



**BOARD OF ADJUSTMENT MEETING
CITY OF FORT LAUDERDALE
WEDNESDAY, DECEMBER 13, 2017 – 6:30 P.M.
CITY HALL CITY COMMISSION CHAMBERS
100 NORTH ANDREWS AVENUE
FORT LAUDERDALE, FLORIDA**

CITY OF FORT LAUDERDALE

Board Members	Attendance	Cumulative Attendance 6/2017 through 5/2018	
		Present	Absent
Douglas Reynolds, Chair	P	4	0
Howard Nelson	P	3	0
Eugenia Ellis	P	4	0
Blaise McGinley	P	4	0
Patrick McTigue	P	4	0
Fred Stresau	P	3	1
S. Carey Villeneuve	P	1	3
Alternates			
Norman Ostrau	P	3	1

Staff

Lynn Solomon, Assistant City Attorney
Cynthia Everett, City Attorney
Mohammed Malik, Zoning Administrator
Burt Ford, Interim Zoning Chief
Anthony Fajardo, Director, Department of Sustainable Development
Teresa Wright, Admin Aide
Brigitte Chiappetta, Prototype, Inc.

Communication to the City Commission

Motion made by Mr. Nelson, seconded by Ms. Ellis, to ask the City Commission to instruct staff to research and recommend updates to the liquor spacing requirements under the City code to reflect the modern reality of businesses within the City of Fort Lauderdale. In a roll call vote, motion passed 8-0.

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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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

The meeting was called to order at 6:30 p.m. Ms. Chiappetta called roll and determined a quorum was present.

Approval of Minutes – November 2017

Motion made by Mr. Nelson, seconded by Mr. McTigue to approve the Board's November 2017 minutes. In a voice vote, motion passed unanimously.

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CASE: B17039

OWNER: 1233 Corp. Inc.

AGENT: Long Law, P.A. – Keith E. Long, Esq.

ADDRESS: 1229 E Las Olas Boulevard

LEGAL DESCRIPTION: COLEE HAMMOCK 1-17 B THE W 24.2 OF E 42.9 OF S 60 OF PAR OF LAND DESC IN OR 423/50 LESS W 14.2 THERE OF & LESS S 10 FOR RW AKA:POR LOT 13 & 14 BLK 26 OF COLEE HAMMOCK; DESIGNATED AS W 10 OF PAR 2,LESS S 10 FOR RW BLK 26

ZONING: B-1

COMMISSION DIS: 4

APPEALING: **Section 5-26 (a) (Distance between Establishments)**
Requesting a variance to allow the sale of alcoholic beverages at a distance of sixty four (64) feet from another establishment selling alcoholic beverages, where the Code of Ordinances requires a minimum distance of three hundred (300) feet separating establishments that sell alcoholic or intoxicating beverages.

Section 5-27(a) (Distance of Establishments from a Church or School)
Requesting a variance to allow the sale of alcoholic beverages at a distance of two hundred three (203) feet from a church, where the Code of Ordinances requires a minimum distance of five hundred (500) feet separating establishments that sell alcoholic or intoxicating beverages from a church or school.

Keith Long, attorney, requested a deferment to the Board's January meeting.

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

Motion made by Mr. Ostrau, seconded by Mr. Nelson, to defer to the Board's January 2018 meeting. In a voice vote, motion passed 8-0.

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CASE: **B17033**

OWNER: Flagami Land Corp

AGENT: Crush Law, PA - Jason Crush

ADDRESS: 1507 E LAS OLAS BOULEVARD

LEGAL DESCRIPTION: COLEE HAMMOCK 1-17 B LOT 9 LESS S 10 FOR ST,10 LESS S 10 FOR ST BLK 40

ZONING: B-1

COMMISSION DIS: 4

APPEALING: **Section 5-26 (a) (Distance between Establishments)**
Requesting a variance to allow the sale of alcoholic at a distance of one hundred thirty four (134) feet from another establishment selling alcoholic beverages, where the Code of

Ordinances requires a minimum distance of three hundred (300) feet separating establishments that sell alcoholic or intoxicating beverages.

Ms. Solomon said the City Attorney's office did not believe that the Board had jurisdiction to hear this request under 47-33.1; they were only authorized to hear matters involving the ULDR. In this instance, the applicant was citing 5-26(a), which allowed for a special exception for distance separation. Ms. Solomon explained that 5-26(a) provided for dining, restaurants with a capacity of 50 or more, and this establishment did not fall into that category. The applicant was requesting a variance, not a special exception.

Jason Crush, attorney, stated the City's policy had been to allow the Board of Adjustment to entertain these requests and he noted they were requesting a variance.

