



CITY OF FORT LAUDERDALE

**BOARD OF ADJUSTMENT MEETING
CITY OF FORT LAUDERDALE
MARCH 13, 2019 – 6:30 P.M.
CITY HALL CITY COMMISSION CHAMBERS
100 NORTH ANDREWS AVENUE
FORT LAUDERDALE, FLORIDA**

Board Members	Attendance	Cumulative Attendance 6/2018 through 5/2019	
		Present	Absent
Douglas Reynolds, Chair	P	8	0
Howard Nelson, Vice Chair	P	7	1
Eugenia Ellis	P	7	1
Blaise McGinley	P	7	1
Patrick McTigue	P	7	1
S. Carey Villeneuve	A	6	2
Chadwick Maxey	P	5	2
Alternates			
Chip Falkanger	P	6	1
Shelley Eichner	P	1	0

Staff

D Wayne Spence, Assistant City Attorney
 Mohammed Malik, Zoning Administrator
 Nadia Martin, Clerk III
 Burt Ford, Zoning Chief
 Michael Rinkus, Plans Examiner
 Chakila Crawford-Williams, Administrative Assistant
 Jamie Opperee, Prototype, Inc.

Communication to the City Commission

Motion made by Mr. Nelson, seconded by Ms. Ellis, to send the following communication to the City Commission:

The Board of Adjustment supports the modification to the liquor spacing requirements to allow for special exceptions to be heard by the Board of Adjustment on all liquor spacing requirements under 300 feet. 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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2.	B19-003	Scott S. Liberman/ Brent M. Reitman	2	7
3.	B19-005	David Stanton; Julie Skiver Stanton/ Stephanie Toothaker	2	3
4.	B19-007	TRICERA FLAGLER HIVE LLC/ Jason Crush Communication to the City Commission For the Good of the City Other Items and Board Discussion	2	2 11 11 11

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. Roll was called and a quorum determined to be present.

Approval of Minutes – February 2019

Motion made by Mr. Nelson, seconded by Mr. McGinley to approve the Board’s February 2019 minutes. In a voice vote, motion passed unanimously.

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CASE: B19007

OWNER: TRICERA FLAGLER HIVE LLC

AGENT: Jason Crush, P.A.

ADDRESS: 900 N. Flagler Drive

LEGAL DESCRIPTION: PROGRESSO 2-18 D TRIANGULAR TR N OF BLK 254,E OF FEC R/W & W OF BLK 216 LESS ST R/W

ZONING DISTRICT: RAC-UV

COMMISSION DISTRICT: 2

Section 5-26 (b) (Distance between establishments)

REQUESTING:

Requesting a special exception to allow the sale of alcohol at a distance of 30 feet from another establishment that sells alcohol, where the Code of Ordinances requires a minimum distance of 300 feet separating establishments that sell alcoholic or intoxicating beverages. This special exception results in a reduction of 270 feet from the required 300 feet.

Jason Crush, attorney, said this would be a high-end Italian restaurant that would be 30 feet [not the required 300] from Glitch Bar, so they needed the special exception. The special exception required the Board find it not to be contrary to the public interest and Mr. Crush stated this was a bona fide restaurant, the sale of alcohol would be secondary to the sale of food and they had neighborhood support, including from the Flagler Village Civic Association, which had provided a letter of support.

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 special exception request as presented. In a voice vote, motion passed 7-0.

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CASE: B19005
OWNER: David Stanton; Julie Skiver Stanton
AGENT: Stephanie Toothaker
ADDRESS: 748 NE 17th Way
LEGAL DESCRIPTION: AMENDED PLAT VICTORIA HIGHLANDS 15-9 B PORT OF BLK 4 DESC AS: BEG AT ELY MOST NW COR OS SAID BLK 4; E 49.67, S 98.13; W 64.50 N 82.65 TO PT OF CUR NELY 23.40 TO POB
ZONING DISTRICT: RCs-15
COMMISSION DISTRICT: 2
REQUESTING: Sec. 47-5.33 – Table of Dimensional Requirements
1. Requesting a variance from the 15' minimum rear yard requirement of Sec. 47.5.33 Table of Dimensional Requirements to allow an existing structure to maintain a 3.25 foot rear yard.
2. Requesting a variance from the 15' minimum rear yard

requirement of Sec. 47.5.33 Table of Dimensional Requirements to allow the construction of a new addition with a rear yard of 6.08 feet.

Chair Reynolds recused himself for this case and Ms. Eichner took his place on the dais.

Stephanie Toothaker, attorney for the applicant, gave a Power Point presentation, a copy of which is attached to these minutes for the public record. She described the variance requests and the history of the property being split into separate parcels. As a result of the lot split, the home had become a non-conforming structure.

Ms. Toothaker referred to the plans for the addition and said they had moved the addition as far away from the property line as possible but it was still within the rear yard setback.

