

**BOARD OF ADJUSTMENT MEETING
CITY OF FORT LAUDERDALE
WEDNESDAY, MARCH 12, 2014 – 6:30 P.M.
CITY HALL CITY COMMISSION CHAMBERS – 1ST FLOOR
100 NORTH ANDREWS AVENUE
FORT LAUDERDALE, FLORIDA**

Board Members	Attendance	Cumulative Attendance 6/2013 through 5/2014	
		Present	Absent
Diana Waterous Centorino, Chair	A	4	3
Michael Madfis, Vice Chair	P	6	1
Roger Bond	P	7	0
Caldwell Cooper	P	6	1
Karl Shallenberger	A	5	2
Fred Stresau	P	5	2
Sharon A. Zamojski	P	5	2
Alternates			
Matthew Scott	P	1	0
Birch Willey [arrived 6:33]	P	5	2

Staff

Bob Dunckel, Assistant City Attorney
 Anthony Fajardo, Zoning Administrator
 Mohammed Malik, Director of Zoning
 Lynda Crase, Administrative Aide
 Brigitte 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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	<u>Number</u>	<u>Applicant/Agent</u>		
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2.	B14002	Rio Nuevo/ Eleftheria Zachariades, Esq.	4	<u>3</u>
3.	B14003	Keith Lewis and Jeannie Lim	4	<u>4</u>
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Call to Order

Mr. Madfis called the meeting to order at 6:31 p.m. He introduced Board members and determined a quorum was present.

Mr. Willey arrived at 5:33.

Mr. Madfis announced Ms. Rodstrom had resigned from the Board.

Approval of Minutes – November 2013

Motion made by Mr. Cooper, seconded by Ms. Zamojski, to approve the minutes of the Board's November 2013 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.

Mr. Stresau recalled that at the last meeting, the Board had discussed their objections to the wording of the staff recommendations for appeals. Mr. Fajardo had indicated he would discuss this with the Zoning Administrator and Mr. Stresau had hoped that the wording of subsequent recommendations would change, but nothing had changed on this agenda.

Mr. Fajardo recalled that the Board's consensus had been that it was good to receive information from staff but that "the word 'recommendation' was maybe not as palatable because it seemed a little strong." He had discussed this with management, but the direction had remained the same. If the Board still objected to the language, they could send a communication to the City Commission regarding this.

Mr. Willey did not think the Board should have staff's opinion *prior* to the Board's discussions. He explained that due to his respect for staff, if he knew their opinions beforehand, this made it more difficult for him to be objective, which made him uncomfortable. Mr. Willey thought staff should hear the Board members' opinions first.

He was also concerned that the Board had heard no appeals for months and decisions had been made at staff level.

Mr. Madfis suggested this discussion continue after they addressed the agenda items.

1. APPEAL NO. B14001

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APPLICANT: 1401 Andrews LLC
AGENT: Jeffrey J. Wolfe/ Phillips, Cantor, Shalek, Rubin & Pfister, P.A.
LEGAL: Croissant Park 4-28 B Lot 1 and 3 together with N 24 of S 49 of E 3.50 of Lot 2 BLK 25
ZONING: SRAC-SAe (South Regional Activity Center-South Andrews east)
STREET: 401 S Andrews Avenue
ADDRESS: Fort Lauderdale, FL
DISTRICT: 4

STAFF RECOMMENDATION:

Staff recommends approval of the request

CONDITIONS OF APPROVAL:

None.

APPEALING: Section 5-26 (Distance between establishments)

Requesting a Special Exception to allow the sale of alcohol by a new restaurant at a distance of 128 feet from other establishments that sell alcohol where the code states that a restaurant bar is prohibited in any place of business located within three hundred (300) feet of another place of business in which there is already in existence a retail vendor's license to sell alcoholic or intoxicating beverages for consumption on or off premises.

Mr. Madfis reported the applicant had requested a deferral to next month.

