






DEVELOPMENT SERVICES

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ADMINISTRATIVE MEMORANDUM NO. 22-152

TO: Mark E. Berman, City Attorney

VIA: David Recor, ICMA-CM, Development Services Director 
Jennifer Gomez, AICP, Assistant Director of Development Services 

FROM: Scott Reale, AICP, Senior Planner 

SUBJECT: Ch. 155 (Zoning Code) Article 2 – Zoning Board of Appeals | Request for Ordinance
City Commission Hearing January 10, 2023

DATE: November 29, 2022

At the November 17, 2022 Zoning Board of Appeals (ZBA) meeting, Daniel Yaffe, Chairman, noted Board attendance has been a challenge recently. A discussion ensued, and ultimately the Board voted (unanimously) to recommend to the City Commission to increase the number of ZBA alternate members from three to four.

Five members of the ZBA constitute a quorum. Five concurring votes are needed to approve most applications or any appeal reversing or modifying a decision. If fewer than six members are present, a supermajority vote of five votes of the quorum is still required. In the past twelve months, three Board meetings were canceled due to lack of a quorum, and on three occasions only five members (regular and alternate) were available. In those instances, most applicants opted to postpone their item to the next meeting. Repeated postponements and cancelations do not serve the public good. Toward that end, staff has prepared a proposed text amendment to section §155.2203 (C) in order to both increase the number of alternate members and to allow up to three alternates to serve as substitute members at any one time.

Please review the proposed changes to this code section and draft the necessary Ordinance. We are also requesting confirmation that the ordinance will require one published notice in a paper of general circulation in the municipality at least 10 days prior to the public meeting, pursuant to Fla. S. S. §166.041 (3) (a).

Should you have any questions or comments, please contact me at scott.reale@copbfl.com | ext. 4667.

ZBA Mtg	Number of Board Members Present
Nov-22	5
Oct-22	6
Sep-22	5
Aug-22	6
Jul-22	NO QUORUM
Jun-22	6
May-22	5
Apr-22	NO QUORUM
Mar-22	6
Feb-22	6
Jan-22	6
Dec-21	NO QUORUM

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155.2203. ZONING BOARD OF APPEALS (ZBA)

A. Establishment

The Zoning Board of Appeals (ZBA) is hereby established in accordance with state law.

B. Powers and Duties

The ZBA shall have the following powers and duties under this Code:

1. Decide Applications for Development Permit

To review and decide the following applications for a development permit:

- a Special Exception (Sec. 155.2406);
- b Major Temporary Use Permit (Sec. 155.2412.C);
- c Interim Use Permit (Sec. 155.2415);
- d Variance (Sec. 155.2420); and
- e Appeal of a decision of the Development Services Director on an application for an Interpretation (Sec. 155.2424).

2 Other Powers and Duties

- a To review and decide appeals of relating to regulations in Section 100.40 (Movable Fixtures in the Public Right-of-Way) of the Code of Ordinances , in accordance with procedures and standards in that section;
- b To review and decide requests for variances relating to regulations in Chapter 151 (Beaches and Waterways) of the Code of Ordinances , in accordance with procedures and standards in that chapter;
- c To review and decide requests for variances and appeals relating to floodplain management regulations in, and actions authorized by, Chapter 152 (Buildings) of the Code of Ordinances , in accordance with procedures and standards in that chapter; and
- d To carry out any other powers and duties delegated to it by the City Commission, consistent with state law.

C. Membership, Appointment, and Terms of Office

1. Membership and Appointment

- a The ZBA shall consist of six regular voting members and **three four** alternate members, appointed by resolution of the City Commission as a whole.
- b Appointed regular voting members shall include one member nominated by the Mayor and one member nominated by each City Commissioner from among residents of the City Commissioner's district—provided, however, that a Commissioner may nominate a person who does not reside in the City Commissioner's district on determining such person would better serve the public interest.
- c Alternate members shall be appointed by the City Commission as a whole.
- d Each regular voting member and alternate member shall be a resident of the city.
- e Regular voting members and alternate members shall serve without compensation.