Ms. Toothaker said the owner had reported no issues after conversations with his neighbors and they had received no letters of objection after posting the signs regarding the variance request.

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.

Ms. Toothaker confirmed that the home was already on the lot when it was split, so there was no question about the valid building permit for the existing home.

Motion made by Ms. Ellis, seconded by Mr. McTigue to approve the variance for the existing home as presented because the applicant had demonstrated by a preponderance of the evidence that the criteria for a variance had been met. In a roll call vote, motion passed 7-0 with Chair Reynolds abstaining.

Mr. Nelson asked about the hardship regarding the proposed addition and Ms. Toothaker said the owners were unaware that the entire home required a variance until they wanted to build the addition. They had minimized the addition as much as possible and she noted that there was nowhere else on the lot that an addition could be situated to connect with the existing home without reconfiguring the interior of the existing home.

Ms. Toothaker confirmed for Mr. Falkanger that the addition would comply with the side setback.

Mr. Nelson suggested the addition could be moved in three more feet. Ms. Toothaker said the owners were not present, so she could not ask their opinion.

Ms. Eichner pointed out that the Board had just granted a variance for the existing home to have a three-foot setback and this request for the new addition would have a six-foot setback.

Mr. Nelson said he did not have a problem with the hardship issue, but with whether this was the minimum variance necessary.

Mr. Maxey did not feel a three-foot adjustment would have any effect on blocking views.

Motion made by Mr. Maxey, seconded by Ms. Ellis to approve the variance for the proposed addition as requested because the applicant had demonstrated by a preponderance of the evidence that the criteria for a variance had been met. In a roll call vote, motion passed 6-1 with Mr. Nelson opposed and Chair Reynolds abstaining.

Ms. Eichner left that dais and Chair Reynolds returned.

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CASE:	B19002
OWNER:	Daniel Ellis
AGENT:	N/A
ADDRESS:	1700 NE 7th Avenue
LEGAL DESCRIPTION:	MIDDLE RIVER TERRACE AMD PLAT 30-24 B LOT 19 BLK 3
ZONING DISTRICT:	RS-8
COMMISSION DISTRICT:	2

1. Sec. 47-5.31- Table of Dimensional Requirements for RS-8 Zoning District

REQUESTING:

2. Sec. 47-19.1.L Except as otherwise provided in this Section 47-19, the following provisions shall apply. No accessory structure shall be built in the front yard more than one (1) story, or thirteen (13) feet in height. The following accessory buildings will be permitted in residential zoning districts: Private garage, garden house, or structure of the same classification. Within a residential zoning district, no accessory use or structure shall be greater in height than the principal building and in no instance shall the height of an accessory use or structure be greater than twenty-four

(24) feet in height except that on lots of greater area than one (1) acre, an accessory building shall not be more than thirty-five (35) feet in height; providing it is located not less than thirty (30) feet from every lot line. The total areas of accessory buildings shall not be greater than thirty-five percent (35%) of the rear yard area. No accessory buildings shall be built closer than ten (10) feet to any rear line which is a street or alley line, or, in the case of corner lots, closer than fifteen (15) feet to any side street line except as otherwise provided herein.

1. Requesting a variance to allow the ATF detached garage/carport to be constructed within the required 25' front yard, measured from the front property line, to 18.15', a reduction of 6.85'. Also requesting a variance to allow the ATF, garage/carport to be constructed within the required 5' side yard to 1.45', measured from the side property line, a reduction of 3.55'.
2. Requesting a variance to allow the ATF, detached garage/carport to be constructed at a total height of 14.18' whereas the code limits the height to 13', an increase in total height of 1.18'. Also requesting a variance in the same section for the ATF, detached garage/carport to be constructed at a height greater than the principle structure, 14.8', whereas the principal structure is only 11.1' which is an increase in total height of 3.7'.

Daniel Ellis, owner, stated the structure was to protect his boat.

Chair Reynolds stated neighbors had objected to Mr. Ellis's request. Mr. Ellis explained the structure had been there for almost eight years and he had never heard a complaint from any neighbor.

Mr. Ellis said he needed to keep the boat behind the fence to prevent the boat from being vandalized and to protect it from the elements. He said the boat was 17 feet long and seven feet tall. The structure was 14 feet tall.

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 variance as requested. In a roll call vote, motion **failed** 0-7.

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CASE:	B19003
APPLICANT:	Scott S. Liberman
AGENT:	Brent M. Reitman, Esq.
ADDRESS:	831 Solar Isle Drive, Fort Lauderdale
LEGAL DESCRIPTION:	RIVIERA 6-17 B LOT 1, LOT 2 E1/2, LOT 4 S 25 OF W 25, BLK 4
ZONING DISTRICT:	RS-8
COMMISSION DISTRICT:	2
APPEALING:	Appealing the application of Sec. 47-19.3. - Boat slips docks, boat davits, hoists and similar mooring structures of the Unified Land Development Regulations to property located at 831 Solar Isle Drive, Fort Lauderdale, Fl. 33301 pursuant to Sec.47-24.12(B)

James Brady, attorney for the Mavons, the owners of the boatlift, had filed a motion to intervene on their behalf.

