

**BOARD OF ADJUSTMENT MEETING
CITY OF FORT LAUDERDALE
WEDNESDAY, SEPTEMBER 14, 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	2	1
Michael Madfis, Vice Chair	P	3	0
Caldwell Cooper	P	3	0
Gerald Jordan	P	1	2
Karl Shallenberger	P	3	0
Henry Sniezek	P	3	0
Birch Willey	P	3	0
Alternates			
Jacquelyn Scott	P	3	0
Fred Stresau	P	2	1
Sharon A. Zamojski	A	2	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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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 – August 2011

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

Board members disclosed communications they had and site visits made 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. 11-03** *(Deferred from February 9, 2011)*

APPLICANT: Louis James

LEGAL: Lots 1-4, less the Right-of-Way for Sistrunk Blvd. together with Lots 47-50, Block 4 of Lincoln Park corrected Plat, according to the Plat thereof, as recorded in Plat Book 5, Page 2.

ZONING: RC-15 (Residential Single Family/Cluster Dwellings/Low Medium Density District) & CB (Community Business District)

STREET: 1447 NW 6th Street

ADDRESS: Fort Lauderdale, FL

DISTRICT: 3

APPEALING: Section 47-20.11.A (Geometric standards)

Requesting a variance to permit a 23-foot drive aisle width on the East side of the Building, where Code requires a minimum of 24-foot drive aisle width.

Mr. Tarek Bahlawan, tenant, requested a six-month extension. He said he had hired an architect. Mr. Dunckel explained that rezoning was needed and on August 23, the City Commission enacted a moratorium on convenience stores.

Motion made by Mr. Shallenberger, seconded by Mr. Jordan, to grant a six-month extension. In a roll call vote, motion passed 6 – 1 with Mr. Cooper opposed.

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2. APPEAL NO. 11-07 (Deferred from July 13, 2011)

APPLICANT: Q Club Hotel, LLC.
LEGAL: Birch Oceanfront Subdivision P.B. 19, P. 26 and all of Block D
ZONING: ABA (A-1-A Beachfront Area)
STREET: 505 N. Fort Lauderdale Beach Boulevard
ADDRESS: Fort Lauderdale, FL
DISTRICT: 2

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

Requesting a variance to install fourteen (14) Wind Turbines, 8 at the lower level and 6 on the roof. (Two (2) are mounted on the front (east side) at the 2nd floor level and extending up to the 3rd floor level. Three (3) are mounted on the South side, at the 3rd floor level and extending approximately 3 feet pass the 7th floor level. Three (3) are mounted on the North side at the 3rd floor level and extending approximately 3 feet pass the 7th floor level), where the 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 install 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.

Mr. Jordan recused himself because he had missed the July meeting when this was previously discussed and asked that Mr. Stresau take his place on the dais. Mr. Dunckel explained that per the ordinance, regular members must be seated unless there was an absence or disqualification. He stated reasons for disqualification could include a member's not having the opportunity to become familiar with the record.

Mr. Dunckel asked Mr. Jordan and Mr. Willey, who had been replaced by alternates the last time the case was discussed, if they felt sufficiently familiar with the record. Mr. Jordan felt Mr. Stresau should replace him. Mr. Willey felt he was sufficiently familiar with the record. Mr. Stresau replaced Mr. Jordan on the dais.

Mr. Dunckel reminded Chair Centorino that there had been a question regarding whether the applicant needed the approval of the board of directors of the condominium. He had reviewed the documents and determined that they did not need that approval because the wind turbines were proposed to be located in an area the applicant owned.

Ms. Heidi Davis, attorney for the applicant, said she had addressed the Board's concerns and sent a letter to Board members confirming this. She had met with unit owners on August 31, 2011; six owners had attended in person and four to six had attended by phone. All 333 owners had been provided backup materials regarding the modifications. After the meeting, the condominium board and unit owners all approved of the wind turbines to be located at the rooftop. However, the six owners in attendance did not like the appearance of the lower level turbines, so several compromises had been suggested, none of which was acceptable of the six unit owners present.

Ms. Davis said according to the condo documents, the applicant had the right, without consent or approval of condo board or unit owners, to make any alterations, additions or improvements...where they were proposed in the application. She noted that unit owners had agreed to this when they purchased their units.