2 Terms

- a Regular voting members of the ZBA shall be appointed for a term which shall run concurrently with the term of the member of the City Commission who appointed them.
- b Alternate members shall be appointed for three-year, concurrent terms.
- c Regular voting members and alternate members shall continue to serve until their successors are appointed.

3. Alternate Members

The Chair of the ZBA shall be authorized to assign one of the **three four** alternate members to serve as a substitute for a regular voting member who is temporarily absent or disqualified, in accordance with the following:

- a The Chair shall rotate assignments among the alternate members unless the unavailability of alternate members makes such rotation impossible.
- b No alternate member may serve as a substitute member for a period of more than three months.
- c No more than **two three** alternate members may serve as substitute members at any one time.
- d No alternate member may take action as a substitute member unless the Chair first announces assignment of that role and the assignment is recorded in the official minutes of the meeting.
- e When substituting for regular voting members, alternate members shall have the same powers and duties as the regular voting member they replace.

4. Removal and Replacement; Attendance

a. Removal for Good Cause

The City Commission may, by majority vote of a quorum present, remove and replace any member of the ZBA at any time for good cause, including, but not limited to, poor attendance (See subsection b below.), lack of participation, unfitness, malfeasance, and conflict of interest (See Section 155.2203.H.). Any allegation of cause for removal shall be in writing, and the City Commission shall hold a public hearing on such an allegation before taking action to remove a board member.

b. Removal for Poor Attendance

Any member of the ZBA who is absent from three consecutive regularly scheduled board meetings or more than 50 percent of regularly scheduled board meetings held within a calendar year shall be removed from the board by the City Commission in accordance with subsection a above. The Chair of the ZBA or the Development Services Director shall notify the Mayor and City Commission if a member qualifies for removal under this subsection.

5. Vacancies

Vacancies occurring for reasons other than expiration of terms shall be filled for the period of the unexpired term only, in accordance with the following:

- a A vacancy in the term of a regular voting member shall be filled by the City Commissioner in whose district the appointment originated.
- b A vacancy in the term of an alternate member shall be filled by the City Commission as a whole.

D. Chair and Vice-Chair

1. The ZBA shall elect a Chair and a Vice-Chair from among its members, each to serve a one-year term. The Chair and Vice-Chair may be elected to successive terms without limitation.
2. The Chair shall preside over all board meetings. The Vice-Chair shall preside over board meetings in the absence of the Chair. If both the Chair and Vice-Chair are absent, the ZBA shall vote to determine who shall serve as acting Chair for the meeting.

E. Staff

The Development Services Director shall serve as the professional staff liaison to the ZBA, provide it with administrative support, and serve as its Secretary, notifying board members of all meetings and keeping the minutes of the meetings.

F. Meetings

1. Schedule

The ZBA shall adopt a schedule establishing the date, time, and location of regular meetings, provided that the ZBA shall meet at least once in a calendar month. The Chair may adjourn a regular meeting on determining that there are no agenda items for consideration, and may call special meetings.

2. Official Record

The ZBA shall keep a written record of its recommendations, transactions, findings, and determinations. Such record shall include minutes of meetings in accordance with state law (Sec. 286.011, Fla. Stat.) and shall be a public record and filed with the Development Services Director.

3. Notice of Meetings

- a The Development Services Director shall provide notice of ZBA meetings to each board member at least 48 hours before the meeting.

b Notice of all ZBA meetings and public hearings shall be provided in accordance with state law and the public hearing requirements in Section 155.2305.C, Public Hearing Notice, as appropriate.

4. Open Meetings

All meetings of the ZBA shall be open to the public.

5. Procedure

In conducting its meetings, the ZBA shall follow rules of procedure adopted in accordance with Section 155.2203.I, Rules of Procedure.

G. Quorum and Necessary Vote

1. Quorum

Five members of the ZBA shall constitute a quorum. No official business of the board shall be conducted without a quorum present.

2. Voting

The concurring vote of five members of the ZBA shall be necessary to approve a Special Exception, Major Temporary Use Permit, or Interim Use Permit, grant any Variance, or approve any appeal reversing or modifying a decision. An affirmative vote of the majority of board members present and constituting a quorum shall be required for all other decisions.

