

**THE CITY OF CORAL GABLES BOARD OF ADJUSTMENT**  
**OCTOBER 6, 2008**  
**CORAL GABLES CITY HALL, 405 BILTMORE WAY, COMMISSION CHAMBER**  
**CORAL GABLES, FLORIDA**

The meeting was scheduled to be held in Coral Gables City Hall Commission Chamber, Coral Gables, Florida, commencing at 8:00 a.m.

**MEMBERS**

**O N D J F M A M J J A S APPPOINTED BY:**

Miles McGrane, III	E	P	E	P	C	C	L	P	P	C	P	E	Mayor Donald Slesnick II
Tony Bello	P	P	P	P	C	C	P	P	P	C	E	P	Vice Mayor William H. Kerdyk, Jr.
Sharon Langer, Esq.	P	P	P	P	C	C	P	P	E	C	E	P	Comm. Maria Anderson
Jaime Pozo, Esq.	P	P	P	P	C	C	P	E	P	C	P	E	Comm. Rafael "Ralph" Cabrera, Jr.
John C. Lukacs, Esq., Chairperson	P	P	P	P	C	C	P	P	P	C	P	P	Comm. Wayne "Chip" Withers
Sergio Artigues, Architect	P	E	P	P	C	C	P	P	P	C	E	P	Board of Adjustment
Dr. Joseph W. Briggle, Vice Chair	P	P	P	P	C	C	P	P	P	C	P	P	City Manager David L. Brown

**STAFF:**

Elizabeth L. Gonzalez, Acting Secretary  
Joan Bailey, Court Reporter  
Edward M. Weller, Interim Building & Zoning Director  
Martha Salazar-Blanco, Zoning Official  
Al Reyes, Chief Electrical Engineer

A = Absent  
C = Meeting Cancelled  
E = Excused Absence  
L = Late  
P = Present  
R = Resigned  
X = Not on Board

**THESE MINUTES DO NOT REQUIRE ANY ACTION BY THE CITY COMMISSION.**

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The meeting was called to order at 8:00 a.m. by the Chairperson who announced that six board members were present at that time. Four votes are necessary for any action thereof.

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The Chairperson announced the following rules of procedure for the hearing:

1. Staff recommendation.
2. The applicant will present his/her case.
3. If there are speakers in favor of the application, they will be given the opportunity to be heard.
4. If there are speakers against the application, they will be given the opportunity to be heard.
5. The applicant will be given the opportunity of a rebuttal.
6. Public hearing closed.
7. Board members discussion.
8. Motion, second and a vote on the application.

## 1. Roll Call

Roll call was taken. Mr. McGrane was out of town and had given prior notice of his inability to attend the Board of Adjustment meeting.

Dr. Briggle made a motion to excuse the absence of Mr. McGrane, seconded by Ms. Langer and a resolution passed by voice vote.

**RESOLUTION NO. 4912-ZB**

## 2. Approval of the September 8, 2008 Recap

A motion was made by Mr. Bello, seconded by Ms. Langer to approve the September 8, 2008 Recap. A resolution was passed by voice vote.

**RESOLUTION NO. 4913-ZB**

3. 8682-Z

Lot(s): 1 through 6 inclusive, Block: 37 and west 310 feet of Block 44  
Coral Gables Douglas Section, PB/PG: 25/69  
(90 Menores Avenue - Phillips Park)

Fred Couceyro, City of Coral Gables Parks and Recreation Director – Applicant  
City of Coral Gables – Owner  
David S. Dayton, P.E. – Architect/Engineer

A hearing was held on case no. 8682-Z.

Present: Fred Couceyro, City of Coral Gables Parks and Recreation Director – Applicant

**APPLICANT'S PROPOSAL:** In connection with proposed freestanding shelter canopies for the existing playgrounds at the subject property, the Applicant requests the following variances pursuant to the provisions of Ordinance No. 1525 as amended and known as the "Zoning Code."

1. Grant a variance allowing freestanding shelter canopies for the existing playgrounds at Phillips Park vs. all shelter canopies shall be attached to the building and may be located on the front, sides or rear of said building and no self-supporting or freestanding shelter canopy, carport canopy or entrance canopy shall be erected as required by Section 5-302(F)(2) and (3) of the Coral Gables "Zoning Code."
2. Grant a variance allowing a freestanding shelter canopy to maintain a ten (10'-0") feet side street setback on Galiano Street vs. principal building and/or structures must maintain a fifteen (15'-0") feet side street setback as required by Section 4-204(D)(b)(ii) of the Coral Gables "Zoning Code."