Mr. Mateo Chaskel, Urban Green Energy, the manufacturer of the proposed turbines, reported they could be made to withstand 145 mph winds. The turbines also had a tilt mechanism to lower the unit in case of a hurricane. The low revolutions per minute resulted in very low noise levels. Mr. Chaskel said the lifespan should be 20 years.

Mr. Randy Gaines, Hilton Engineering, stated they spent approximately 4.5% of their revenue, \$450,000 on energy. They were working on building plans that would be certified by the U.S. Green Building Council and the turbines were part of this effort. Mr. Gaines stated they were also working to get their portfolio certified with ISO 50001.

Mr. Todd Delmay, Delmay and Partners Meeting and Event Planners, said companies were increasingly including the Green characteristics of hotels when they sent out RFPs for events. Other hotel patrons sought out hotels that used Green initiatives when they traveled. Mr. Delmay wished the Board to grant the variance for the wind turbines because it would help him to market the hotel, and Fort Lauderdale.

Mr. Tom Stravecky, real estate broker, discussed the positive impact Green initiatives had on property values, and noted that Green buildings were spending less time on the market than non-Green buildings. A study specifically aimed at wind turbines had determined that they had no negative impact on property values.

Lisa Schott, noise consultant with Quietly Making Noise, had conducted a noise study on these turbines, and determined that they were at or below ambient noise levels. She explained that the primary noise sources were mechanical equipment and traffic, and

the levels were fairly consistent 24 hours per day. In only one location did the turbines have a noise level above ambient, and this was by only one decibel. Ms. Schott explained to Mr. Willey where the measuring devices had been located. She stated she had conducted her modeling based upon tests performed on the turbines by a laboratory.

Ms. Davis presented the evidence she had previously submitted regarding how this request met the variance criteria. She stated they had overwhelming support from the City Commission, the Sustainability Advisory Board, the Utility Advisory Board, the Central Beach alliance, the condominium board and the owners who had attended the meeting for the turbines at roof level. The applicant was willing to compromise regarding the number of lower level turbines if the Board felt this would be beneficial to all parties.

Mr. Shallenberger said he was in favor of the project, but was concerned about the unit owners who lived at the hotel who were opposed, and asked if there was a way for Hilton to get those people in favor. Ms. Davis clarified that no one lived at the hotel; the average owner visited 9 days per year and it was run as a hotel. She noted that the letters of opposition were dated before she had met with unit owners in August, and only one person who had sent a letter had attended the August meeting.

Chair Centorino opened the public hearing.

Mr. Lester Zalewski, Vice President of the Central Beach Alliance, said the neighbors had reacted enthusiastically to the presentation from Hilton regarding the turbines. Their board of directors had voted unanimously in favor of the project. He said they felt this would be a step forward at the beach. Mr. Zalewski said 50 – 100 people had attended their meeting. He explained to Mr. Cooper that they had viewed the turbines as mobile sculptures. He said they felt this was one way to indicate that Fort Lauderdale was a city of the future.

Mr. John Maliani, unit owner, said he had attended the August meeting, and stated someone had suggested removing all of the lower level turbines and adding two more to the roof level.

Ms. Blanca Sanchez, unit owner, said she had attended the August meeting, and stated the people who had submitted the affidavits opposing the project in July had not specifically retracted them after the August meeting, so they had been resubmitted. She submitted "email and Facebook writings" from other unit owners who opposed the project. Ms. Sanchez said some questions had not been answered at the August 31 meeting, but that information had been provided at this hearing. Ms. Sanchez confirmed that 6 to 10 people had attended the August meeting in person; she could not say how many attended by phone, but she thought 30 total in person and on the phone would be a fair estimate, and she thought 50% were in favor of the roof-mounted

turbines and 100% oppose the ground floor level turbines.

Mr. Bernie Raphael said he had not received notification of the August 31 meeting. He asked how many decibels the turbines produced. He also wanted to know if the turbines would increase the assessed value of the units, resulting in higher taxes. Mr. Raphael asked about communication the Board received from City Commissioners. Mr. Dunckel read Commissioner Rodstrom's email regarding this matter, stating her support for the proposal. Mr. Willey said Commissioner Rodstrom had phoned him because he did not have email, and said he had not felt pressured.

Ms. Sanchez stated buyers were not presented with any condo documents until after they closed on their units. Mr. Dunckel said condo documents were public record and available to buyers' attorneys prior to purchase to review and/or provide to buyers.