Chair Reynolds opened the public hearing regarding whether the Board had jurisdiction over this matter.

Jim Brady, Vice President of the Collee Hammock Homeowners Association, said their board had passed a motion to support the application. The applicant had met with the association twice and the board members felt the use was appropriate, subject to certain restrictions to which the applicant had agreed.

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

Ms. Solomon stated she found "nowhere in this ordinance that allows the Board of Adjustment to hear variances for distance separation under 5-26."

Mr. Nelson stated he did not want to undo 25 years' worth of the Board's decisions based on an oral opinion with no background. He said this would void hundreds of the Board's opinions and invalidate approvals it had granted over the years. He wanted the Board to discuss whether they believed they had jurisdiction.

Ms. Solomon stated this opinion had been arrived at with a great deal of care and consideration. She had been told that the reason this had been done for so many years was because of a City Attorney opinion, but she could find nothing in writing to support that opinion. Mr. Nelson felt that barring something from the City Commission stopping the Board from continuing, the Board had the right to make a decision.

Ms. Ellis was concerned that the Board had heard the same types of requests within the past few months with Ms. Solomon as the City's counsel, and she had not objected then. Ms. Ellis was also feeling ambushed because there had been no advanced knowledge of this problem. Since the request had been put on their agenda, she felt the Board should hear it.

Mr. Villeneuve agreed with Mr. Nelson. He asked if the applicant would be barred from making another request for two years if the Board heard this case and granted the request but the decision was appealed on the grounds that the Board did not have jurisdiction. Ms. Solomon said if the City fixed the ordinance, the applicant could re-apply under the new ordinance. She did not believe that a ruling that the Board did not have jurisdiction would constitute a denial.

Mr. Stresau felt they should delay until the City Attorney could make a presentation to the Board and worked on fixing the ordinance.

Mr. Crush did not have an opinion on the Board's jurisdiction. He asked the Board to consider either this application or a one-year non-conforming use permit while the City corrected the ordinance. Ms. Solomon said the non-conforming use permit request would be an amendment to the current application and anyone objecting to the original request had been notified of this hearing, so notice would be proper.

Mr. Crush amended the request to a temporary, non-conforming use permit request, with the conditions from the Collee Hammock Civic Association to which the applicant had agreed.

Motion made by Mr. Nelson, seconded by Ms. Ellis, to hear the request, based on the modification, without prejudice. In a voice vote, motion passed unanimously.

Mr. Crush stated the temporary, non-conforming use permit was being sought for Tiffany's Beauty Spa at 1507 East Las Olas Boulevard because the business did not comply with Section 5-26: distance between establishments. He explained that Tiffany's Spa was a high-end, full service spa and they wished to serve alcohol to spa clients, not to anyone coming in off the street. Mr. Crush stated any approval would be subject to the conditions from the Collee Hammock Civic Association. He submitted documents showing support from 180 Fort Lauderdale residents and 29 Las Olas businesses.

Ms. Solomon stated condition #7 regarding a third party beneficiary would be between the applicant and the Collee Hammock Civic Association. Mr. Brady explained that the civic association had an agreement with the applicant. Mr. Nelson said the civic association would have the same rights as any other third party to enforce the order; the City could not confer third party beneficiary rights to them. Mr. Brady insisted that if the order provided for the association to be a direct third-party beneficiary, this would

recognize the standing of the civic association (as a corporate entity) to enforce the regulation.

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

Motion made by Mr. Nelson, seconded by Ms. Ellis to approve the temporary non-conforming use permit for one year, subject to the following conditions:

1. Limited to a 2COP (wine & beer only);
2. Limited to The Tiffany Beauty Spa use and its current ownership;
3. The service of wine or beer on premises will be limited to the current business hours of Monday through Saturday, 10:00 a.m. – 7:00 p.m.;
4. No alcoholic beverages will be consumed outside nor taken outside The Tiffany Beauty Spa location;
5. Service of wine and beer shall only be in association with and accessory to the conduct of the spa and not as a primary use;
6. This shall not be deemed to and shall not run-with-the-land; and
7. Colee Hammock Homeowners Association, Inc., a Florida not for profit corporation, is intended and deemed by the Board of Adjustment and the Applicant and all claiming under and through the Applicant to be and shall be a direct third-party beneficiary with respect hereto, with standing and full right to enforce, by legal means, the conditions and restrictions imposed by this Order.

In a roll call vote, with Mr. Ostrau opposed, motion passed 7-1.

