



CITY OF FORT LAUDERDALE

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

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

Staff

Lynn Solomon, Assistant City Attorney
Mohammed Malik, Zoning Administrator
Burt Ford, Interim Zoning Chief
Teresa Wright, Admin Aide
Brigitte Chiappetta, Prototype, Inc.

Communication to the City Commission

Motion made by Chair Reynolds, seconded by Mr. Stresau, to ask the City to provide a written clarification of the new voting policy that required: 1. Passage of a motion “to deny” in order to deny a request (not just the failure of a motion “to approve;” 2. That both a motion “to approve” and a motion “to deny” must have a supermajority in order to pass; 3. To address the situation of when there was no supermajority for an approval and there was no supermajority for a denial. In a voice vote, motion passed unanimously.

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 – January 2018

Motion made by Mr. Stresau, seconded by Ms. Ellis to approve the Board's January 2018 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 R/W AKA:POR LOT 13 & 14 BLK 26 OF COLEE HAMMOCK; DESIGNATED AS W 10 OF PAR 2,LESS S 10 FOR R/W BLK 26

ZONING: B-1

COMMISSION DISTRICT: 4

APPLICATION:

Sec. 47-24.12.6.A (Variances, special exceptions and interpretation of Unified Land Development Regulations).
Requesting a Temporary Nonconforming Use Permit for the sale of Alcoholic Beverages in a licensed vapor shop which states:

Criteria—Temporary nonconforming use permit. A temporary nonconforming use permit may be granted upon demonstration by a preponderance of the evidence of the following criteria:

- a. Granting of the temporary nonconforming use permit shall not be incompatible with adjoining properties or the surrounding neighborhood or otherwise contrary to the public interest.

(Deferred from December 13, 2017 meeting)

Keith Long, attorney representing the tenant, Dirty Penny Vape and Ale, stated they were requesting a temporary, non-conforming use permit. He explained that this was a retail outlet for vaping pens, customized devices and vaping liquid. He described the interior, which was 10' X 50' and included a "bar" where patrons would sample devices and liquid. The shop also wanted to offer craft beer to enhance the tasting experience.

Mr. Long said the code stated that the non-conforming use permit may be granted if the permit was not incompatible with adjoining properties/neighborhood or was otherwise contrary to the public interest.

Mr. Long displayed an aerial photo of the neighborhood and said two adjacent establishments that were within the 300-foot separation requirement and had triggered this request.

Mr. Long stated this would be compatible with the neighborhood and the beer sales would be secondary to the vaping equipment/supplies retail sales. He did not envision the alcohol sales being contrary to the public interest. He added that they had spoken with the All Saints' Church, which was in the 500' distance requirement, and they had decided to remain neutral to this request.

Mr. Aurelius said there was already a sign on the business naming it Vape and Ale, even though no alcohol sales were permitted yet. Mr. Long explained vaping to Mr. Aurelius and said the fumes were non-toxic and this was an alternative to smoking cigarettes.

Mr. Villeneuve asked for proof to Mr. Long's claim that the retail sales would far exceed the alcohol sales. He also noted that some of the nearby businesses that sold alcohol were not primarily bars. Mr. Long said many restaurants had a proportion of food to alcohol sales of 60%/40%. He stated this business was not intended to be a bar; it would rely on sales of vaping liquids and devices, which could be very expensive. He said they would only stock approximately 100 craft beers at a time.

Mr. Long had distributed a petition of support from nearby businesses and individuals and said there was also a letter of objection from neighboring businesses. He pointed out that there was one business that had signed both the support petition and the letter of objection.

Mr. Stresau noted the application lacked a site plan and Mr. Long explained that inside, there were eight seats at the bar area and two 4-seat tables; there would be no outside seating.

Mr. Villeneuve asked how many different types of beer would be stocked and Mr. Long guessed it would be 10-15.

Chair Reynolds opened the public hearing.

Jacqueline Scott said she believed in property rights and stated she did not believe that vaping had been studied enough to be proven safe. She felt the non-conforming use permit was a loophole the business wanted to use to allow them to sell liquor.

Ms. Scott read from the code and stated this was "a new use and therefore outside the directive and parameters of the very section under which you purport to act." She was aware that the Board had granted other such permits and she did not like the fact that they were circumventing the normal rules regarding liquor sales. She added that the more the Board allowed this, the more problems it created for the neighborhood such as parking.