2. APPEAL NO. B14002

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APPLICANT: Rio Nuevo
AGENT: Eleftheria Zachariades, Esq.
LEGAL: FT LAUDERDALE B-40 D LOT 17 E 70 LESS S 15;18 E 70; 19 E 70 LESS N 20 BLK C
ZONING: H-1 (Historic Preservation District)
STREET: 209 SW 2nd Avenue
ADDRESS: Fort Lauderdale, FL
DISTRICT: 4

STAFF RECOMMENDATION:

Staff recommends approval of the request

CONDITIONS OF APPROVAL:

None

APPEALING: Section 5-26 (Distance between establishments)

Requesting a Special Exception to allow the sale of alcohol by a new restaurant at a distance of 124 feet from other establishments that sell alcohol where the code states that a restaurant bar is prohibited in any place of business located within three hundred (300) feet of another place of business in which there is already in existence a retail vendor's license to sell alcoholic or intoxicating beverages for consumption on or off premises.

Mr. Dunckel reminded the Board that the applicant was not required to show a hardship: in order to meet the requirements for a special exception the applicant must show that the activity was not contrary to the public interest.

Eleftheria Zachariades, attorney for the applicant, reported a sushi restaurant wished to move in and to sell beer, wine and sake. She stated the sale of alcohol was incidental to the sale of food and the sale of alcohol would not be incompatible with the surrounding community. She explained that the former tenant, Urban Brew, had served beer but had never received a Special Exception.

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

Motion made by Mr. Cooper, seconded by Mr. Stresau, to approve. In a roll call vote, motion passed 7-0.

3. APPEAL NO. B14003

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APPLICANT: Keith Lewis & Jeannie Lim
LEGAL: LAUDERDALE ISLES NO 2 35-33 B LOT 30 LESS PT DESC AS,
COMM AT NW COR LOT 30, SW ALG WYL/L 53.08 TO POB, CONT
SW ALG W/L 193.70 TO PT ON SEAWALL, NELY ALG SAME 37.40,
NELY 126.15, NLY 39.97 TO POB BLK 5
ZONING: RS6.85A (Residential District)
STREET: 2678 Gulfstream Lane
ADDRESS: Fort Lauderdale, FL
DISTRICT: 4
STAFF RECOMMENDATION:
Staff recommends approval of the request
CONDITIONS OF APPROVAL:
None

APPEALING: Section 47-39.A.6.F(1) (Dimensional Requirements – Side Yard)

Requesting a variance to allow an enclosed front porch to be constructed with a side yard of 5-feet 6-inches where the code states that the minimum side yard for structures located in the RS-6.85A zoning district shall be a minimum of 7-feet 6-inches resulting in a decrease of 2-foot 0-inches.

Ms. Zamojski pointed out that the hatched areas on the notice that had been mailed out did not match the folio number. Mr. Fajardo explained that the Broward County Property Appraiser's office generated the graphic including the 300-foot buffer of addresses. If there was nothing there, nothing would show up in the hatched area. Ms. Zamojski said there were three properties within the 300-feet on SW 34 Terrace that were not identified in the notice. Mr. Fajardo explained that per the code, failure of notice did not invalidate the meeting, but if the Board was uncomfortable, they could defer, and staff would look into it to ensure everyone was properly notified.

Mr. Stresau stated the surveys and other material did not indicate a 5'6" side yard as stated in the request. Mr. Madfis saw a 21 1/8" encroachment. He suggested they ask the applicant.

Keith Lewis, applicant, said they like the house but it was a bit small so they had hired an architect to draw plans to enclose the porch. The architect had indicated the corner of the wall represented an 18" encroachment. Mr. Lewis said an attorney had advised him that there was a hardship because this was a pie-shaped lot. Mr. Lewis noted that the existing porch and the posts were rotting out due to water intrusion. He felt that rebuilding would be better for the neighborhood. He distributed photos of the property and renderings from his architect.

Mr. Lewis informed Ms. Zamojski that the encroachment was four to six feet on the northeast corner.

Mr. Stresau noted there was an encroachment on the west side of the property as well. Mr. Dunkel stated the Board might defer to allow the applicant to return with a survey that reflected the tie in the corner that was in question and to amend the application to include the 7.09 and 7.12 setbacks on the west. If a variance were granted now, there would be a problem when the owner sold the house later. Mr. Fajardo stated they did not know the County requirements at the time this house was built. Mr. Madfis felt this encroachment would be legal, non-conforming and the owner did not intend to alter it.