Motion made by Mr. Nelson, seconded by Mr. McTigue, to grant Mr. Brady's motion to intervene on his clients' behalf. In a voice vote, motion passed unanimously.

Andrew Schein, attorney for the applicant, said they needed the Board's interpretation of one code provision and how the City had applied it. The code provision was ULDR Section 47-19.3, which stated no boat slips, docks, davits, hoists or similar mooring structures may be constructed by any owner on any lot unless a principal building exists on such lot. There was another code provision that allowed the City Commission to waive the principal building requirement, but this had not been done. Mr. Schein displayed an aerial photo of the area.

Mr. Schein explained that in 2010, the City had issued a permit to create a notch in the sea wall for a boat basin, but then refused to conduct a final inspection, stating the City had issued the permit in error, since there was no principal structure on the property.

The court had ruled in favor of the lots owner, Mr. Mavon on a doctrine of equitable estoppel: Mr. Mavon had incurred substantial expenses, based on reliance on the City's permit.

Mr. Schein informed the Board that Mr. Mavon had submitted a permit application in 2018 for a boatlift in the basin and the City had issued it. Mr. Schein's client, Mr. Liberman, whose property was immediately adjacent to the lot, had filed suit, stating the issuance of the permit was contrary to the ULDR because no principal structure existed on the lot [the same reason the City had cited against allowing a final inspection in 2010]. The City had filed a motion to dismiss Mr. Liberman's suit, stating he had not exhausted all administrative remedies, i.e., coming before the Board of Adjustment for an interpretation.

Mr. Schein said the City had argued that the boat hoist application was not contrary to the ULDR because the Mavon's home and the boat basin had the same folio number with the Broward County Property Appraiser (BCPA). He explained that the property appraiser allowed this only for tax roll purposes, not to skirt zoning regulations. Mr. Schein said the City did not want to set the precedent of exempting both properties sharing unity of title from the provisions of the ULDR if one property was exempt; this could have terrible precedent effects throughout the City.

Mr. Schein stated the Board must determine whether a principal building exists on that lot and whether a principal building was required to exist in order to have a mooring structure or a boatlift.

Mr. Nelson asked why Mr. Schein did not find unity of title sufficient to tie the two parcels together into one lot. Mr. Schein said the City did not recognize unities of title; this was done away with in the 1997 code change because of issues like this.

Mr. Maxey said this had already been through the courts and asked Mr. Schein's argument against equitable estoppel that would likely result from this action. Mr. Schein said this had never gone to the Board of Adjustment or the City Commission in 2010; the City Attorney had waived the Board of Adjustment hearing and directed the owner to go directly to equitable estoppel. Mr. Liberman had never had the opportunity to oppose this in a public hearing.

Chair Reynolds said the court had determined the City could not deny the final approval after issuing the permit in error. He noted that estoppel was a "one-off;" just because the court had decided one way in 2010 did not mean it applied now.

Mr. Nelson had a copy of the court's equitable estoppel ruling and said the claim was that the City should be estopped from claiming there was no principal structure. It appeared to Mr. Nelson that the court had determined that the issue of whether there was a principal structure was gone. Mr. Schein vehemently disagreed, and said

equitable estoppel related to addressing incurred costs. The court acknowledged that there was a violation of the requirement for a principal structure.

Chair Reynolds questioned when Mr. Liberman had become involved and wondered why he had not intervened before the deadline. Scott Liberman, applicant, said he had tried to intervene in the circuit court action brought by Mr. Mavon against the City but had been denied. He did not have standing to appeal the summary judgement order that only applied to the final approval.

Mr. Liberman recalled that Dean Trantalis, a City Commissioner at the time, had asked if unity of title would solve the problem and Greg Brewton, the Zoning Administrator at the time, had stated unity of title would not cure the problem and informed the Commission that the ULDR was amended to specifically prevent this. Harry Stuart, the City Attorney at the time, had opined that Mr. Brewton was correct that unity of title would allow for the permissive use of the boat basin but would prevent Mr. Mavon from selling the parcels separately in the future, which was the intent at the time. It would only allow Mr. Mavon to put his boat in the basin. Mr. Liberman had understood that equitable estoppel would not be a basis to build upon the boat basin.

Mr. Liberman stated he had called Code Enforcement and an inspector had informed him that building the boatlift was a code violation. Mr. Brady objected to Mr. Liberman's testimony because it was hearsay and beyond the scope of the appeal. Chair Reynolds overruled Mr. Brady's objection.

