

**BOARD OF ADJUSTMENT MEETING  
CITY OF FORT LAUDERDALE  
WEDNESDAY, APRIL 9, 2014 – 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 6/2013 through 5/2014</b>	
		<b>Present</b>	<b>Absent</b>
Diana Waterous Centorino, Chair	P	5	3
Michael Madfis, Vice Chair	P	7	1
Roger Bond	P	8	0
Caldwell Cooper	P	7	1
Karl Shallenberger	P	6	2
Fred Stresau	P	6	2
Sharon A. Zamojski	P	6	2
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<b>Alternates</b>			
Matthew Scott	P	2	0
Birch Willey	P	6	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**

**Motion** made by Mr. Willey, seconded by Mr. Cooper, to request that staff not produce printed recommendations for Board of Adjustment cases. Also, that Board members be advised of the date the Commission would discuss their communication in order to have an opportunity to speak on the issue. In a roll call vote, motion passed 7-0.

**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>Appeal Number</u>	<u>Applicant/Agent</u>	<u>District</u>	<u>Page</u>
1.	<b>B14001</b>	1401 Andrews LLC/Jeffrey J. Wolfe	<b>4</b>	<u><b>2</b></u>
2.	<b>B14003</b>	Keith Lewis and Jeannie Lim	<b>4</b>	<u><b>4</b></u>
3.	<b>B14004</b>	SFMA LLC	<b>2</b>	<u><b>4</b></u>
4.	<b>B14005</b>	Commercial Prospect LLC/Victory Petroleum/ Wonder Meryl	<b>1</b>	<u><b>6</b></u>
5.	<b>B14006</b>	Shopping Center Interests, LLC/ Eleftheria Zachariades, Esq. For the Good of the City Communication to the City Commission	<b>2</b>	<u><b>7</b></u>  <u><b>8</b></u> <u><b>9</b></u>

**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.**

**Call to Order**

Chair Centorino called the meeting to order at 6:34 p.m. She introduced Board members and determined a quorum was present.

**Approval of Minutes – March 2014**

**Motion** made by Mr. Cooper, seconded by Mr. Stresau, to approve the minutes of the Board's March 2014 meeting. In a voice vote, motion passed unanimously.

**Note: items were heard out of order.**

1. **APPEAL NO. B14001** Index
- 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.

**(DEFERRED FROM MARCH 12)**

Mr. Dunckel reminded the Board that the application for a special exception required the applicant to demonstrate that the request was not contrary to the public interest.

Jeffrey Wolfe, attorney for the applicant, said there would be a benefit to having a restaurant/bar in the area and he saw no harm. Andy Yeager, a partner at Tap 42, said this was adjoining Tap 42. He described the menu and said they would have a full service bar.

Chair Centorino opened the public hearing.

Jay Adams, neighboring property owner, said he hoped he would not be prevented from doing something like this in the future.

Mr. Madfis remarked that the special exception was a portion of the code that was perhaps becoming antiquated.

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. Stresau had heard no evidence other than the applicant's verbal presentation that the sale of alcohol was incidental to the food service. The neighborhood parking had also not been addressed, and Mr. Stresau pointed out that parking in the area was already very difficult. Mr. Fajardo replied that Tap 42 and other uses in the area must meet parking requirements, and this business was meeting the ratio in this area. Mr. Stresau felt that parking complaints were contrary to the public interest and they should review this. Mr. Madfis said the idea was to create pedestrian activity in the RAC. Mr. Fajardo said this location would be directly affected by the Wave project.

Mr. Dunckel said the points raised by Mr. Stresau were relevant to the concept of "contrary to the public interest" and could be taken into consideration, with conditions being attached to any approval to ameliorate the perceived issues that might be

contrary to the public interest.

**Motion** made by Mr. Madfis, seconded by Ms. Zamojski to approve the application. In a roll call vote, motion passed 6-1 with Mr. Stresau opposed.

**2. 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 five (5) feet six (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 two (2) foot.

**(DEFERRED FROM MARCH 12/REQUESTING DEFERRAL TO MAY 14, 2014)**

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. Shallenberger to defer the case to the Board's May 14 meeting. In a voice vote, motion passed unanimously.

**3. APPEAL NO B14004**

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**APPLICANT:** SFMA LLC  
**LEGAL:** PROGRESSO 2-18 D LOT 45 TO 48 BLK 321  
**ZONING:** RMM-25 (Residential Mid-Rise Multifamily/Medium High Density)  
**STREET:** 642 NW 3<sup>rd</sup> Avenue

**ADDRESS:** Fort Lauderdale, FL  
**DISTRICT:** 2

**APPEALING: Section 47-5.36 (Table of dimensional requirements for the RMM-25 district – Corner Yard)**

Requesting a variance to allow a structure (additional classroom space) to be constructed with a corner yard of six (6) feet where the code states that the minimum corner yard for structures located in the RMM-25 zoning district shall be a minimum of twenty-five (25) feet resulting in a decrease of nineteen (19) feet.