H. Disqualification from Participation and Voting Based on Conflict of Interest

1. A member of the ZBA shall not participate in the review of, or vote on, an application for a development permit if the action proposed by the application creates a conflict of interest—that is, if the action proposed by the application would inure to the special private gain or loss of the member, any principal or corporation (or a parent organization or subsidiary of such corporation) that employs or otherwise retains the services of the member, or a close relative (e.g., parent, sibling, spouse, or parent- or sibling-in-law) or business associate of the member.

2. If an objection is raised to a board member's participation in a matter based on a conflict of interest (as defined in subsection 1 above), and that member does not recuse himself or herself, the remaining members of the board present shall, by majority vote of a quorum present, determine whether the member is or is not disqualified from participating in and voting on the matter.

3. If a board member is disqualified on a regular and continuing basis due to a conflict of interest (as defined in subsection 1 above), the Chair of the board may request, in writing, that the member resign. If the member does not resign in response to such a request, the Chair shall report the conflict of interest to the Mayor and City Commission, who may consider whether to remove and replace the member in accordance with Section 155.2203.C.4, Removal and Replacement; Attendance.

I. Rules of Procedure

The ZBA shall adopt rules of procedure governing its procedures and operations. Copies shall be made available for public inspection in the Development Services Department.

(Ord. 2012-64, passed 9-11-12; Am. Ord. [2013-37](#), passed 1-22-13; Am. Ord. [2014-16](#), passed 1-28-14; Am. Ord. [2015-75](#), passed 9-8-15; Am. Ord. [2017-17](#), passed 1-10-17)



City of Pompano Beach Zoning Board of Appeals

Commission Chambers
100 West Atlantic Blvd.
Pompano Beach, FL
33060

1st Draft

Thursday, November 17, 2022

6:00 PM

(03:03)

A. CALL TO ORDER

The meeting was called to order by Chairman Daniel Yaffe at 6:01 PM

(03:44)

B. ROLL CALL

Charlotte Burrie
Penny Cutt
Derek Lewis
David Wheeler
Daniel Yaffe

Also in Attendance:

James Saunders, Assistant City Attorney
Mario Sotolongo, Code Compliance Director
Scott Reale, Senior Planner
Martha Lawson, Department Head Secretary
Veronica Thomas
Robert Bulfin
Jennifer Eads
Joel Eads

(04:35)

C. APPROVAL OF THE MINUTES

MOTION by Charlotte Burrie and seconded by David Wheeler to approve of the Minutes from the meeting held on October 20, 2022. All voted in favor.

(03:57)

D. EXPLANATION OF PREREQUISITES AND BOARD PROCEDURES

Mr. Yaffe provided an explanation of the prerequisites for the approval of each appeal as well as the Board procedures. He explained that in order for items to be approved, applications require 5 affirmative votes and there are 5 Board members present. He stated applicants are welcome to postpone their items without penalty.

(08:35)

E. INDIVIDUALS TESTIFYING PLACED UNDER OATH

City staff and members of the public testifying before the Board at the meeting were placed under oath by Martha Lawson, Department Head Secretary and State of Florida Notary Public.

(09:30)

F. PUBLIC HEARING

1. LN-316 VARIANCE - VERONICA THOMAS

Request: Variance
P&Z# 22-11000012
Owner: Veronica Thomas
Project Location: 624 NW 3rd Avenue
Folio Number: 4842 35 10 0050
Land Use Designation: LM- LOW-MEDIUM 5-10 DU/AC
Zoning District: Multiple-Family Residence 12 (RM-12)
Agent: Veronica Thomas
Project Planner: Scott Reale

Ms. Thomas, 624 NW 3rd Avenue, Pompano Beach introduced herself to the Board.

