping requirements for vehicular use areas)  
Requesting a variance to allow a landscape buffer of 2.35 foot along the North property line and 2.44 ft. along the South property line, where the Code requires the minimum depth of the landscape area shall be 2½ foot along the perimeter of a parcel of land, which does not abut a street.

**APPEALING:** Section 47-22.4.A.1 (Maximum number of signs at one location and special requirements in zoning districts)  
Requesting a variance to allow one (1) freestanding sign and three (3) wall signs, where the Code states that the maximum number of signs allowed is two (2) signs, no more than one (1) being a freestanding sign.

Mr. Craig McDonald, applicant, said McDonald's wanted to redevelop the site, and gave a Power Point presentation describing the project [a copy of which is attached to these minutes for the public record].

Mr. McDonald said they were trying to redevelop the site in compliance, in every extent possible, with the current codes. He stated the proposed project would decrease the existing non-conformities. Regarding the variance criteria, Mr. McDonald stated the proposed variances were the minimum necessary to reasonably redevelop the property; literal and strict application of the five sections of the ULDR would deprive McDonalds of substantial property rights to redevelop the site that had been afforded to other property owners in the City and within the same zoning district; the hardship was not self-created, but was a result of changing development regulations over the 30+ years the restaurant had been in business; the variances would not be incompatible with adjoining properties or the surrounding neighborhood or be detrimental to the public interest. Mr. McDonald was aware he needed to apply to the Planning and Zoning Board for a parking variance. He said they had met with the Coral Ridge Homeowners Association, and they supported all of the variance requests.

Mr. McDonald explained to Mr. Willey that the parking plan did not meet current code.

Mr. Madfis wondered if they needed all of the signage. Mr. McDonald said they were removing a large pole sign from the site and were not installing a new McDonald's sign. Mr. Madfis noted that the building was designed to act as a sign, and local people were already aware of the restaurant because it had been there for over 30 years.

Mr. Cooper asked how many items would be in the 20-foot buffer on the Federal highway side of the property. Mr. Tom Lambenthol, landscape architect, stated no structures would be in this area. He said they had a net average of 22-feet of total green area. Mr. McDonald stated there was a stop sign and two directional signs in the buffer. Ms. Rosangela DeMello said there would also be an ADA sidewalk crossing in the buffer.

Mr. Lambenthol referred to the landscape plan, and noted where landscape areas now replaced parking spaces to comply with the landscape code and provided an adequate buffer. Mr. Willey thought it was ridiculous for Mr. Lambenthol to imply that the variance should be granted because the landscape plan looked so much better than the property currently looked. He said he had noticed that the landscaping on the south side of this property and wondered how the owners had "allowed it to look so lousy for their neighbors for so long..." Mr. Willey was unsure if the new landscaping would be maintained in the future, since they had not maintained it in the past. Mr. Lambenthol stated the existing ficus hedge had looked fine for some time but had been decimated by white flies last year. He said they also intended to use native plant materials and to correct many flaws.

Mr. Dunckel explained to Mr. Willey that if the Board did not grant the variance regarding the four spaces, they would have a shortage of 13 spaces; if the Planning and Zoning Board granted them a parking reduction of 13 spaces, this would comply with the 20-foot interdistrict corridor in the front. If the Planning and Zoning Board denied their request for a 13-space reduction, the applicant would return to the Board of Adjustment with a different configuration.

Mr. Shallenberger felt using the "M"s instead of a sign was well thought out and decorative.

Mr. McDonald stated the nine-space parking reduction amounted to a 28% reduction. Mr. Madfis said the code described 20% as approachable but beyond that the Planning and Zoning Board might have more difficulty approving the request. Mr. Madfis applauded the landscape architect for his design.

Mr. Willey was concerned about the loss of the four parking spaces to protect the corridor. Chair Centorino was concerned about the corridor as well.

Mr. Shallenberger said he would hate to see the functionality of the site compromised because of the parking spots on the corridor.

Mr. Sniezek asked if the applicant had considered having the parking in the front instead of in the setback. Mr. McDonald said it would not function properly that way.



Mr. Dunckel stated the 20-foot interdistrict corridor was sacrosanct and had accomplished much over the years. He worried about the potential domino effect with allowing encroachments here and there.

Mr. Jerry Zamora, site engineer, said they had spent weeks on the design and determined this was the most viable to be in compliance and keep the site operating.

Chair Centorino opened the public hearing.

Ms. Mergenhagen said signage and parking spaces were important for economic viability and an empty spot would be less attractive to the neighborhood than what the applicant was proposing. She pointed out that the applicant had met with the neighborhood in a timely manner, had posted their notices correctly and were answering the Board's questions in detail.

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. Shallenberger wondered if the applicant would like the Board to defer voting on some of the requests since they might need to reconfigure the site. Ms. DeMello said they had been working on the project for several years and felt this was the best configuration. If the requests were denied they would not move forward with redevelopment, they would renovate the existing site. They would prefer the Board voted on all of the requests. Ms. DeMello noted they had chopped eight feet off the building to fit this configuration.

Mr. Sniezek acknowledged this was a very small parcel and the applicant had made tradeoffs to redesign the site. Except for the sign issue, Mr. Sniezek was comfortable with the requests and recommended they approve the variances as per the site plan.