**APPEALING: Section 47-5.36 (Table of dimensional requirements for the RMM-25 district – Side Yard)**

Requesting a variance to allow a structure (additional classroom space) to be constructed with a side yard of three (3) feet where the code states that the minimum side yard for structures located in the RMM-25 zoning district shall be a minimum of twenty (20) feet resulting in a decrease of nineteen (17) feet.

**APPEALING: Section 47-20.15 (Backout parking)**

Requesting a variance to allow backout parking into a street right-of-way (NW 7<sup>th</sup> Street), where the code states that backout parking may only be permitted in connection with residential or commercial uses into an improved alley

**APPEALING: Section 47-2.2.Q (Sight triangle)**

Requesting a variance to allow a parking facility to encroach within the code required twenty-five (25) foot sight triangle resulting in an encroachment of approximately nine (9) feet along the NW 7<sup>th</sup> Street portion of the site triangle.

**APPEALING: Section 47-25.3 (Neighborhood Compatibility)**

Requesting a landscape buffer variance to allow a three (3) foot landscape strip buffer between a residential and non-residential use along the east property line, where the code states a minimum ten (10) foot landscape strip shall be required to be located along all property lines which are adjacent to residential property resulting in a decrease of seven (7) feet.

**Project Note:** The current school use within the RMM-25 Zoning District is legal non-conforming. The proposed expansion will require conditional use approval by the Planning and Zoning Board.

**STAFF RECOMMENDATION:** Staff recommends denial of the request  
**Conditions of Approval:** N/A

Chair Centorino opened the public hearing.

John Bolt, neighbor, said he was representing himself and another neighbor. He was shocked to see a 14-foot wall proposed to be built three feet from his fence, which would interfere with his garden's air and light. He asked that the project be required to adhere to the setbacks and to require the mechanical equipment not to be "blasting in the back of the residential units there." Mr. Bolt said the application did not specify the removal of two large oak trees but he wanted them to be preserved on the site. Mr. Shallenberger informed Mr. Bolt that the oak trees were scheduled to remain on the site.

Ms. Zamojski asked Mr. Bolt to put his comments in writing for the Board and Mr. Bolt agreed.

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

**Motion** made by Mr. Madfis, seconded by Mr. Cooper to defer the case to the Board's May 14 meeting. In a voice vote, motion passed unanimously.

**4. APPEAL NO B14005**

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**APPLICANT:** Commercial Prospect LLC/Victory Petroleum  
**AGENT:** Wonder Meryl  
**LEGAL:** 17-49-42 PART OF SE1/4 OF NE1/4 DESC'D AS COMM AT SW COR OF SE1/4 OF NE1/4 N ALG W/L FOR 330.23,E 50.00 TO PT ON E R/W/L OF PROSPECT RD AND POB,CONT E 250.00,S 250.17,WLY 224.88,NW 35.44,N 225.10 TO POB  
**ZONING:** B-3 (Heavy Commercial/Light Industrial Business)  
**STREET:** 2395 W Commercial Blvd.  
**ADDRESS:** Fort Lauderdale, FL  
**DISTRICT:** 1

**APPEALING:** Section 47-6.13. (List of permitted and conditional uses, Heavy Commercial/Light Industrial (B-3) District).

Requesting an after-the-fact use variance to permit an outdoor hand car wash in the B-3 zoning district where the code does not indicate outdoor hand car wash as a permitted or conditional use in the B-3 zoning district.

**STAFF RECOMMENDATION:** Staff recommends denial of the request

**Conditions of Approval:** N/A

Wonder Meryl, agent, informed Chair Centorino that the hand car wash business had been on the site before he purchased it eight years ago.

Mr. Dunckel reminded the Board that this was a request for a use variance, which was "judicially suspect, to say the least" and must be "scrutinized with the greatest degree of caution."

Mr. Madfis thought Mr. Meryl should have made a substantial presentation, as well as appeared before a local community organization to present his request. He said this required "a lot of work for us to really show that we...have the right, or the ability or type of hardship to make that decision."

Chair Centorino advised Mr. Meryl that the fact that the zoning code did not allow the hand car wash was not a hardship. She was also concerned about the dirty water runoff contaminating a nearby lake. Mr. Wonder explained that the cars were washed in bays, which had oil and sand separators.

Mr. Wonder informed Ms. Zamojski that he leased the property and Mr. Dunckel explained that Mr. Wonder should have consent from the owner of the property for this request.

Mr. Fajardo confirmed that the City had a consent letter from the owner. He had counseled Mr. Wonder to consult a land use attorney before putting the application together.

Mr. Wonder requested 60 days to improve his application. Mr. Fajardo recommended 90 days.

