



**BOARD OF ADJUSTMENT MEETING  
CITY OF FORT LAUDERDALE  
OCTOBER 14, 2020 – 6:30 P.M.**

**CITY OF FORT LAUDERDALE**

<b>Board Members</b>	<b>Attendance</b>	<b>Cumulative Attendance 6/2020 through 5/2021</b>	
		<b>Present</b>	<b>Absent</b>
Howard Nelson, Chair	P	2	0
Patrick McTigue, Vice Chair	P	2	0
Eugenia Ellis	P	2	0
Chadwick Maxey	P	2	0
Blaise McGinley	P	2	0
Douglas Reynolds	P	2	0
S. Carey Villeneuve	P	2	0
<b>Alternates</b>			
Chip Falkanger	A	0	2
Shelley Eichner	P	2	0
Michael Lambrechts	P	2	0

**Staff**

D' Wayne Spence, Assistant City Attorney  
Burt Ford, Zoning Chief  
Chakila Crawford-Williams, Administrative Assistant  
Brigitte Chiappetta, Recording Secretary, Prototype Inc.

**Communication to the City Commission**

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**Motion** made by Mr. McGinley, seconded by Mr. Reynolds:

To have staff consider amendments to the fence code, taking into consideration new FEMA flood elevations and site screening. And to also include a clearer option regarding “architectural features” on top of fences.

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.

<u>Index</u>	<u>Case Number</u>	<u>Owner/Agent</u>	<u>District</u>	<u>Page</u>
1.	PLN-BOA-20090001	Dutzer, Michael Anthony; Mansman, Robert William II/Ryan Abrams Esq.	2	<a href="#">2</a>
2.	PLN-BOA-20090005	Lennar Homes, LLC/ Deena Gray, Esq.	4	<a href="#">5</a>
		Communication to the City Commission For the Good of the City Other Items and Board Discussion		<a href="#">6</a> <a href="#">7</a> <a href="#">7</a>

**I. Call to Order**

The meeting was called to order at 6:31 p.m. Roll was called and a quorum determined to be present.

Mr. Spence announced that Item 2 was pulled from the agenda for defective notice.

**II. Approval of Minutes – September 2020**

**Motion** made by Mr. McTigue, seconded by Mr. Maxey to approve the Board’s September 2020 minutes. In a voice vote, motion passed unanimously.

**III. Public Sign-In / Swearing-In**

**All individuals wishing to speak on the matters listed on tonight’s agenda were sworn in.**

**During each item, Board members disclosed communications they had and site visits made.**

**IV. Agenda Items**

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**CASE:** PLN-BOA-20090001

**OWNER:** DUTZER, MICHAEL ANTHONY; MANSMAN, ROBERT WILLIAM II

**AGENT:** RYAN, ABRAMS, ESQ.

**ADDRESS:** 1725 NE 18 ST, FORT LAUDERDALE, FL 33305

**LEGAL DESCRIPTION:** POINSETTIA HEIGHTS RIVER ADD 26-27 B LOT 16 BLK 4

**ZONING DISTRICT:** RS-8

**COMMISSION**  
**DISTRICT:** 2  
**REQUESTING:** **Sec. 47-19.5. - Fences, walls and hedges**

1. Requesting a variance to allow an eight(8) foot privacy fence be installed directly behind the existing six(6) foot fence along a street, NE 17 Terrace, where the ULDR allows a fence to be a maximum of six foot six inches(6'6") in height, from the lowest adjacent grade, whichever is less.
2. Requesting a variance to allow the eight (8) foot fence be installed two feet ten inches (2'10") from the property line along NE 17 Terrace where the ULDR requires a minimum setback of three (3) feet from the property line.

Ryan Abrams, attorney for the owner, explained that the owner wanted the fence for privacy. He gave a Power Point presentation, a copy of which is attached to these minutes for the public record.

Regarding the criteria for a variance:

- a. That special conditions and circumstances affect the property at issue which prevent the reasonable use of such property;

Mr. Abrams said the special conditions were: there were utility boxes next to the property; it was a corner property; it was on a higher grade than abutting properties.

- b. That the circumstances which cause the special conditions are peculiar to the property at issue, or to such a small number of properties that they clearly constitute marked exceptions to other properties in the same zoning district;

Mr. Abrams said these were the same as for criterion a.

- c. That the literal application of the provisions of the ULDR would deprive the applicant of a substantial property right that is enjoyed by other property owners in the same zoning district. It shall be of no importance to this criterion that a denial of the variance sought might deny to the owner a more profitable use of the property, provided the provisions of the ULDR still allow a reasonable use of the property;

Mr. Abrams said the ability to use a backyard was a property right that the owner was unable to enjoy. The owner should have the right to a buffer between his property and the public right-of-way.

- d. That the unique hardship is not self-created by the applicant or his predecessors, nor is it the result of mere disregard for, or ignorance of, the provisions of the ULDR or antecedent zoning regulations;

Mr. Abrams stated the owner did not create the new elevation and flood zone requirements.

- e. That the variance is the minimum variance that will make possible a reasonable use of the property and that the variance will be in harmony with the general purposes and intent of the ULDR and the use as varied will not be incompatible with adjoining properties or the surrounding neighborhood or otherwise detrimental to the public welfare.

Mr. Abrams stated the code indicated that the intent of fences and buffers was to “ease a transition between public ways and private property” and not allowing this variance would not serve the code.

Chair Nelson said the privacy issue could have been addressed via the new home design and/or the new landscape design in 2019 and asked Mr. Abrams how this hardship was therefore not self-created. Mr. Abrams agreed that the privacy shield could have been provided with landscaping, but his point was that “they should have a right to shield themselves from public view with a fence like anybody else.”

