

**BOARD OF ADJUSTMENT MEETING
CITY OF FORT LAUDERDALE
WEDNESDAY, JULY 13, 2011 – 6:30 P.M.
CITY HALL CITY COMMISSION CHAMBERS – 1ST FLOOR
100 NORTH ANDREWS AVENUE
FORT LAUDERDALE, FLORIDA**

Board Members	Attendance	Cumulative Attendance 6/2011 through 5/2012	
		Present	Absent
Diana Waterous Centorino, Chair	P	1	0
Michael Madfis, Vice Chair	P	1	0
Caldwell Cooper	P	1	0
Gerald Jordan	A	0	1
Karl Shallenberger	P	1	0
Henry Sniezek	P	1	0
Birch Willey [arrived at 7:30]	P	1	0
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Alternates			
Jacquelyn Scott	P	1	0
Fred Stresau	P	1	0
Sharon A. Zamojski	P	1	0

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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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 – May 2011

Motion made by Mr. Cooper, seconded by Mr. Stresau, to approve the minutes of the Board's May 2011 meeting. In a voice vote, motion passed unanimously.

Board members disclosed communications they had regarding items on the agenda.

All individuals wishing to speak on the matters listed on tonight's agenda were sworn in.

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1. **Appeal No. 11-08**

APPLICANT: Urbana Pelican Grand 1, LLC

LEGAL: All of Pelican Grand Beach Resort, a Hotel Condominium, according to the Declaration of Condominium recorded in official records Book 43208, Page 647 of the public records of Broward County, Florida, and more particularly described in the application for a variance with the Clerk of the City of Fort Lauderdale Board of Adjustment

ZONING: RMH-60 (Residential High Rise/High Density District)

ADDRESS: 2000 N. Atlantic Boulevard
DISTRICT: 2

Appeal pursuant to ULDR Section 47-24.12 of City Staff's subsequent withdrawal of Staff's prior approval in 2009 of Pelican Grand Beach Resort's ("Pelican"). Administrative Review Application for a shade structure at the southeast corner of the property as an approved "shade structure" with "outdoor food service area" to be "utilized for special events" including "weddings, parties, brunches, fund-raisers, and private events". Pelican requests an interpretation of the ULDR and Temporary Use Permit pursuant to ULDR Section 47-24.12 for the continued use of the existing shade structure which is permitted use under ULDR Section 47-19.2.P "freestanding shade structures" and pursuant to ULDR Section 47-19.8 which permits hotels with more than 50 guest rooms to have "outdoor food service areas." Pelican maintains that Section 47-19.2.X requiring Site Plan Level III review of the outdoor food service area is inapplicable because 57-19.2.X applies to "Multifamily dwellings."

Appeal pursuant to ULDR Section 47-24.12 of City Staff's determination that Pelican's existing 11th Floor Decks can not continue to be used for "outdoor food service areas" pursuant to ULDR Section 47-19.8 Hotel Accessory Uses and request for the continued use of the existing 11th Floor Decks for outdoor food service areas.

Mr. Burgess said staff was recommending deferral of this item; staff was still working on the case.

Motion made by Mr. Madfis, seconded by Mr. Shallenberger, to defer.

Mr. Stresau thought it was inconvenient to the public to defer an item that had been advertised. Mr. Dunckel said the Board could consider this when deciding whether or not to defer.

In a voice vote, motion passed unanimously.

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2. Appeal No. 11-07

APPLICANT: Costa Dorada Associates Ltd.
LEGAL: "Birch Oceanfront Subdivision" P.B.19, P.26 and all of Block D
ZONING: ABA (A-1-A Beachfront Area)
ADDRESS: 505 N. Fort Lauderdale Beach Boulevard
DISTRICT: 2

APPEALING: Section 47-12.5.B.5 (List of Permitted Uses, A1A Beachfront Area (ABA) District)

Requesting a variance to permit the installation of fourteen (14) Wind Turbines, 8 at grade level and 6 on the roof, where Code does not list Wind Turbines as a permitted use.

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

Requesting a variance to permit the installation of six (6) Wind Turbines on a roof without screening, where Code requires that roof mounted structures such as air conditioners and satellite dish antennas be screened at least 6 inches above the top most surface of the roof mounted structure.