Mr. Scott Reale, Senior Planner, introduced himself to the Board and stated that the Applicant Landowner is requesting a Variance from Section 155.3209(C) [Intensity and Dimensional Standards of the RM-12 Zoning District], of the Pompano Beach Zoning Code, in order to construct a carport addition within the required front yard and required interior yard. Specifically, the Applicant is seeking approval of the support columns located 3 ft from an interior side lot line (with associated roof setback 5 ft from an interior side lot line), rather than located a minimum 8 ft from an interior side lot line; and the carport addition columns and roof to be located 5 ft from a front yard lot line rather than located a minimum 25 ft from a front lot line as required by code.

The property is located at the southeast corner of NW 3rd Avenue and NW 7th Street in the Northwest CRA. The subject property has no open code cases. A Certificate of Occupancy was issued on 12/11/2014 for a 1,246 sq ft dwelling consisting of two bedrooms (BP #12-11588). As part of the approval, a 12.1 ft strip of land along the north side of the property was conveyed to the city for right-of-way dedication (Reso 2014-178) for NW 7th Street. Similarly, the property survey and city's right-of-way maps suggest a 10 ft strip of land along the west side of the property was previously conveyed to the city for right-of-way dedication for NW 3rd Avenue. The resulting net lot area of the subject property is 5,211 sq ft. The minimum lot area of a property zoned RM-12 is 7,000 sq ft. However, a single-family dwelling can be built on a smaller lot so long as the lot and permitted structures and uses comply with all other applicable zoning standards. The principal dwelling currently complies with all RM-12 setback requirements. The minimum interior side yard setback requirement is 8 ft, and the home is located 14.06 ft from the interior side yard lot line. This is a revised application from the applicant's initial request to construct a garage located only 1 ft from the interior side yard. That request went before the ZBA in August of this year; however, Fire Prevention had concerns about the structure's proximity to a triplex on the adjacent lot as well as life safety access. Rather than outright denying the request, the Board recommended the applicant work with staff to come up with a revised plan that satisfies the Fire Marshal's concerns. Fire Prevention has since issued a revised memo which does not object to the revised site plan. The proposed carport will have columns/posts 3 ft from the interior side lot line with the roof 5 ft from the interior side lot line. Additionally, in order to accommodate Fire's concerns, the proposed carport structure will encroach 20 ft into the required front yard, and ultimately setback 5 ft from the front lot line. Staff acknowledges residential corner lots often pose development constraints. As previously stated, this property in particular had land taken for right-of-way dedication on two sides, and the principal dwelling is located in the center of the property, rendering a new carport or garage difficult if not impossible to construct without relief from setback requirements.

Should the Board determine that the applicant has provided competent substantial evidence to satisfy the eight Variance review standards, staff recommends the Board include the following conditions as a part of the Order:

1. Obtain all necessary governmental permits and approvals including building and zoning compliance permits.
2. Maintain an overall minimum 30% pervious area on the site.
3. Protect, relocate, or mitigate for any trees impacted by carport addition.

Ms. Thomas thanked staff.

Mr. Yaffe asked if anyone in the audience wished to speak on the matter. There were none. Mr. Yaffe asked if there were any correspondence. Mrs. Lawson replied, no Mr. Chairman. Mr. Yaffe asked if the Board had any questions of the applicant. There were none. Mr. Yaffe closed the public hearing.

MOTION by David Wheeler and seconded by Charlotte Burrie that the Board finds in application PZ#22-11000012 that there is competent substantial evidence in the record demonstrating the minimum requirements for granting a Variance have been met and that approval is granted, subject to the 3 conditions requested by staff. All voted in favor.

(04:40)

2. [LN-365](#) **VARIANCE - ENTOURAGE FLORIDA DEVELOPMENT, LLC**

Request: Variance
P&Z# 22-11000017
Owner: Entourage Florida Development, LLC
Project Location: 407-419 N Riverside Drive
Folio Number: 484331130050 / 484331130060
Land Use Designation: H- HIGH 25-46 DU/AC
Zoning District: Multiple-Family Residence 45 (RM-45)
Agent: Courtney Callahan Crush
Project Planner: Scott Reale

MOTION by Charlotte Burrie and seconded by David Wheeler that application PZ#22-11000012 be moved to the December 15, 2022, meeting. All voted in favor

(05:30)

3. [LN-366](#) **MAJOR TEMPORARY USE PERMIT - CELU DEVELOPMENTS LLC**

Request: Major Temporary Use Permit
P&Z# 22-15000016
Owner: CELU Developments LLC
Project Location: W McNab Road (vacant parcel)
Folio Number: 494203000521
Land Use Designation: I- INDUSTRIAL
Zoning District: General Industrial (I-1)
Agent: Paola West
Project Planner: Scott Reale

MOTION by Charlotte Burrie and seconded by David Wheeler that application PZ#22-15000016 be moved to the December 15, 2022, meeting. All voted in favor.