Mr. Liberman said he had understood after the City Commission decision, specifically from former Mayor Jack Seiler, that the equitable estoppel order could not be a basis to further develop the site that was in violation of the ULDR. He believed the estoppel order was very narrow: it would allow Mr. Mavon to complete the basin, get final inspection and keep his boat in the basin. He said the boatlift was "literally on top of me."

Mr. Maxey asked what Mr. Liberman's biggest issue was with the boatlift and Mr. Liberman said the issue was the obstruction of the view from his property and the fact that the lift was a violation of the ULDR. When the boat was moored without the lift, it was situated below Mr. Liberman's property line. On the lift, it blocked his views.

The Board took a brief break.

Michael Burke, attorney representing the City, said the appeal dealt with the application of the ULDR by a City administrative official to issue the permit for the boatlift. The criterion for the appeal was whether the application was "clearly erroneous". The only issue raised in the appeal was the alleged absence of a principal structure on the lot on which the boatlift was constructed, pursuant to a City permit.

Mr. Burke asked the Board to consider the purpose of the prohibition, which he believed was to prevent someone from constructing a mooring structure on a vacant lot that was not connected to any commercial or residential building. When Mr. Mavon applied for the boatlift permit in 2018, there was a mooring structure on the property: "It was not vacant in the sense that there was nothing on the property."

Regarding Mr. Brewton's opinion about unity of title, Mr. Burke said the current Zoning Administrator could have a different opinion. He said with the court decision, the unity of title, the existing mooring structure, the request for a mooring device to assist with the boat already moored there, there was not clear error. On this basis, the Board could affirm the determination of the administrative official and Mr. Burke believed they should.

Mr. Brady said he and his client agreed with the City. There had been a mooring device at the seawall since 1969 without a principal structure on the parcel that became the basin. Now, there was a basin and an operating boatlift on the seawall that formed the basin.

Mr. Brady stated a code inspector had visited the property on 12/3/18 and found there was no violation.

Mr. Brady said the Mavons wanted to dock the boat in its current site because docking it on the river behind their home would endanger it.

Mr. Schein displayed the plans for the boatlift permit and said the City had determined that a principal structure existed on the lot. He stated that per the plans, this was clearly an error.

Mr. Schein stated the City admitted it had issued the original permit in error and now the owner felt that because of this mistake, he could continue to improve the site. Mr. Schein thought this was an erroneous decision as well.

Mr. Liberman said he had seen a boatlift contractor measuring the basin in late November 2018 and immediately called Code Enforcement. Building Inspector Carrasquel had informed Mr. Liberman that the lift was a violation but he had later informed Mr. Liberman that a superior had overruled him. Mr. Liberman acknowledged this was hearsay without Inspector Carrasquel's testimony.

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 Mr. Maxey to deny the appeal, finding there was no evidence to find City staff's decision clearly erroneous and therefore uphold City

staff's determination. In a roll call vote, motion **failed** 2-5 with Ms. Ellis, Mr. McGinley, Mr. McTigue, Mr. Falkanger and Chair Reynolds opposed.

Motion made by Mr. Nelson, seconded by Mr. McTigue, to approve the appeal, reversing staff's determination with respect to whether a principle structure exists on the lot, consistent with the requirements of the ULDR. In a roll call vote, motion passed 5-2 with Mr. Nelson and Mr. Maxey opposed.

Communication to the City Commission

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Chair Reynolds requested an update on the alcoholic beverage code section. Mr. Spence reported staff had amended Section 5-26(d) to extend the opportunity to grant a special exception to *all* establishments within the 300-foot distance requirement. The City Commission would vote on this the following Tuesday.

Motion made by Mr. Nelson, seconded by Ms. Ellis, to send the following communication to the City Commission:

The Board of Adjustment supports the modification to the liquor spacing requirements to allow for special exceptions to be heard by the Board of Adjustment on all liquor spacing requirements under 300 feet. In a voice vote, motion passed unanimously.

Report and for the Good of the City

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None

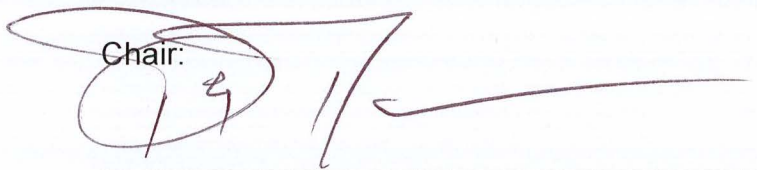
Other Items and Board Discussion

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None

There being no further business to come before the Board, the meeting adjourned at 8:53 pm.

Chair:

A handwritten signature in dark ink, appearing to be "DR", written over a horizontal line. The signature is stylized and includes a large loop at the beginning.

Douglas Reynolds, Chair

Attest:

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ProtoType Inc.

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