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CASE: B17038

OWNER: Jerome, Renel Arsel

AGENT: 2C Design- Carlos Castaneda

ADDRESS: 1300 NW 5 AVE

LEGAL DESCRIPTION: PROGRESSO 2-18 D LOT 13 LESS S 15 FOR ST BLK 77

ZONING: RDS-15

COMMISSION DIS: 2

APPEALING: **Section 47-5.32 (Table of dimensional requirements for Rds-15 districts)**
Requesting a variance to allow a minimum lot width of 35 feet whereas the code requires a minimum lot width of 50 feet. A reduction of 15 feet.

Section 47-5.32 (Table of dimensional requirements for Rds-15 districts)

Requesting a variance to allow a minimum lot size of 4730 square feet whereas the code requires a minimum lot size of 6000 square feet. A reduction of 1270 square feet.

Section 47-2.2.Q.3. (Measurements: *Sight Triangle*)

Requesting a variance to reduce the sight triangle to 25 feet by 10 feet to accommodate driveway parking whereas the code requires 25 feet by 25 feet from the point of property line intersection for a street to street sight triangle.

Section 47-19.5 (Fences, walls and hedges)

Requesting a variance to reduce the fence setback to 1.5 feet whereas the code requires a minimum setback of 3 feet from the property line abutting a street. A total setback reduction of 1.5 feet

Carlos Castaneda, agent, said he wished to purchase the lot to build a fully compliant two-story residential building.

Mr. Stresau stated a notice should have been posted on all rights of way but there was no sign posted on 13 Street. He asked staff if the applicant had provided the required affidavit of posting. Mr. Malik said the affidavit had been provided and he presented photos showing the sign was posted on 13 Street.

Mr. Castaneda described the variances he was requesting. Mr. Nelson explained that two lots on this street were subject to the expansion of the 13 Street right of way. Mr. Castaneda had researched this and discovered that the original plat had been 50 feet wide. He assumed the City had purchased 15 feet to widen 13 Street.

Mr. Stresau believed that the code allowed the applicant to ask the City Engineer to consider a reduction of the sight triangle from 25' to 15' X 15'. Mr. Malik thought that this would only apply to a sight triangle with mature trees, but Mr. Stresau thought the interpretation was more liberal than that. Mr. Malik said he could not answer this because he was not in Engineering. Mr. Castaneda said no structure would be built in the sight triangle and there was enough room to park in the driveway that there would be minimum impact from cars in the driveway.

Mr. Malik confirmed that the property could be accessed from 13 Street instead of 5 Avenue, but 13 Street was a much busier street. Mr. Stresau said this would avoid the sight triangle issue.

Mr. Nelson asked if there was a possible access way into the driveway that would not require the entire variance. For instance, could the driveway entrance be narrower. Mr. Castaneda thought this was possible.

Mr. Stresau wanted to know if the owner at the time 13 Street was widened had received any additional damages for the site being reduced to below what was required, necessitating this variance.

Ms. Solomon had found a case in Broward County regarding payment of severance damages in an eminent domain action. She said the value of the probability of getting a variance would have been subtracted from the severance damages. Therefore, they would have to know what the order provided for when the property was taken.

Mr. Castaneda said he did not own the property yet; he had a contract to purchase it. He was also offering 15% below the asking price; he was not getting a greatly diminished price because the lot could not be built on without a variance.

Chair Reynolds opened the public hearing.

Carlos Llanos, neighbor, said he had bought the lot opposite this one in 2004 from an owner who had built on it after the lot was reduced by the street widening. Mr. Llanos said Mr. Castaneda's design was very nice and would rejuvenate the area.

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

Mr. Stresau suggested voting on each request separately.

Motion made by Mr. Nelson, seconded by Mr. Ostrau, to approve the variance request for Section 47-5.32 regarding the square footage and width of the lot. In a roll call vote, motion passed 8-0.

Motion made by Mr. Nelson, seconded by Mr. Stresau, to approve the variance request for Section 47-19.5 regarding the fence setback.

Mr. Stresau noted that the code did not require a three-foot minimum setback, but a setback *averaging* three feet and permitted a portion of the fence along a public right of way to be at the edge of the sidewalk for no more than 20 feet. It was therefore possible to adjust the fence to provide the average three-foot setback.

Mr. Nelson amended his **motion** to approve the variance request for Section 47-19.5 regarding the fence setback to provide an average setback of 1.5 feet. Mr. Stresau seconded the amended motion. In a roll call vote motion passed 8-0.

Motion made by Mr. Nelson, seconded by Mr. McTigue, to approve the variance request for Section 47-2.2.Q.3 regarding the sight triangle based on the minimization of the lot's width caused by the widening of 13 Street, conditioned upon the applicant meeting with City Engineering staff to ensure that the driveway design minimized any interference with sight and safety issues.

