CITY OF FORT LAUDERDALE

BOARD OF ADJUSTMENT MEETING
CITY OF FORT LAUDERDALE
WEDNESDAY, MARCH 14, 2018 – 6:30 P.M.
CITY HALL CITY COMMISSION CHAMBERS
100 NORTH ANDREWS AVENUE
FORT LAUDERDALE, FLORIDA

		Cumulative Attendance 6/2017 through 5/2018	
Board Members	**Attendance**	**Present**	**Absent**
Douglas Reynolds, Chair	P	7	0
Howard Nelson, Vice Chair	P	5	1
Eugenia Ellis	P	7	0
Blaise McGinley	P	7	0
Patrick McTigue	P	7	0
Fred Stresau	P	6	1
S. Carey Villeneuve	P	4	3
Alternates			
John Aurelius	P	3	0
Chadwick Maxey	P	2	0

Staff
Lynn Solomon, Assistant City Attorney
Mohammed Malik, Zoning Administrator
Burt Ford, Interim Zoning Chief
Teresa Wright, Admin Aide
Anthony Fajardo, Director, Department of Sustainable Development
Chris Cooper, Deputy Director, Department of Sustainable Development
Brigitte Chiappetta, 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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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.

Mr. Fajardo introduced Chris Cooper, new Deputy Director of the Department of Sustainable Development.

Approval of Minutes – February 2018

Motion made by Mr. Nelson, seconded by Ms. Ellis to approve the Board's February 2018 minutes. In a voice vote, motion passed unanimously.

1. Index

CASE:	**B18003**
OWNER:	Prime International Investments LLC
ADDRESS:	1216 CHATEAU PARK DRIVE
LEGAL DESCRIPTION:	LAUDERDALE MANORS ADD-REV PLAT IN BLKS K,L,M,N & Q 32-1 B LOT 22 BLK L
ZONING:	RS-8
COMMISSION DISTRICT:	3

APPEALING: **Section 47-5.31. Table of dimensional requirements for the RS-8 district, Corner Yard Setback.** Requesting a variance for the required corner yard of an existing after the fact enclosed carport converted into habitable space to be reduced to 14.37 feet from 20 feet (80 ft. wide x 25% = 20 ft. corner yard) at the west building corner, for a total reduction of 5.63 feet, tapering down to 0 feet, a total area of 340 square feet, whereas the table of dimensional requirements for RS-8 district requires a minimum of 25 % lot width, but not greater than 25 feet.

Donovan Pessoa, engineer, said the owner had never been informed that this was a non-conforming structure until they were told the converted garage was encroaching into the setback during plan review. Without the additional habitable space, Mr. Pessoa said this would be a two-bedroom, one-bath home, which was "almost…useless." They wanted to make the structure more usable.

Mr. Pessoa said in his experience, if a structure was permitted when it was built, even if it encroached into the setback, it was allowed to stay.

Mr. Villeneuve asked if the garage had already been converted into a bedroom/bath and Mr. Pessoa stated the work had not been done yet. Nikelle Barbosa, owner of Prime International Investments, said the previous owner had enclosed the carport without a permit. She bought the property with code violations and liens on it and had the plans drawn to pull permits. The plans were approved by Building and Engineering but failed Zoning.

Mr. Nelson reviewed the plans and pointed out that when the previous owner had enclosed the carport, it had been enlarged.

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.

Mr. Stresau said there were four corner-lot homes in the immediate vicinity that had less than the 25' side setback and he had asked staff to perform some research. Mr. Malik said the setback in 1948, when this house was originally permitted, was 25% of the width of the lot, but did not need to be more than 25 feet, the same as today. The original building was permitted and built in 1953-54. The previous owner had not pulled permits to enclose the carport.

Mr. Nelson said previous plans did not all seem to show the carport; one appeared to show just a slab. He was reluctant to grant a variance for an increase in a non-conforming structure.

Mr. Villeneuve said it would not be possible to remove "a tiny sliver of a triangle" and if the variance were not granted, the house would probably stay vacant and contribute to blight.

Mr. Stresau recalled in 2002 the BOA had asked the City Commission for a workshop to discuss whether the Commission wanted the Board to turn down every application that did not meet the criteria. The Commission had responded that the Board should consider whether or not the request hurt the neighborhood and whether there was neighborhood sympathy for the request. He felt this was a case in which the applicant should be granted the variance.