(17:25)

4. LN-367

**MAJOR TEMPORARY USE PERMIT - FIRTH PROPERTIES
LAKESIDE LLC**

Request: Major Temporary Use Permit
P&Z# 22-15000017
Owner: Firth Properties Lakeside LLC
Project Location: 1201 S Ocean Boulevard
Folio Number: 494306120710
Land Use Designation: C- COMMERCIAL
Zoning District: General Business (B-3)
Agent: David Bee
Project Planner: Scott Reale

Mr. Robert Bulfin, Attorney for applicant, introduced himself to the Board.

Mr. Scott Reale, Senior Planner, introduced himself to the Board and stated that the Applicant Landowner is requesting a MAJOR TEMPORARY USE PERMIT from the provisions of Chapter 155: Article 5 [Development Standards] of the City of Pompano Beach Zoning Code in order to temporarily utilize a portion of an existing shopping center parking lot for outdoor dining without complying with the applicable development standards as required by Code. The property is located on the southwest corner of S Ocean Boulevard (A1A) and SE 12th Street.

The shopping center, originally called the Lakeside Shoppes, was approved in 1976 via PRA No. 2085, with 53 parking spaces. At the time, 42 spaces were required by code. Accounting for the current restaurant and retail uses, staff has determined 42 spaces are required. With the outdoor seating area, there are currently 50 parking spaces on the site, two of which are handicap/ADA spaces. On 10/21/2021, the ZBA granted a one-year Major Temporary Use Permit (PZ #21-15000007) for outdoor seating on a portion of the shopping center's parking lot. The applicant is seeking an additional year for this use, citing many customers prefer outdoor seating due to the ongoing pandemic. During the peak of the COVID pandemic, the City suspended most outdoor application requirements for restaurants and retail businesses to expand operating space into portions of privately owned and public rights-of-way. Staff finds the outdoor seating area, which takes up two parking spaces, does not negatively impact the property with regard to site circulation or minimum parking requirements. The applicant was cited for encroaching into a portion of the handicapped/ADA parking spaces; however, the revised conceptual site plan suggests only two standard parking spaces are affected. If this Temporary Use Permit is approved, the outdoor seating area would be allowed for a maximum of one year.

Should the Board determine the applicant has provided competent substantial evidence sufficient to satisfy the seven Major Temporary Use Permit review standards, staff request the Board include the following conditions as part of the Order:

1. Obtain all necessary governmental approvals
2. Outdoor seating is limited to the area depicted on the site plan and shall not further encroach into the parking lot.
3. Maintain Jersey barriers (or similar bollard device) to provide clear separation between outdoor seating and vehicular use area.

Mr. Bulfin briefly summarized how the applicant meets each of the 7 review standards.

Mr. Mario Sotolongo, Code Compliance Director, confirmed the temporary use permit will cure the current code violation on the property.

Mr. Yaffe asked if anyone in the audience wished to speak on the matter. There were none. Mr. Yaffe asked if there were any correspondence. Mrs. Lawson replied, no Mr. Chairman. Mr. Yaffe asked if the Board had any questions of the applicant. There were none. Mr. Yaffe closed the public hearing.

Mr. Wheeler asked Mr. Reale asked what a Jersey barrier is. Mr. Reale briefly described the concrete barrier.

Ms. Cutt asked how long it was from when the previous Major Temporary Use Permit expired until the property received a violation. Mr. Bulfin stated that the applicant filed his application to extend the temporarily use approximately a week prior to the expiration date.