APPEALING: Section 47-19.2.S (Mechanical and Plumbing Equipment)

Requesting a variance to permit the installation of four (4) wind turbines at grade 6 inches from the side yard and 35 feet in height, where the Code requires a 5-foot side yard setback and a limitation of 5 feet in height for mechanical equipment.

APPEALING: Section 47-19.2.S (Mechanical and Plumbing Equipment)

Requesting a variance to permit the installation of four (4) additional 35 foot high wind turbines at grade 6 inches from the front yard property line, where the Code does not allow mechanical equipment in a front yard.

Ms. Heidi Davis, attorney for the applicant, said at the April Meeting, the Board had requested a deferral to obtain direction on the wind turbine issue. She said since then the applicant had met with the Mayor and three Commissioners in this time. Ms. Davis said the applicant had changed the site plan to relocate the wind turbines from grade level to be mounted on the building. They were withdrawing the variance requests for Section 47-19.2.S and Section 47-19.2.S.

Ms. Davis said the applicant had presented the project to the Utility Advisory Board and the Sustainability Advisory Board, both of which supported it. She said the Commission had directed staff to study this issue and propose an ordinance to regulate wind turbines. The Commission also supported the Hilton project to move forward as a test project in the City. Ms. Davis said the information gathered from the Hilton project would be used to prepare the ordinance, which would be workshopped through the Planning and Zoning Board [P&Z].

Ms. Davis said eight turbines had been moved from grade level and would be secured against the parking garage levels and six turbines would be mounted at roof level. She stated the City code required roof-mounted mechanical equipment to be screened, but screening the turbines would not be effective, beneficial or possible, due to the height of the turbines. She noted that the intent of the code was to screen unsightly equipment from view, but the turbines were like "kinetic art sculptures" which would not create adverse visual impact.

Ms. Davis showed the Board the proposed location of the turbines on a rendering. Mr. Cooper asked if condo dwellers would have their views obstructed by the turbines, and Ms. Davis said this depended on the condo location, but because of the turbine design, one could look through it. Mr. Jiro Yates, Architect, referred to a rendering and explained that some of the seventh floor condos might have a view through the top of the turbines. The pool level condos would not face the turbines.

Mr. Yates referred to page seven of the packet that described the specifications for the turbines. He stated these turbines had been installed in 50 countries and were very quiet. Mr. Yates said the noise certifications were based on an IEC standard. He added that these units were marine grade and could withstand a corrosive environment and 145 mph winds. Units mounted on the roof could be lowered in the event of a hurricane.

Ms. Davis said they had made a presentation to the Central Beach Alliance, who supported the project. She stated the applicant had agreed to help the City with the ordinance preparation.

Mr. Sniezek said they had received letters from condo unit owners opposing the project and asked what outreach had been done. Ms. Davis said she had spoken with three condo owners after the April Board meeting and had not been contacted by them since. Notice of this meeting had been sent to all owners and they had received nine replies expressing concern earlier in the day. The applicant had sent these owners a copy of the site plan and agrees to address their concerns.

Mr. Cooper asked if the building had a condo board. Ms. Davis said they had not contacted the condo board; they had contacted individual owners.

Chair Centorino was pleased that the City Commission had begun to address this issue. She said she had monitored the wind turbine in Harbordale, which did not move. Ms. Davis explained that the turbine at Harbordale was currently strapped down and not operating because it had been installed improperly. Mr. Yates explained that when the Harbordale turbine was operating, it made no noise. He noted that the site of that turbine was not very conducive to wind.

Mr. Yates said their turbines should be able to power 2,700 light bulbs. He said they had performed wind studies on this roof. When all of their turbines were operating at maximum efficiency, they would generate 32,000 watts, enough to power seven fluorescent bulbs in each of the 330 suites as once.

Chair Centorino opened the public hearing.

Ms. Blanca Sanchez, unit owner at the Hilton Q Club, said most of the condos were owned by individuals and other units were owned by the developer. She said she did

not reside at the property; she lived in Pembroke Pines. Ms. Sanchez was concerned that many seasonal owners were not aware of this proposal. She said she had not been notified of the meeting in April and received notice of this meeting on July 9. Ms. Sanchez stated the proposal had not been brought up at an association meeting.