Mr. Willey referred to a letter from Bruce McGinnis, President of the condo board, stating the condominium group approved of the proposal, but Mr. Willey was not sure Mr. McGinnis had authorization to represent the condominium group because Mr. McGinnis did not indicate that a meeting had been held. Ms. Davis stated the letter should have stated that the condominium board approved the plan; there had been no meeting of the membership.

Mr. Madfis agreed that questions regarding whether the applicant had the authority to bring this application forward had been satisfied.

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.

Chair Centorino thought the turbines would save a very small amount of energy, and this was "not worth what we risk to our beach..."

Ms. Davis stated the turbines produced approximately 32,000 watts, but said they must consider the entire package, which included solar and additional Green initiatives in the hotel. She felt that a 10% or 20% savings was significant. Ms. Davis reiterated that they were willing to consider a compromise.

Mr. Chaskel informed the Board that the units generated 38 decibels at 60 meters. Ms. Schott said 38 decibels was very, very quiet, and noted the air conditioning vent in the Commission chambers was approximately 50 decibels and the ambient sound level at the Hilton ranged from 55 – 60 decibels during the day, and the quietest locations at night registered 52 decibels.

Mr. Madfis did not feel it was a negative to start out with a small increment of energy savings, and he wanted to support this effort and approve the application.

Ms. Davis confirmed for Mr. Sniezek that the turbines had been sound tested by independent engineers.

Mr. Shallenberger said Hilton must do a better job of getting information out to people. He pointed out that there were no real residents in the building, so he would not take that into consideration for this proposal. Mr. Shallenberger said he would support this and he felt it was a great marketing tool.

Mr. Cooper said the things he took into considerations were: sustainability; the Central Beach Alliance's support and the City Commission's support. He remarked that a miniscule number of owners opposed the plan.

Mr. Sniezek said one question was whether this should be considered a permitted use and he agreed it should be because it was clearly an accessory structure for the hotel. The second question was regarding not requiring the screening, and he said if this was a permitted use, this was justified. He did not believe the turbines presented a noise or safety problem, and he was therefore in favor of the variances. Mr. Dunckel clarified that they were considering granting a use variance, not to consider whether this was a permitted use.

Mr. Stresau asked for clarification about the unit owner's rights. Mr. Dunckel stated the location of the proposed turbines was on hotel condo unit property and the condo documents were structured so that the board of directors of the condo association did not need to address that. Ms. Davis had referred to the condo document declaration, but Mr. Dunckel said regardless of what that declaration said, the unit owners' rights to lodge arguments had not been waived; they did not have the right to address them through the condo board of directors.

Mr. Stresau stated he did not support this application and he did not believe that the units at ground level could be efficient, they were solely for advertising. Mr. Stresau did not feel the roof units could withstand summer storm winds. He was unaware of whether the City Commission had actually discussed this proposal. Mr. Dunckel stated the Commission had discussed it at a conference agenda meeting.

Ms. Davis said they had made a presentation to all Commissioners except Commissioner DuBose, who had been unavailable. They had also made presentations to the Utility Advisory and Sustainability Advisory Boards. The Commission had discussed this at their June 21 and July 6 conference meetings.

Mr. Willey said the Board was not supposed to consider financial impact when granting a variance, but this had been mentioned by some of the applicant's representatives. Mr. Willey felt there was a safety issue regarding how the turbines would be affected by winds during a hurricane. He stated the Board had been addressing wind-generated power for some time, and he would like the City Commission to instruct staff to draw up

guidelines pertaining to windmills and turbines. He said he was not willing to take a chance on this proposal that might not work and could jeopardize the beach.

Mr. Gaines informed the Board that these would be the first turbines on a Hilton hotel. He said for this hotel and where it was located, there would be a great return to the business for implementing the turbines. He said this was proven technology that was a “game changer” and would bring in business.

Ms. Davis reminded the Board that the turbines would be lowered in the event of a hurricane. She explained that the City was working on an ordinance. Mr. Burgess confirmed staff was working on this.

Mr. Stresau asked if the ground-level turbines would work. Mr. Chaskel acknowledged that the higher the turbines were located, the better they would operate, but the ground-level units would work and create energy. Mr. Jiro Yates, engineer, stated he had spoken with the consultant who had determined where the turbines should be located. Mr. Yates said they could withstand winds of 145 mph, and installations had survived hurricanes.