Ms. Barbosa stated she had put the notice signs up and neighbors were concerned because the house had been empty. She said granting the variance would not adversely affect any neighbor.

Motion made by Mr. Nelson, seconded by Ms. Ellis, to approve. In a roll call vote, motion passed 7-0.

2. Index

CASE:	**B18004**
OWNER:	Deborah Acker
ADDRESS:	3624 RIVERLAND RD
LEGAL DESCRIPTION:	LAUDERDALE ISLES NO 2-BLK 7 36-37 B LOT 66
ZONING:	RS-6.85A
COMMISSION DISTRICT:	4
APPEALING:	**Section 47-39.A.1.b.12.(a)** ***Docks and moorings*** Requesting a Variance to allow an after the fact dock 15.5 feet into the waterway as measured from the property line, extending an additional 10.5 feet into the waterway, whereas the code states no dock shall project more than 5 feet into any waterway beyond the property line along the waterway or the established bulkhead line. **Section 47-39.A.1.b.12.(a)** ***Docks and moorings*** Requesting a variance to allow an after the fact dock to be located directly along the eastern property line extending 10 feet into the setback, whereas the code states no dock shall extend closer than 10 feet to the plot line of any other residentially-zoned property.

Deborah Acker, owner, said she needed the longer dock because her husband was very ill and could not do very much anymore, but he experienced happy memories when

friends took him out in their boat. She said the finger dock had been there when they purchased the home in 2010. Ms. Acker stated the adjacent neighbor had no issue with the dock as it was and it did not disrupt boating traffic. She added that since they were at the end of the canal, debris collected there and she cleaned it at her own expense.

Mr. Nelson explained that since the rear edge of the property was only 19.3 feet wide and 10 feet was required on either side, no dock could be built here per the code. Ms. Ellis recalled that when these properties were annexed into the City, it was with the existing docks.

Chair Reynolds opened the public hearing.

John Aurelius (speaking as a member of the public) urged the Board to approve the variance only for the length of Mr. Acker's life. He also suggested that all property owners - Ms. Acker and her two children - should sign a code petition or a joinder.

Lance Pehlman, neighbor, said he supported Ms. Acker's request. He informed Mr. Nelson that Ms. Acker's dock did not interfere with his use of his dock.

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. Malik said he had just received a letter from the neighbor. Mr. Ford read the letter from Frank Hodgeson, who was concerned that if the variance were granted, other property owners would do the same.

Motion made by Mr. Nelson, seconded by Ms. Ellis to approve. In a roll call vote, motion passed 7-0.

3. Index

CASE:	**B18005**
OWNER:	Alhambra Place Condominium Association, Inc.
ADDRESS:	209 N BIRCH RD
LEGAL DESCRIPTION:	ALHAMBRA PLACE
ZONING:	IOA
COMMISSION DISTRICT:	2
APPEALING:	**Section 47-12.5.D.1.a (Intracoastal Overlook Area District, Setbacks)** Requesting a variance for a new entry porte-cochere to reduce the front yard setback from 20 feet to 2.58 feet from

the front property line for a total reduction of 17.42 feet, whereas the code requires a 20-foot front yard setback.

Chair Reynolds recused himself from this item, citing a conflict and Mr. Maxey joined the Board on the dais.

Stephanie Toothaker, attorney, provided a Power Point presentation, a copy of which is attached to these minutes for the public record.

Mr. Toothaker said this would be permitted if it were an awning. She stated a glass porte-cochere was more appropriate for this building.

Ms. Toothaker said this was obviously not a self-created hardship. She described how water poured directly off the roof in the rain. The architects had tried to design the porte-cochere to be as inconspicuous as possible and to require the least variance possible.

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

Mr. Malik agreed that if this were an awning, it would not require a variance to intrude into the setback.

Motion made by Ms. Ellis, seconded by Mr. McTigue to approve. In a roll call vote, motion passed 6-1 with Mr. Stresau opposed.

Chair Reynolds returned to the dais and Mr. Maxey stepped down.

Communication to the City Commission Index

Mr. Malik said the Board's last communication to the City Commission - regarding voting - would be sent to the Commission on March 20.

Report and for the Good of the City Index

Mr. Stresau read from the Land Development Code, which stated the City Commission, by resolution, set the rules and procedures for the Board of Adjustment. He felt this meant the City Attorney could not tell the Board how to vote, although he believed the Commission might well defer to the City Attorney's opinion. Until the new Commission discussed this, he wanted the Board to continue voting as they had for the past 35 years - by affirmative motion.