Mr. John Maliani, unit owner, was also concerned that some unit owners might not have received notice, since many lived abroad. Mr. Maliani objected to referring to the turbines as art and said he did not want to look at them. He also did not want to hear the turbines, and thought "as soon as that thing is off by a little bit...it's like a creaking door; you're going to start hearing things."

Mr. Ray Fields, unit owner, was concerned about noise. He wondered if the building would need reinforcement to support the weight of the turbines. Mr. Fields felt the owners would receive no benefit from this; only the developer would.

Ms. Tara Andresen, daughter of a unit owner, said she was not opposed to wind turbines, but she had some concerns. She wondered about the noise levels, now that the ground level turbines would be mounted higher up, closer to the pool areas and balconies. Ms. Andresen said the applicant had not attended any condo board meetings. She said her main concern was that most unit owners had purchased these as income properties and were responsible for the shared cost of maintaining the common areas. She said she was not aware if energy savings would be applied to the unit owners' electric costs.

Ms. Sanchez said she had been informed by "other parties" that tax credits would be given to the developer only, not unit owners, and the unit owners would continue to pay for shared costs. Mr. Maliani said there were legal and trust issues between the developer and the unit owners; they believed they were being charged for things that were not happening. He thought the developer would benefit from the turbines, not the unit owners.

Mr. Willey arrived at 7:30.

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. Davis said this Hilton was the most profitable in the world and had the highest occupancy rate and the owners would not do anything to jeopardize this. Ms. Davis explained the owner was funding this clean, renewable energy source, and the benefit would be shared in the common areas.

Mr. Madfis asked if the condo association had any rights regarding the application. Ms. Davis could not say, and did not have the condo documents with her.

Mr. Cooper said he had thought this was a hotel, but now knew it was also a condo association that had not been brought into the decision making process by the developer. Ms. Scott was also concerned that no presentation had been made to unit owners. She worried about the affect the turbines would have on unit owners' views and the possibility of noise. Ms. Scott wanted to know if any of these units had been installed anywhere in Florida. Mr. Yates said there was a unit in Cocoa Beach. He stated they were in use on beaches in China and in Europe.

Mr. Stresau recalled the wind turbine the Board had already approved on 17th Street, and said that was supposed to be their test case. He said he would not be in favor of any other wind turbines until the original pilot program was done.

Ms. Davis asked to continue the request to provide additional information to Board members and possibly to meet with unit owners.

Mr. Dunckel felt the Board should make Ms. Davis aware of all of the concerns they wished her to address in the interim. Mr. Sniezek wished the developer to hold a workshop with the condo association to give all of the unit owners the opportunity to express their concerns.

Mr. Shallenberger said he favored alternative energy, and wanted additional test sites, but he felt the Commission had still not addressed the Board's major concern: zoning.

Mr. Madfis said he favored alternative energy as well, but clarifying ownership issues at this property regarding the application was very important.

Mr. Stresau recalled a motion at the Board's May meeting to request the Commission authorize the P&Z to hold a workshop to discuss windmills. He noted that Commissioners had expressed concern that approving this project would set a precedent without guidelines, which had been the Board's reason for suggesting the P&Z discuss this and set up parameters.

Mr. Cooper wanted the see the developer discuss this with the condo association, and the association come to a consensus. He suggested allowing 60 days for this to take place. Mr. Cooper wanted to see documentation from the manufacturer indicating the units would meet current wind codes.

Chair Centorino asked for information regarding the condo units' ownership, and requested information from the condo documents that "explain where the division of lights and management is spelled out."

Ms. Davis said a condo association meeting was scheduled on July 28 and they would like to attend that meeting. Chair Centorino was concerned this was not sufficient time

to notify all unit owners. Ms. Andresen said July was an annual meeting, and the Board had notified members already.

Mr. Dunckel stated the turbines would require a permit, and this would require certification that the turbines met current wind load codes. He was certain the Building Official would require this to come from an engineer, not the manufacturer. Mr. Madfis said the City would require a Notice of Acceptance from Miami Dade County or certification from a local engineer. Mr. Dunckel said they should also establish a standard for when the turbines would be lowered in the event of a hurricane.