Jerry Jordan, President of the Collee Hammock Neighborhood Association, said this historic neighborhood was the second oldest in the City. The lane reduction on Las Olas had resulted in cut through traffic in their neighborhood and created serious pedestrian safety concerns. Permit parking for the neighborhood, which had been passed by the City Commission in November, had still not been implemented. Mr. Jordan felt there were too many businesses adding an alcohol component on Las Olas and this would only add to the parking issues. These problems were contributing to the deterioration of the neighborhood's quality of life. Mr. Jordan said the majority of Collee Hammock board of directors had voted to deny this request. He asked the Board to deny it.

Pat Patel, owner of Cigar Bar at 1219 East Las Olas Boulevard, said his business had been here since 1997 without incident. He objected to this request and said they should not have built the bar before getting the permit; they had chairs set up outside, which was illegal, and Mr. Long had presented "a lot of false information" regarding the safety of vaping. Mr. Patel said there was an Alcoholics Anonymous club outside the back door of this business and the people from the meetings could use the rear door to enter and purchase beer. Mr. Patel added that the vaping product was "purely a product for minors." Mr. Patel confirmed that he had a 4COP license, a bar license and a packaged license for his business. He also allowed smoking inside his business.

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. Long reiterated that there had been no studies proving that the nicotine or other components of the vapor were unsafe. Regarding Ms. Scott's claim that they were trying to circumvent the system, Mr. Long pointed out that there were several clusters of businesses within 150-feet of each other that had requested the same permit from the Board. He recalled that at a recent meeting, someone had brought up the question of the Board's jurisdiction to hear this type of request and the head of that neighborhood's HOA had spoken in favor of that non-conforming use permit. He added that parking problems were not part of the criteria for this request: that was a zoning issue.

Ms. Scott had shown a photo of tables outside the business and Mr. Long said the permit would not allow alcohol to be consumed outside and his client would agree to a condition that there would be no outdoor seating at all.

Mr. McGinley asked what the regulatory device was for keeping track of alcohol and vaping sales and how this would be enforced. Mr. Malik explained this was a State requirement and the State performed audits.

Regarding the Board's purview over such requests, Ms. Solomon said the City had the ability to delegate authority to the Board to make these decisions, provided they set criteria, which they had. She and Anthony Fajardo, Director, Department of Sustainable Development, had been discussing amending the ordinance and had been considering removing the distance separation for bars. Ms. Ellis pointed out that the Board had heard these requests all over the City, not just on Las Olas. Ms. Solomon said this would only be for one year and within that year, they hoped to have put in a fix to judge this by the special exception standard, which was very similar to the temporary, non-conforming use criteria: the compatibility issue.

Mr. Villeneuve wished they had seen a menu to ensure this would be a high-end store to be compatible. He also wished they could limit the permit to six months, so they could assess the actual business activities, or that they could include a condition that the beer could only be sold to vaping customers.

Motion made by Mr. Aurelius, seconded by Ms. Ellis, to approve. In a roll call vote, motion failed 4-3 with Mr. Stresau, Mr. McTigue, Mr. Aurelius and Chair Reynolds opposed.

Motion made by Mr. Aurelius, seconded by Mr. Stresau, to deny. In a roll call vote, motion passed 5-2 with Mr. Villeneuve and Mr. McGinley opposed.

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CASE: B18002

OWNER: Jaegermeister I LLC % Danac Corp/ Tesla

AGENT: Leland Greenfield

ADDRESS: 2829 N FEDERAL HIGHWAY

LEGAL DESCRIPTION: CORAL RIDGE PROPERTIES 28-8 B POR LOTS 6&7 & TR B DESC AS:BEG SE COR LOT 6,NELY 200 ALG E/L LOT 6,NWLY 532.94 TO PT 80 E OF W/L OF TR B,SLY 345,SELY 205, NELY 100,SELY 250,NELY 50 TO POB

ZONING: B-1

COMMISSION DISTRICT: 1

APPEALING: **Section 47-22.3.G (General regulations: flat signs/wall signs).**

Requesting a variance to allow a flat wall sign installed 3 foot 2 inches above the roof deck, whereas the code states the sign can be no more than 1 foot 6 inches above the roof deck, which is an increase of 1 foot 8 inches above the roof deck.