Mr. Brent Upchurch, one of the owners of the franchise, said this proposal was their "best shot at getting something that the City can enjoy." He admitted it was not an ideal situation for anyone but that they had done their due diligence to develop the best site possible.

Mr. Shallenberger recommended they vote on the requests individually.

**Motion** made by Mr. Shallenberger, seconded by Mr. Jordan, to approve the requests.

Mr. Madfis wanted to specify that the approval was "as it appears on the site plan." Mr. Shallenberger and Mr. Jordan agreed.

In a roll call vote for the first item, Section 47-23.9.A.1, motion **passed** 6 – 1 with Mr. Willey opposed.

In a roll call vote for the second item, Section 47-23.9.A.1, motion **passed** 6 – 1 with Mr. Willey opposed.

In a roll call vote for the third item, Section 47-20.17.A, motion **passed** 7 - 0.

In a roll call vote for the fourth item, 47-21.9.A.2.b, motion **passed** 7 - 0.

In a roll call vote for the fifth item, Section 47-22.4.A.1, motion **failed** 2 – 5 with Mr. Cooper, Mr. Willey, Mr. Sniezek, Mr. Madfis and Chair Centorino opposed.

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### **Request for Rehearing:**

#### **4. 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/W S 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. Dunckel described the requirements to request a rehearing: a detailed statement of the nature of an alleged error on the part of the Board or the substance of any new evidence or information not considered by the Board when the application was denied and why this new information or evidence must neither have been known to the applicant nor discoverable or obtainable through reasonable diligence on the part of the applicant prior to the hearing at which the application was denied.

Mr. Dunckel advised the Board that they should determine this evening whether to grant the rehearing. If they voted in favor, the rehearing would then be scheduled for a later date.

Mr. Burgess said staff had received a letter requesting a rehearing that mentioned there was new information but did not state what that information was.

Mr. Gene Schlanger, Economic Development Manager, Real Estate Division for the City of Fort Lauderdale, said he oversaw 800 properties that the City owned, one of which was the City Park Mall. In the City Park Mall there were three restaurants, one of which was this Italian restaurant requesting the variance. Mr. Schlanger said the City Park Mall was "an award winning, upscale, secure facility." He distributed a flyer describing the mall and noted that it closed at 6 p.m. on Saturday and was closed on Sunday. Mr. Schlanger stated most of the clientele of the Mall were attorneys and were therefore not likely to throw wine bottles and cans on church property.

Mr. Schlanger added that there were approximately 15 other restaurants in the area of the Mall and three of those sold beer and wine. Empire Pizza had been approved unanimously by the Board of Adjustment to sell beer and wine. He said restaurants were having a difficult time paying rent in hard economic times and Mr. Schlanger wanted "the City's restaurants be accorded the same opportunity that you accorded the other restaurants that are serving beer and wine, which you unanimously approved. "

Mr. Dunckel reminded Mr. Schlanger that he was supposed to be presenting new information that could not have been found out any other way. Mr. Schlanger felt the request had been denied due to "misinformation" that he would clear up. He said the Pastor had been concerned that the restaurant would be open nights and weekends, and Mr. Schlanger stated it could not be open then because gates prevented it. Mr. Dunckel remarked that this was information that could have been brought up at the first hearing and Mr. Schlanger stated he had been unavailable to attend that hearing. Mr. Schlanger stated the Pastor's mention of beer bottles and cans being strewn about the church property could not be attributed to the upscale clientele that frequented this restaurant because they currently did not serve beer. Mr. Schlanger added that the City Park Mall had its own 24-hour security guard and the Fort Lauderdale Police parked a Police vehicle in front of the mall at busy hours.

Mr. Shallenberger wanted to re-hear this request, as he felt the Board had done "a disservice to the business by turning them down." He had stated at the previous meeting that the City would not allow the negative things the Pastor feared to happen. But, Mr. Shallenberger said Mr. Schlanger had "given me ... nothing new that I can take to the Board members to argue."

Mr. Dunckel observed that no one was present from the church and mailed notice, which was required, had not been sent.

Ms. Rhonda Koussevitsky, owner of Slice, said she had been met outside after the last meeting by some of the church members and a representative. The church people had indicated that " had they have known what they heard here, they would have never objected it [sic]." They were unaware that that two nearby restaurants had been

approved for liquor and were unaware of this restaurant's hours. Ms. Koussevitsky said the church people had apologized to her.

Mr. Shallenberger said since the church people were not present, Mr. Schlanger should return to the Board and "rethink how he's going to present this case." Mr. Jordan felt there was new information to present.

Mr. Schlanger said Debra Rutkowski at Planning and Zoning had informed him that there were no requirements to be met prior to this meeting. Mr. Schlanger stated the mailing was the Planning and Zoning Department's responsibility, so it was their error.

Mr. Burgess confirmed that Planning and Zoning had not sent out mail notices for this hearing. He explained that the applicant was supposed to provide the mailing notice, the letters and stamped envelopes; Planning and Zoning filled the envelopes and posted them.

**Motion** made by Mr. Jordan, seconded by Mr. Madfis, to defer this item to the Board's next meeting, and to have mail notice sent out. 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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None.

There being no further business to come before the Board, the meeting was adjourned at 9:02 p.m.

Chair:

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Diana 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.