MOTION by Charlotte Burrie and seconded by David Wheeler that the Board finds in application PZ#22-15000017 that there is competent substantial evidence in the record demonstrating the minimum requirements for granting a Major Temporary Use Permit have been met and that approval is granted, subject to the 3 conditions requested by staff. All voted in favor.

At this time the Board took a 5-minute break.

(37:27)

5. LN-368 SPECIAL EXCEPTION - B&E PROPERTIES GROUP LLC

Request:	Special Exception
P&Z#	22-17000013
Owner:	B&E Properties Group LLC
Project Location:	2310 NW 3rd Avenue
Folio Number:	484226AK0010
Land Use Designation:	C- COMMERCIAL
Zoning District:	Community Business (B-2)
Agent:	Jennifer Eads
Project Planner:	Scott Reale

Mr. Joel Eads and Mrs. Jennifer Eads, 2310 NW 3rd Avenue, Pompano Beach, introduced themselves to the Board.

Mr. Scott Reale, Senior Planner, introduced himself to the Board and stated that the Applicant Landowner is requesting SPECIAL EXCEPTION approval as required by Section 155.4211(D)(1) [Districts Where Permitted] of the Pompano Beach Zoning Code in order to utilize the subject property (Zoning District: B-2) for a Place of Worship. The subject property is located on the east side of NW 3rd Avenue, approximately 230 feet south of Copans Road in the Northwest CRA. The subject property, known as Copans Plaza, was developed in the late 1980s as commercial condominium tenant bays. There are no open code violations associated with the property. 2. The applicant is proposing to utilize Unit #1 of the commercial condo complex, comprising approximately 2,306 sq ft, as a Place of Worship. Because the property is zoned Community Business (B-2), a Special Exception is required for this use. The applicant's narrative indicates they have approximately 75 congregants. 3. The parking requirement for a Place of Worship is 1 space per 5 persons of maximum occupancy capacity in assembly space, and the site appears to have sufficient parking. According to the applicant's narrative, the assembly space will be 1,058 sq ft. Staff does not object to the proposed use; however, it should be noted there is another church within the same plaza occupying a different tenant bay. Parking could potentially become an issue if both places of worship hold services at the same time. That said,

according to city records, there is only one other business with an active business tax receipt in the plaza.

Should the Board determine the applicant has provided competent substantial evidence sufficient to satisfy the thirteen Special Exception review standards, staff requests the Board include the following condition as part of the Order:

1. Obtain all necessary governmental permits and approvals, including a Change of Use to New Assembly and other requirements denoted in the Fire Marshal's memo.

Mr. and Mrs. Eades indicated they have spoken with all property owners in the condo complex, including the pastor of the other church, to make sure parking will not be an issue at the times of the proposed worship serves.

Mr. Yaffe asked if anyone in the audience wished to speak on the matter. There were none. Mr. Yaffe asked if there were any correspondence. Mrs. Lawson replied, no Mr. Chairman. Mr. Yaffe asked if the Board had any questions of the applicant. There were none. Mr. Yaffe closed the public hearing.

MOTION by Charlotte Burrie and seconded by David Wheeler that the Board finds in application PZ#22-17000013 that there is competent substantial evidence in the record demonstrating the minimum requirements for granting a Special Exception have been met and that approval is granted, subject to the 1 condition requested by staff. All voted in favor.

Mr. Yaffe noted attendance has been a challenge recently and asked for a motion to recommend to the City Commission to increase the alternate list membership from three to four.

MOTION by Charlotte Burrie and seconded by Penny Cutt to recommend to the City Commission to increase the alternate list membership from three to four. All voted in favor.

Ms. Cutt asked about Board member attendance. Mr. Yaffe said Ms. Lawson and Mr. Reale are working on that information. Ms. Lawson further described attendance challenges and processes.

Mr. Saunders stated there is no current concern about Board member removal due to not meeting attendance requirements.

G. ADJOURNMENT

There being no further business before the Committee, MOTION by all to adjourn the meeting adjourned at 7:38 PM.

NOTE: Any person who decides to appeal any decision of this BOARD/COMMITTEE with respect to any matter considered at this meeting will need a record of the proceedings and for such purpose may need to insure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based