Mr. Stresau referred to other carwashes in the City, which he assumed were located in B1 zoning districts, and asked what the difference was in their operations from Mr. Wonder's, located in a B3 district. Mr. Fajardo explained there was a code enforcement case indicating that the car washing was being conducted outside the building. Mr. Stresau stated he wanted the City to be "more specific before he has to go hire an attorney as to why he might even have to be here tonight."

**Motion** made by Mr. Madfis, seconded by Mr. Stresau, to defer the request for 90 days. In a voice vote, motion passed unanimously.

**5. APPEAL NO B14006**

**APPLICANT:** Shopping Center Interests, LLC  
**AGENT:** Eleftheria Zachariades, Esq.  
**LEGAL:** RESUB BLKS 9-12 HOLMBERG & MC KEES 3-115 D LOT 8,9 BLK 12  
**ZONING:** RAC-EMU (Regional Activity Center- East Mixed Use)  
**STREET:** 290 N Federal Highway

**ADDRESS: Fort Lauderdale, FL**  
**DISTRICT: 2**

**APPEALING: Section 5-27 (Distances of establishments from church or school)**

Requesting a special exception pursuant to Section 5-27(b) to allow alcohol sales in a restaurant incidental to the sale and service of food at a distance of one hundred ninety-six (196) feet from a school where the code states a restaurant licensed to sell alcoholic or intoxicating beverages is prohibited in any place of business located within five hundred (500) feet from any established school.

**STAFF RECOMMENDATION:** Staff recommends denial of the request  
**Conditions of Approval:** N/A

Eleftheria Zachariades, agent for the applicant, stated the proposed restaurant would be 196 feet from St. Anthony's. Regarding the requirement that the sale of alcohol be incidental to the sale of food, she reported the majority of sales would be of food. Regarding neighborhood compatibility, she described the number of bars and restaurants in the area. Ms. Zachariades added that the restaurant previously located here had been serving beer and wine without a special exception.

Ms. Zachariades informed the Board that the restaurant would be open from noon until 10:00 P.M., so for a few hours a day, the restaurant would be open when children were present at the school.

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. Madfis, seconded by Ms. Zamojski, to approve the application. In a roll call vote, motion passed 7-0.

**Report and for the Good of the City**

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Ms. Zamojski wondered about City/State coordination for liquor licenses. There was a requirement for a business owner to present the State license before applying for a business tax. Mr. Dunckel said the State was supposed to confirm that the City signed off before issuing the liquor license.

Mr. Fajardo informed the Board that the special exception would apply to subsequent restaurant operations on the site. Mr. Dunckel said a subsequent business would seek approval from the State and then the City would ensure that it was a restaurant operation. If not, a variance must be sought. Mr. Stresau felt a public hearing should be required for a subsequent business to allow public input. Mr. Shallenberger felt the special exception should apply only to the business that received it.



Ms. Zamojski noted that Chair Centorino would be leaving the Board after the next meeting. Mr. Dunckel explained that Ms. Centorino's position on the Board was not vacant until the City Commission appointed someone to replace her.

The Board wished Chair Centorino Happy Birthday.

**Communication to the City Commission**

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Regarding the staff recommendations, Mr. Shallenberger said he had wanted information from staff, informing the Board "how we got to where we were, not a recommendation."

Mr. Stresau said every Board member had expressed concern about the word "recommendation," which lent "a certain amount of credence to the application." He assumed that Planning Department management had no intention of changing the wording and he felt this was a bad idea.

Mr. Willey agreed that the Board should not receive an opinion/recommendation from staff before making their decisions. He did want information from staff, but not recommendations. Mr. Cooper agreed he wanted pertinent information to help make a decision, not a recommendation. Chair Centorino agreed, and was concerned that if an applicant appealed, the staff recommendation could put the City in a worse position.

Mr. Dunckel explained that in an appeal, a judge could only consider evidence in support of the Board's conclusion; he/she was precluded from considering evidence "in the opposite direction." If the Board denied an application, but staff had recommended approval, the court was not supposed to consider the staff recommendation.

Mr. Dunckel said judicially, he had no problem with that aspect of the staff recommendation. He did feel that this could lead to a "disconnect between what the Board is doing and what staff is recommending and I think it erodes the confidence that the public may have in the process that we're going through."

Mr. Fajardo said he had brought this back to management twice and the direction from his superiors stood. He advised the Board that they could send a communication to the City Commission regarding this issue. Mr. Stresau suggested Board members attend the Commission conference meeting when their recommendation would be discussed. Mr. Fajardo agreed to advise Board members of the date of the meeting.

**Motion** made by Mr. Willey, seconded by Mr. Cooper, to request that staff not produce printed recommendations for Board of Adjustment cases. Also, that Board members be advised of the date the Commission would discuss their communication in order to have an opportunity to speak on the issue. In a roll call vote, motion passed 7-0.

There being no further business to come before the Board, the meeting was adjourned at 8:04 pm.

Chair:

  
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Diana Centorino

Attest:

  
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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.