Mr. Villeneuve suggested that instead of requiring the applicant to meet with Engineering, the Board could include the condition that while the driveway could encroach into the sight triangle, no cars could park in that area of the driveway. Mr. Castaneda explained that he intended to develop the site and sell it so he could not guarantee that no one would park in one area of the driveway. He agreed to meet with City Engineering staff to ensure that the driveway design minimized any impact on the sight triangle. He said it made sense to access the driveway from 5 Avenue instead of 13 Street.

Mr. Stresau pointed out that the lot was 135 feet deep and there was no reason the structure could not be positioned 10 feet farther to the east, which would allow plenty of space to park cars and not encroach into the sight triangle. He did not want the Board to approve any encroachment into the sight triangle unless a City engineer signed off on it.

In a roll call vote, **motion** passed 8-0.

Report and for the Good of the City

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Mr. Stresau recalled that he had raised an issue regarding sign posting at the previous meeting. He had examined the Land Development Code Section 47-27 Notice Procedures, and distributed a copy with important passages highlighted. He stated the code specified that the sign must remain on the property until final disposition of the application, including any deferral, re-hearing, appeal, request or review. One of the previous month's cases had not adhered to this requirement. On the FPL case the previous month, the affidavit of proof had not been provided. Mr. Stresau referred to a "catchall that the staff added as this ordinance went through the City Commission 30 years ago, 'Failure to provide these types of notices in accordance with these provisions shall not be grounds to invalidate the hearing.'" Mr. Stresau did not understand how the Land Development Code could require that signs be posted and later on state that it did not make any difference. He recommended that item #7 (the catchall which he quoted) be eliminated.

Mr. Malik stated they had done research and made changes to notice procedures and this did not invalidate what was done at the prior meeting. He still felt that the catchall should remain in the code.

Mr. Stresau said he did not want the Board to make decisions and risk that a member of the public would inform the City later that they had not been properly notified.

Mr. Fajardo reported staff had been working with the City Attorney's office on language to address the "content neutrality issue" in the sign ordinance. They would go back to the Planning and Zoning Board soon and then present the revisions to the City Commission in January or February. He agreed to have staff create a summary of all of the issues they were addressing.

Mr. Stresau stated he had sent an email asking staff to forward his comment to Chair Reynolds requesting that the Board and staff discuss the public sign posting issues prior to hearing agenda items this evening. He had been advised that this could not be done because it was a violation of the Sunshine Law. He pointed out that the Board's agenda did not have an item to approve the agenda, so in order to discuss a topic that affected the entire agenda, it should be presented before hearing cases. Mr. Stresau stated for eight months, members of the Infrastructure Task Force had been sending questions and comments to Public Works staff to be forwarded to the other Board Members. He said, "I would suggested that if my fairly limp request only to be heard before we started the agenda tonight to talk about the posting of signs and what the Land Development Code says, we are way out of whack on the Infrastructure Task Force."

Mr. Nelson asked that an agenda item be added the Board's January agenda to discuss posting of notice. Chair Reynolds agreed.

Communication to the City Commission

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Mr. Nelson said the Board had discussed the need to update the code related to spacing of liquor sale businesses. He said there should be a change to the code so that most of these businesses would no longer need to apply for a variance or special exception. Mr. Fajardo agreed staff could work on this if directed to do so by the City Commission.

Motion made by Mr. Nelson, seconded by Ms. Ellis, to ask the City Commission to instruct staff to research and recommend updates to the liquor spacing requirements under the City code to reflect the modern reality of businesses within the City of Fort Lauderdale. In a roll call vote, motion passed 8-0.

Other Items and Board Discussion

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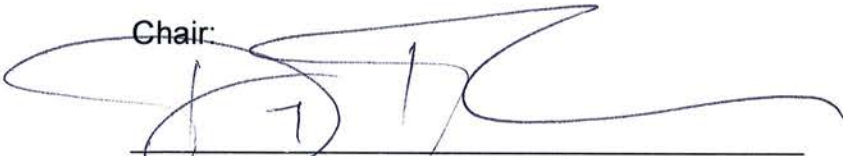
Chair Reynolds thanked Mr. Ostrau for his service to the Board.

2018 Meeting Schedule

Motion made by Mr. Nelson, seconded by Ms. Ellis, to approve the schedule as distributed. In a voice vote, motion passed unanimously.

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

Chair:

A handwritten signature in black ink, appearing to be 'Douglas Reynolds', written over a horizontal line. The signature is stylized and cursive.

Douglas Reynolds, Chair

Attest:

A handwritten signature in black ink, appearing to be 'Brigitte Chiappetta', written over a horizontal line. The signature is cursive and elegant.

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.