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

Mr. Cooper brought the Board's attention back to the issue: the 18" of the porch corner for which the owner was requesting a variance. The owner confirmed that enclosing the porch would not change the footprint of the existing structure.

Mr. Willey advised the owner he could request a deferral to include the encroachments on the west side of the house so a question would not arise in the future.

Mr. Lewis explained that a section of the property had been sold to the adjacent neighbor to accommodate a shuffle board court, moving this property line and creating the encroachment.

The Board discussed the request and what appeared to be discrepancies in the measurements.

Mr. Lewis requested a one-month deferral.

Mr. Stresau reminded Mr. Lewis that the survey should show the dimension from the property line to the face of the building.

Motion made by Mr. Cooper, seconded by Ms. Zamojski, to defer the request until the Board's next meeting. In a roll call vote, motion passed 7-0.

Communication to the City Commission

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None.

Report and for the Good of the City

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The Board returned to this discussion of staff's recommendations.

Mr. Madfis noted that the City addressed some issue through planning and he thought the Board should be reminded of this when deciding on appeals, but staff should cite master plan sections or other references to back up their recommendation.

Mr. Bond remarked that the purpose of the Board was to make these decisions and he felt blindsided when staff advised them to approve an appeal. He felt uncomfortable voting in opposition to a staff recommendation.

Mr. Dunckel stated the Board should grant variances when the facts of the case showed that the criteria had been met. If staff recommended approval when the criteria were not met, the Board should exercise independent judgment. There was a question of where the City would be legally if the Board denied a variance when staff had recommended approval. Mr. Dunckel explained that when an applicant appealed the Board's decision, the court would consider the record and whether the facts met all of the criteria, regardless of what staff said. If the facts did not meet all of the criteria, the court was bound to uphold the decision of the Board. A Writ of Cert ensured that a

judge could only listen to factual arguments that supported the Board's decision; the court was not supposed to pay attention to the other side. This gave the City a "tremendous home court advantage."

Mr. Stresau reminded the Board that Greg Brewton had stated that staff's obligation was to support the zoning code and the reason applicants came before the Board was because they wanted to do something other than what the code permitted. If this had been the case for 30 years, Mr. Stresau said, "Then I don't believe that the comment that the staff's recommendations are for approval are appropriate but I think it's also important to recognize...if there are outstanding issues that the Board should be aware of as to why we might be swayed or how we would couch our requirements for voting for a variance that we should know that, and that that's not a recommendation, that is additional information that we might not have." Mr. Stresau provided the example of the South Andrews Master Plan, about which Board members were not knowledgeable, and agreed that if a request was located in this area, staff should provide the Board with pertinent information in that master plan, but it should not be a recommendation. Mr. Stresau requested Mr. Fajardo discuss this one more with staff and if staff wanted to continue using the term "recommendation", the Board should send a communication to the City Commission and let them decide.

Mr. Madfis thought the Board should inform the City Commission and the City Manager of their concerns because perhaps the Planning Manager thought this was the direction the City had directed them to pursue. In any case, he requested staff include their reasons for making a recommendation so the Board understood it better.

Mr. Dunckel reminded the Board that staff recommendations were made to the Planning and Zoning Board (P&Z), which was presented a site plan that needed to be checked against many different code sections but the Board of Adjustment (BOA) usually confined their analyses to one or two sections and whether or not the facts fit into the criteria. Therefore, no one should feel that recommendations should be made to the BOA as they were to the P&Z.

The Board agreed not to send a communication to the City commission regarding this issue at this time.

There being no further business to come before the Board, the meeting was adjourned at 7:24 pm.

Chair: 
Diana Centorino

Attest:



ProtoType Inc.

Minutes prepared by: J. Opperlee, Prototype Inc.

Any written public comments made 48 hours prior to the meeting regarding items discussed during the proceedings have been attached hereto.