Ms. Scott asked how individual unit owners had been made aware of this proposal. Ms. Davis said the City had mailed notice to every unit owner in April and July.

Motion made by Ms. Scott, seconded by Mr. Sniezek, to defer this item for a minimum of 60 days. In a roll call vote, motion passed 7 – 0.

Mr. Carbon confirmed that the Commission had directed staff to workshop the ordinance with the P&Z. He said Mr. Brewton, Mr. Jessup and Mr. Burgess were working on the ordinance, Mr. Carbon was checking it for technical merit.

Mr. Burgess confirmed that notices of Board of Adjustment meetings were sent by regular mail and ads were taken out in the newspaper.

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3. Appeal No. 11-13

APPLICANT: 6400 Building LLC
LEGAL: All of DON L. CLYMER PLAT, according to the Plat thereof, as recorded in Plat Book 100, Page 24 of the Public Records of Broward County, Florida, TOGETHER WITH a portion of Section 10, Township 49 South, Range 42 East, and more particularly described in the application for a variance with the Clerk of the City of Fort Lauderdale Board of Adjustment
ZONING: B-3 (Heavy Commercial/Light Industrial Business)
ADDRESS: 6400 N. Andrews Avenue
DISTRICT: 1

APPEALING: Section 47-22.4.A.2 (Maximum number of signs at one location and special requirements in zoning district)

Requesting a variance to permit a building identification ground sign to have different copy/ID from the existing building identification flat wall signs, where the code allows one building identification for a multiple tenant office building.

Ms. Hope Calhoun, attorney for the applicant, explained that they wanted to include signage for Wells Fargo on the ground sign. She said this was in keeping with the

Andrews Avenue area and would help Wells Fargo succeed. Ms. Calhoun said the request satisfied all of the variance criteria.

Mr. Sniezek asked if there was any existing signage, and Ms. Calhoun said the existing ground sign had the address of the building and the name of the property. Ms. Calhoun said the building had multiple other commercial tenants and there was a directory inside the building. The replacement ground sign would be slightly taller but not as wide. It would display the building address and Wells Fargo. Mr. Cooper asked if other tenants' names could be added and Ms. Calhoun stated this request was for Wells Fargo only. If other tenants wished to be added later, this request would have to come before the Board.

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. Jared Wiener, building owner, confirmed that the blank areas on the sign could be used by other tenants in the future, and asked for that permission now. Mr. Dunckel stated that was not possible.

Motion made by Mr. Madfis, seconded by Mr. Cooper, to approve the request. In a roll call vote, motion passed 7 – 0.

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4. APPEAL NO. 11-14

APPLICANT: Michael A. Gagne
LEGAL: "Dixie Park", P. B. 9, P. 19. Lot 13, together with S ½ vac alley abutting said Lot Blk. 4
ZONING: RMM-25 (Residential Mid-Rise Multifamily/Medium High Density)
STREET: 827 NE 14th Court
ADDRESS: Fort Lauderdale, FL
DISTRICT: 2

APPEALING: Sec. 47-5-36 (Table of dimensional requirements for the RMM-25 district) Requesting a variance to allow the carport to be enclosed for a family room with a 3 foot 9 inches side yard setback, where the Code requires a 5-foot side yard setback.

Mr. Michael Gagne, applicant, said his foster family was growing. He explained that the previous owners had put an addition on the house in 1953 and built the carport and enclosed a utility room in 1974. Mr. Gagne wished to enclose the carport. He said his hardship was that he needed the room to keep his sanity.

Mr. Dunckel recalled a case in Rio Vista that the Board had heard some time ago when they had granted a side yard variance. He recalled a 10-foot distance separation requirement between the carport and the adjacent property. Mr. Dunckel asked if the Building Department would require firewall rating on this property to protect the neighbor. Mr. Gagne said they had discussed this when the permit applications were submitted and Mr. Burgess said this would be considered.

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

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5. APPEAL NO. 11-15

APPLICANT: City of Fort Lauderdale
LEGAL: All sections, one, two, three and six and seven of Sunset Memorial Gardens, according to the Plat thereof as recorded in Plat Book 55, Page 4
ZONING: CF (Community Facility)
STREET: 3201 NW 19th Street
ADDRESS: Fort Lauderdale, FL
DISTRICT: 3

APPEALING: **Sec. 47-19.5 (Fences, walls and hedges)**
Requesting a temporary use variance to allow a zero foot setback to replace existing fence, where the Code requires a three-foot setback.