Ms. Solomon had distributed a copy of a memo from the City Attorney regarding voting protocols. She stated the City attorney had addressed the Board's concerns and asked

the City Commission to adopt certain rules from Robert's Rules of Order. She said they were seeking clarity. For instance, if a motion were made to deny an application and it failed, did this automatically assume that it was approved?

Chair Reynolds asked if Robert's Rules of Order should be followed by the Board. He asked if anyone had surveyed other municipalities in the State to see if they had their own protocols. Ms. Solomon said they had not, but there were attorneys in the City Attorney's office who had worked in other municipalities. The procedures she had distributed were those used by Manatee County. Ms. Solomon said, "We're not saying which rules to adopt; we're giving you options here."

Mr. Nelson said he was having a hard time with the concept of selecting an option, and he thought the default was Robert's Rules of Order: making motions in the affirmative and failure of that motion was a failure to grant affirmative relief.

Mr. Maxey informed the Board that he had attended the Planning and Zoning Board meeting on February 21 and the board's implementation of the new voting rule, "may have changed the outcome of the action that was occurring that night." He encouraged Board members to watch the video of the meeting to see how the Planning and Zoning Board had struggled with this and made a decision that may have changed the outcome of a site plan approval.

Mr. Nelson asked if any Board member was uncomfortable continuing to vote as they had been. Ms. Ellis was not uncomfortable, but feared that if other Boards were voting differently, the Board could be vulnerable to having to rehear a case.

Mr. Nelson recalled the Board had asked staff to talk to the Commission regarding liquor distance cases and he believed there had been no action. He urged the City Attorney to seek an Attorney General's opinion, in the absence of the City Commission taking action. Ms. Ellis suggested they follow the same path they had been using unless they were instructed otherwise. Mr. Malik said the City was not freezing applications but they were not encouraging them until this was resolved.

Mr. Stresau referred to Code Section C13-18 that stated the City Commission may waive the limitations of the various Sections they had considered this evening for case B18004 "under extraordinary circumstances." He asked if Staff had offered that as an alternative to Ms. Acker to save her $600 application to come to the Board of Adjustment. Mr. Malik said a former Assistant City Attorney had explained to him that there had been an agreement when this area was annexed that a permit for any structure already existing would be granted, but that this agreement was supposed to sunset after two years. After two years, property owners must apply for a variance. He added that in the City, a dock could go up to the property line on both sides; in an annexed area, there must be a ten-foot setback. In annexed areas, the dock could only

be five feet wide; in the City, the width used to be up to 10 feet wide but this had been changed to 25% or 25 feet.

Mr. Nelson was unclear if the Commission's ability to waive the rules would have sunsetted after the two years. Mr. Malik agreed to look into this and report back to the Board.

Other Items and Board Discussion Index

There being no further business to come before the Board, the meeting adjourned at 7:51 pm.

Chair:

~~Douglas Reynolds~~, Chair
Howard Nelson

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.

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE
KAYNOCAS DOUGLAS	BOARD OF ADJUSTMENT
MAILING ADDRESS	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:
2756 NE 37th DRIVE	☐ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
CITY COUNTY	NAME OF POLITICAL SUBDIVISION:
FORT LAUDERDALE, FLA 33308	CITY OF FORT LAUDERDALE
DATE ON WHICH VOTE OCCURRED	MY POSITION IS:
MARCH 14, 2018	☐ ELECTIVE ☒ APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office MUST ABSTAIN from voting on a measure which would inure to his or her special private gain or loss. Each elected or appointed local officer also MUST ABSTAIN from knowingly voting on a measure which would inure to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent, subsidiary, or sibling organization of a principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies (CRAs) under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * * * * * * * * * * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * * * * * * * * * * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you are not prohibited by Section 112.3143 from otherwise participating in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on page 2)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Douglas Reyadigo, hereby disclose that on March 14, 20 18:

(a) A measure came or will come before my agency which (check one or more)

___ inured to my special private gain or loss;

X inured to the special gain or loss of my business associate, Law Firm Tripp Scott PA;

___ inured to the special gain or loss of my relative, _____;

___ inured to the special gain or loss of _____, by whom I am retained; or

___ inured to the special gain or loss of _____, which is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

Applicant Alhambra Place Condo Assn (Case No 18005) is a client of my Law Firm Tripp Scott, PA.

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

3/14/2018
Date Filed

Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED $10,000.