Leland Greenfield, representing the new tenant, stated the request was the result of a site plan level 1 administrative review, when an official had commented a variance was needed. He explained that the proposed sign height was actually lower than the current sign and that it would be consistent with the neighborhood and would have no negative impact.

Mr. Greenfield displayed photos of the current sign and a rendering of the proposed signage and said the new sign would be half as high above the roof deck. He said the City had already approved a building permit for the sign.

Mr. Greenfield explained to Mr. Aurelius that the roof line facade would be straightened. Mr. Stresau said he and staff had an extensive conversation about where the "roof deck" was and asked Mr. Greenfield where it was. Mr. Greenfield stated it was at the 28'4" main building roof deck.

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 referred to the definition of a flat wall sign, "Any sign erected flat against the face of or not more than 18' from the face of an outside wall of any building, and not extending 18" above the wall upon which it was placed." Mr. Greenfield stated this sign would be installed flat on the entrance portal. Mr. Stresau said this sign did not project above the roof and it met the requirement to be flat. He wondered why this request was here.

Mr. Malik said, "This has been going on for more than three decades; the interpretation, it's not new; I'm just upholding what was done before." Any sign more than 18" above the principal structure of the roof was a "roof sign."

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

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Chair Reynold asked Ms. Solomon why the Board that heeded to vote to deny the first application after the motion to approve it had failed. Ms. Solomon said it had come to her attention that "there must be an affirmative vote either in the positive or the negative." A motion to approve or deny must pass by a super majority vote, "if it doesn't pass, then officially, this Board has not taken any action." The Planning and Zoning Board had been instructed to vote this way as well. Ms., Solomon informed Chair Reynolds that she had no written opinion on this, but, "The written opinion is not going to be any different than what I'm saying." This change was intended to "bring clarity to the process; to make it certain that this Board did take an affirmative action." She could not address how this could affect what had happened in the past and she had not looked at that issue.

Since Ms. Solomon had indicated that a motion to deny or approve required a super majority to pass, Mr. Villeneuve asked what would happen if Ms. Ellis had not changed

her vote earlier and Ms. Solomon stated, "It's my understanding that we would have to stay here until somebody changed their mind."

Mr. McTigue recalled that when he served on the Planning and Zoning Board, they had been instructed that motions should be made in the positive (to approve). Mr. Stresau stated this had been the rule as long as he could recall. He also recalled that the Board had been instructed in the past to state the reason they were voting to deny. He asked Ms. Solomon if this new voting rule applied to the City Commission. Ms. Solomon believed it did.

Chair Reynolds felt that requiring the motion to deny to have a supermajority did not make any sense because an applicant should have the burden to get a positive super majority in favor. What would happen if the was *not* a super majority to deny, but there was a supermajority *not* to approve. Staying until a Board member changed his/her mind made no sense and could require the Board to stay until all hours. Chair Reynolds requested a written opinion from the City Attorney regarding this. Mr. Stresau stated they would not get an answer from the City Attorney. The Board should ask the City Commission to direct the City Attorney to provide the written opinion.

Mr. Stresau recalled that the previous month, when they were considering the sign for the Sixt car rental offices, the staff had indicated that the Executive Airport Authority had supported the sign, but the Mayor had indicated it was not appropriate for City Staff to make any recommendations.

Mr. Stresau recalled that the Board had spent almost four months debating this and at a City Commission conference meeting, the Commission agreed it was not appropriate for staff to make a recommendation to the Board of Adjustment.

Communication to the City Commission

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Motion made by Chair Reynolds, seconded by Mr. Stresau, to ask the City to provide a written clarification of the new voting policy that required: 1. Passage of a motion "to deny" in order to deny a request (not just the failure of a motion "to approve;"; 2. That both a motion "to approve" and a motion "to deny" must have a supermajority in order to pass; 3. To address the situation of when there was no supermajority for an approval and there was no supermajority for a denial. In a voice vote, motion passed unanimously.

Other Items and Board Discussion

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Ms. Solomon reported staff was moving forward with a sign ordinance dealing with content neutrality.

There being no further business to come before the Board, the meeting adjourned at 8:00 pm.

Chair:



Douglas Reynolds, Chair

Attest:



Brigitte Cioppetta
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.