Mr. Maxey did not understand the need for an eight-foot fence and Mr. Abrams explained the elevation of the patio. Gage Couch, landscape architect, said the fence would be installed on the 17<sup>th</sup> Terrace side of the property.

Ms. Ellis felt the fence was acting as an artistic feature/screen.

Mr. Nelson asked Mr. Ford if there was a modification that would change this from a fence to an architectural feature, which would not require a variance but Mr. Ford did not think so. He referred to an ‘architectural feature’ that was permitted atop a fence, which was limited to 18” in additional height.

The Board took a break while Mr. Abrams consulted with his client.

Upon returning, Mr. Abrams said his client wanted to continue pursuing the variance.

Mr. Ford said 24 feet of the original fence could have the 18” architectural addition on top.

Mr. Couch said they would consider this architectural feature. He described the elevated grade of the patio and the house. He believed the privacy panel was the most limited way reasonable to provide the privacy the owner requested. He stated they did not believe plants would provide the level of privacy desired. The area the plants would be sited was also in the shade. He discussed where one would need to be standing in the yard to be seen over the fence.

Michael Dutzer, owner, said many people used the sidewalk outside the fence and stated, "When you wake up and you see people standing outside the fence looking into your yard, it's kind of disturbing." He claimed ATT workers serviced the utility box two or three times per weeks for hours at a time. He said they had considered hedges, but were concerned about the roots intruding into the pool and had built a retaining wall instead. Mr. Dutzer said they had spent almost \$100,000 on landscaping.

Mr. Dutzer said this house was at a higher elevation than all the other nearby homes. He said denial of the variance would deprive him of the ability to enjoy his backyard and he considered this a substantial property right that was enjoyed by his neighbors. He stated a sense of privacy and security was very important to him.

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

Mr. Abrams said there was no reasonable or more aesthetic substitute for the fence. He believed the request met all of the criteria and reiterated his responses.

Mr. Maxey asked if the screen could be part of an architectural design above the 6'6" fence. Mr. Ford said the code indicated that "all fences may include architectural features and light fixtures along the top of the fence and gate." Mr. Maxey asked about placing the privacy screen behind the architectural feature three feet inside of the fence. Mr. Ford said such a structure could not be located in any setback.

Mr. McTigue said houses he was building were at substantially higher elevations than older houses. He asked Mr. Ford if staff had considered this. Mr. Nelson thought this could prompt an amendment to the fence code.

**Motion** made by Mr. Villeneuve, seconded by Ms. Ellis:  
To find that the application meets the criteria for approval and to approve the variance. In a roll call vote, motion **failed** 4-3 with Mr. McTigue, Mr. Maxey and Mr. Reynolds opposed.

2.

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<b>CASE:</b>	<b>PLN-BOA-20090005</b>
<b>OWNER:</b>	LENNAR HOMES, LLC
<b>AGENT:</b>	GREENSPOON MARDER LLP/DEENA GRAY, ESQ.
<b>ADDRESS:</b>	1901 SW 5 Place; SW 5 ST; 460 SW 20 AVE; 506 SW 20 AVE; 502 SW 20 AVE, FORT LAUDERDALE, FL. 33312
<b>LEGAL DESCRIPTION:</b>	RIVERSIDE NO 2 1-104 D LOT 4 LESS N 150,5 LESS N 150 BLK E; RIVERSIDE NO 2 1-104 D LOT 4 LESS N 150,5

LESS N 150 BLK E; RIVERSIDE NO 2 1-104 D N 150 OF LOTS 6,7,8 & N 150 OF THAT PT LOT 9 LYING E OF PAVED RD BLK E; RIVERSIDE NO 2 1-104 D LOT 6 TO 8,S 70 OF N 360,9 S 70 OF N 360 LYING E OF PAVED RD BLK E; RIVERSIDE PARK TOWNHOUSE AND VILLAS 141-43 B PARCEL 4

**ZONING DISTRICT:**  
**COMMISSION DISTRICT:**  
**REQUESTING:**

RM-15

4

**Sec. 47-19.5. B. - Fences, walls and hedges**

1. Requesting a variance to allow the combination of a permitted retaining wall of varying height, along the east side, of three foot eight inches(3'8") to four foot seven inches(4'7") with a five(5) foot tall aluminum fence installed atop the wall with a total combined wall/fence height of eight foot eight inches(8'8") to nine foot seven inches(9'7") with a varying increase in total height above the permitted six foot six inch(6'6") between two foot two inches(2'2") to three foot one inch(3'1"). Along the north property line the permitted retaining wall ranges from four foot eight inches(4'8") to six foot one inch(6'1") with a six(6) foot wood fence installed atop the wall with a total combined wall/fence height varying from ten foot eight inches(10'8") to twelve foot one inch(12'1"), with a varying increase in total height above the permitted six foot six inch(6'6") between four foot two inches(4'2") to five foot seven inches(5'7").

This item was pulled from the agenda for defective notice.

### Communication to the City Commission

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**Motion** made by Mr. McGinley, seconded by Mr. Reynolds:

To have staff consider amendments to the fence code, taking into consideration new FEMA flood elevations and site screening. And to also include a clearer option regarding "architectural features" on top of fences.

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

**BOARD VOTE FOR BOARD OF ADJUSTMENT 2021 CALENDAR**

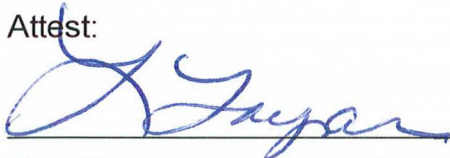
Mr. Spence explained that no vote was needed.

There being no further business to come before the Board, the meeting adjourned at 8:37 p.m.

Chair:



Attest:



ProtoType Inc.

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