Ms. Davis offered to install only the turbines at roof level and to wait to install the units around the pool deck until after the City created an ordinance. Mr. Dunckel advised the Board that the first variance request should be split in two because of the two locations of the turbines. He said the argument for placing the turbines on the roof was a more compelling argument than placing them on the pool deck.

Mr. Madfis said he felt secure that there would not be a safety issue in a hurricane. He said this was a great opportunity to work with the Hilton, and remarked that if there was any malfunction, he did not doubt that they would remove them.

Mr. Shallenberger said he did not favor a compromise.

Motion made by Mr. Madfis to approve the wind turbines on the roof as a permitted use.

Mr. Dunckel suggested making the variance conditional, depending on whether or not this proposal worked, and/or defining the wind speed and/or condition under which the turbines should be taken down. Mr. Madfis did not want to include conditions in the motion.

Mr. Cooper seconded Mr. Madfis’s motion. In a roll call vote, motion **passed** 5 – 2 with Mr. Willey and Mr. Stresau opposed.

Motion made by Mr. Madfis, seconded by Mr. Cooper, to approve the rest of the application as shown.

Mr. Stresau was concerned that the applicant would change the turbine model from the one presented in the application. Ms. Davis stipulated that only the model shown in the application would be covered by the variance. Mr. Madfis suggested the turbine must meet the minimum specifications as presented. Mr. Cooper agreed to accept Mr. Madfis's amendment to the motion.

In a roll call vote, motion **failed** 4 – 3 with Mr. Willey, Mr. Stresau and Chair Centorino opposed.

Motion made by Mr. Madfis, seconded by Mr. Cooper, to allow the turbines to be installed on the roof without the screening normally required by code. In a roll call vote, motion passed 5 – 2 with Mr. Willey and Chair Centorino opposed.

Mr. Dunckel asked the Board to vote on limiting the turbines on the roof to what had been presented and to meet the minimum specifications presented. In a roll call vote, Board agreed 7 – 0.

At this time, Jerry Jordan returned to the Board and Fred Stresau stepped down from the dais.

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3. APPEAL NO. 11-18

APPLICANT: Crockett & Cindy Herd
LEGAL: "Colee Hammock", P.B. 1, P. 17, Lot 21 W 25,22,23, Block 36
ZONING: RS- 8 (Residential Single Family/Low Medium Density District)
STREET: 1300 Brickell Drive
ADDRESS: Fort Lauderdale, FL
DISTRICT: 4

APPEALING: **Section 47-5-31 (Table of dimensional requirements for the RS-8 District)**

Requesting a variance to permit a 19 foot 4 inch front yard setback to allow a garage addition to extend 5 foot 8 inches into the required front yard, where Code requires a minimum of 25 foot front yard setback.

Ms. Courtney Crush, attorney for the applicant, stated this was a unique property that had water on two sides. She referred to a photo of the property and described the current garage and where the addition would extend.

Regarding the variance criteria:

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

Ms. Crush said the property was special because it had three yards with 25-foot setbacks.

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 Ms. Crush said one now needed to turn around to exit the property.

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.

Ms. Crush said the home represented approximately 20% lot coverage and the code allowed 40%. She described where the garage would be located and the area that would extend into the setback. Ms. Crush added that the addition would be compatible and would be no closer to the northeast neighbor.

Ms. Crush stated the Colee Hammock Association Board agreed the property was uniquely configured and asked the Board of Adjustment to approve the request.

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. Jordan, seconded by Mr. Cooper, to approve the request. In a roll call vote, motion passed 7 - 0.

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4. APPEAL NO. 11-19

APPLICANT: Big Al's Bail Bonds LLC

LEGAL: "Crossant Park South River Sec. 8-20," B Lot 3
W. 30, 4 E 35 Block 31

ZONING: ROC (Planned Residential Office District)

STREET: 300 SW 12th Street

ADDRESS: Fort Lauderdale, FL

DISTRICT: 4

APPEALING: Sec. 47-5.60.E.9 (Residential office zoning district-Approval of development plan)

Requesting a variance for a change in use from Residential to a Professional Office, through the site plan Level I review (Administrative Review Process), where the regulations of Sec. 47-5.60.E.9 (ROC Zoning District) requires a Site Plan Level III review (DRC and Planning and Zoning Board).

Mr. Madfis recused himself from this item and Mr. Stresau took his place on the dais.