APPEALING: **Sec. 47-19.5.C.2 (Fences, walls and hedges- *Landscape district*)**
Requesting a temporary use variance for relief of landscape requirements, where the Code requires in non-residential districts, all fences and walls, including chain link fence, shall be required to be planted with hedges, shrubs, groundcover, trees, or a combination thereof.

Mr. Burgess explained this would be a temporary use until the case went through the public purpose process; the fence needed to be installed as soon as possible. Mr. Dunckel said the request for a temporary use variance would allow the Board to assign a time limit longer than the one year allowed for a temporary non-conforming use permit.

Ms. Cate McCaffrey, Director of Business Enterprises, explained that Sunset Memorial Gardens Cemetery was undergoing capital improvements, including the new aluminum cemetery fence. She displayed a photo of the existing fence, which had been in place since 1961, and said they wished to replace it with an aluminum fence. Ms. McCaffrey showed another photo depicting the main irrigation line, which was now inside the fence line. If the fence were moved, they would need to relocate the entire irrigation main and they would need to remove approximately 39 trees. The fence would also be in close proximity to existing gravesites and would limit access for visitors and maintenance of those sites. The fence might also impede some of the platted sites near the existing graves. Regarding the landscaping, Ms. McCaffrey felt the existing landscaping and fencing were appropriate, as opposed to shrubbery or bushes.

Mr. John Banas, Sunset Memorial Gardens Cemetery, stated the fencing would be on three sides; the north border had a concrete wall the City had constructed the previous year.

Mr. Banas informed Mr. Cooper that tax money was not paying for the fence and would not pay to replace it if it were stolen; this was covered by the Cemetery Perpetual Care Trust Fund. Ms. McCaffrey informed the Board that expenditure of these funds had already been approved by the Cemetery Board of Trustees and the City Commission.

Mr. Banas stated there were graves that had already been purchased that they would be unable to dig if the fence were installed according to code. They also did not want to remove 39 trees from the cemetery.

Mr. Banas said they had needed to access the irrigation line several times in the past four years. Mr. Madfis stated that perhaps it was time to replace the water line. He said an 8" line would probably be buried two feet deep and a fence could be installed on top of it. They could also jog the fence to go around the trees. Mr. Madfis suggested they could use a modular fence that could be partially dismantled when needed. Mr. Banas said this was not possible. Mr. Madfis felt there were a lot of options, and "you're coming to us with actually nothing and there's no attempt here to mitigate the impact of your variance and I don't see any reason to grant it. I don't really see the hardship."

Mr. Madfis said if the public right of way was not comfortable for pedestrians, it became a cost center; if it was comfortable, it became an asset.

Mr. Willey agreed with Mr. Madfis, and said the City expected to be granted the variance for a fence that would not normally be granted to someone else. He suggested some graves could be dug with a shovel instead of a backhoe. Mr. Willey suggested the project be redesigned so it was not a straight line. He remarked that the water main was for irrigation, not water service.

Mr. Shallenberger suggested the applicant request deferral. Mr. Dunckel explained that if the Board voted against the variance, they must wait two years to reapply.

Mr. Banas remarked on the high caliber of the City's cemetery system, and said he wanted to help this community by improving the fencing. He stated it was not possible to hand dig a grave in coral rock; a backhoe was necessary. Mr. Banas said, "I'm the guy who has to sit across from Mrs. Jones [and tell her] we can't put Mr. Jones next to her mom because...now there's a fence."

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. Julius Delisio, Fort Lauderdale Cemeteries, presented a recent survey, and pointed out that there were also fiber optic cables and electric lines along 19th Street, presenting additional challenges. Board members had not noticed this on the survey provided.

Motion made by Mr. Stresau, seconded by Mr. Madfis, to defer the item until City staff brought it back. In a voice vote, motion passed unanimously.

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 8:53 p.m.

Chair:

Diana Centorino

Attest:

ProtoType Inc.

Minutes prepared by: J. Opperlee, Prototype Inc.