Mr. Dunckel explained that the Board was being asked to grant a variance to a procedure in the ULDR rather than a substantive requirement. He said the problem with doing something like was that at a later date, an applicant could request that only the Board of Adjustment review a proposal, circumventing Site Plan Level III and City Commission review. Mr. Dunckel felt this was beyond the jurisdiction of the Board, and advised that the Board could deny the variance on the grounds that the Board did not have jurisdiction to grant variances to the procedure.

Mr. Alan Certain, property owner, said someone had advised him that there was no language stating this was out of the Board's jurisdiction. He stated Mr. Madfis had helped him to decipher the code. Mr. Certain also felt he was within the criteria.

Mr. Stresau asked Mr. Burgess to explain the difference between Site Plan Level I and Level III reviews. Mr. Burgess said a Level I could be a permit application process or a staff level review, or some minor changes in use. Level II required the Development Review Committee (DRC) process, and that recommendation was reviewed by the Planning and Zoning Board. He explained that in this case, the site Plan Level II was triggered by the ROC zoning district.

Mr. Certain said the only thing he needed to do in order to comply was add one parking spot. He said the Level II review was excessive for his small project, and was a waste of time and money.

Mr. Cooper asked if Mr. Certain's proposal was to "whack a small portion off a residential house that sits on a commercial street, put some paving down, pull permits to do everything, so you can open up a business office instead of having a residential house that's on a five-lane highway, and we're discussing whether it's going to go through a Level I or a Level II review to do this." Mr. Dunckel said the Commission had already determined that a Site Level III review was needed; the request was "asking you to substitute yourself for the City Commission and re-write the legislation which the City Commission has passed. That's not the purpose of the Board of Adjustment."

Chair Centorino did not feel the Board had jurisdiction. Mr. Dunckel acknowledged that the words Mr. Certain referred to in the code "offer themselves up to an argument, but you've got to look beyond the words to what is the intent behind the process and that great body of law through all the books and encyclopedic authorities, cases, that just don't apply it that way."

Mr. Stresau suggested the applicant withdraw his application and get his money back.

Mr. Certain insisted that this was not clearly defined and it was within the Board's authority to review this, because his was a unique situation. Mr. Shallenberger advised Mr. Certain that the Board could suggest he receive a refund. Chair Centorino said Mr. Certain must decide if he wished to withdraw the application or proceed.

Mr. Certain said he would withdraw, but he would bring this up with the City Commission.

Motion made by Mr. Stresau, seconded by Mr. Shallenberger, to urge the City to apply Mr. Certain's application fee to his next application fee. In a roll call vote, motion passed 7 – 0.

At this time, Michael Madfis returned to the Board and Fred Stresau stepped down from the dais.

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5. APPEAL NO. 11-20

APPLICANT: Chris Chittero
LEGAL: "Crossant Park River," Lot 34, Block 18
ZONING: RD-15 (Residential Single /Duplex/Low Medium Density District)
STREET: 213 SW 11th Court
ADDRESS: Fort Lauderdale, FL
DISTRICT: 4

APPEALING: **Sec. 47-5.32 (Table of dimensional requirements for the RD-15 and RDs-15 district)**

Requesting a variance to enclose a carport to create a den and bathroom with a 3 foot 6 inch side yard setback, where the Code requires a minimum of five (5) foot side yard setback.

Mr. Chris Chittero, applicant, said he wanted to make the carport space usable.

Mr. Steve Sanders, attorney, explained that whoever had done the work had done it without a permit and the joists had been water damaged. Mr. Sanders referred to the survey, and noted that the Chitteros had been sold the house as a two-bedroom, two bath house with a den, including the enclosed carport area. No one had mentioned the

setback problem. Mr. Sanders stated when the house was built in 1946, it was encroaching into the setback one foot six inches.

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. Jordan, seconded by Mr. Madfis, to approve the variance. In a roll call vote, motion passes 7 – 0.

Communication to the City Commission

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None.

Report and for the Good of the City

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Chair Centorino announced this was Mr. Jordan's last meeting and thanked him for his service. Mr. Jordan thanked Board members and staff.

There being no further business to come before the Board, the meeting was adjourned at 10:04 p.m.

Chair:

Diana Centorino

Attest:

ProtoType Inc.

Minutes prepared by: J. Opperlee, Prototype Inc.