All as shown on plans which have received Final approval from the Board of Architects. Such approval is for architectural design only and is not an endorsement of any variance being requested by the Applicant.

**STAFF OBSERVATION:**

Item No. 1

The Applicant is requesting a variance to allow three freestanding shelter canopies over the existing playgrounds at Phillips Park. Presently, the "Zoning Code" does not allow any self-supporting or freestanding shelter canopies. All canopies must be attached to the building.

After careful review of the plans submitted for the proposed canopies, staff has determined the canopies to be a necessity. The canopies provide relief from sun exposure and protection from the rain for the children using the playground. In addition, the canopies maintain the equipment at a cooler level.

The proposed canopies are aesthetically pleasing and enhance the appearance of the playground.

Item No. 2

The Applicant is requesting a variance to allow one freestanding shelter canopy to be installed at a distance of ten (10'-0") feet from the side street property line which abuts Galiano Street instead of providing a fifteen (15'-0") feet side street setback as required by the Coral Gables "Zoning Code."

The park is designated Special Use which is provided for and intended to accommodate uses to enhance the quality of the surrounding neighborhood. Currently, it has a tennis court which abuts the side street property boundary. The proposed canopy would be set back farther, be less obtrusive than the existing tennis court and add to the enjoyment of the park and the well being of the citizens.

The Zoning Division staff recommends APPROVAL of Items 1 and 2 of the Applicant's request.

**STAFF RECOMMENDATION:** Pursuant to Section 3-806 STANDARDS FOR VARIANCES of the "Zoning Code," the Zoning Division staff finds and the Board of Adjustment shall find as follows in regard to the Applicant's proposal as presented in their application for a variance from the provisions of Ordinance No. 1525, as amended and known as the "Zoning Code," and makes the following recommendations:

1. That special conditions and circumstances do exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district.
2. That the special conditions and circumstances do not result from the actions of the Applicant.
3. That granting the variance requested will not confer on the Applicant a special privilege that is denied by this Ordinance to other lands, buildings or structures in the same zoning district.
4. That literal interpretation of the provisions of the "Zoning Code" would deprive the Applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the "Zoning Code," and would work unnecessary and undue hardship on the Applicant (see also definition of "necessary hardship").
5. That the variance requested is the minimum variance that will make possible the reasonable use of the land, building or structure.
6. That granting the variance will not change the use to one that is different from other land in the same district.

7. That the granting of the variance will be in harmony with the general intent and purpose of the "Zoning Code," and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

Based on the findings in paragraphs 1 through 7 above, the Zoning Division staff recommends APPROVAL of items 1 and 2 of the Applicant's proposal.

A motion was made by Mr. Bello, seconded by Ms. Langer to Approve items 1 and 2 of the Applicant's proposal.

**RESOLUTION NO. 4914-ZB**

**A RESOLUTION APPROVING A REQUEST FOR VARIANCES TO ORDINANCE NO. 1525 AS AMENDED AND KNOWN AS THE "ZONING CODE," TO WIT:**

1. Grant a variance allowing freestanding shelter canopies for the existing playgrounds at Phillips Park vs. all shelter canopies shall be attached to the building and may be located on the front, sides or rear of said building and no self-supporting or freestanding shelter canopy, carport canopy or entrance canopy shall be erected as required by Section 5-302(F)(2) and (3) of the Coral Gables "Zoning Code."
2. Grant a variance allowing a freestanding shelter canopy to maintain a ten (10'-0") feet side street setback on Galiano Street vs. principal building and/or structures must maintain a fifteen (15'-0") feet side street setback as required by Section 4-204(D)(b)(ii) of the Coral Gables "Zoning Code."

A Resolution was passed and adopted due to the following roll call: "Yea" - Mr. Pozo, Mr. Artigues, Mr. Bello, Dr. Briggle, Ms. Langer and Mr. Lukacs. "Nay" - None. "Excused" - Mr. McGrane.

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**3. 8683-Z**

Lot(s): 1 through 4 inclusive,  
and east half of street adjacent to Lots 1 and 3, Block: D  
Sunrise Point, PB/PG: 65/14  
(25 Sunrise Avenue - Sunrise Harbor Park)

Fred Couceyro, City of Coral Gables Parks and Recreation Director – Applicant  
City of Coral Gables – Owner  
David S. Dayton, P.E. – Architect/Engineer

A hearing was held on case no. 8683-Z.

Present: Fred Couceyro, City of Coral Gables Parks and Recreation Director – Applicant

**APPLICANT'S PROPOSAL:** In connection with proposed freestanding shelter canopies for the existing playgrounds at the subject property, the Applicant requests the following variances pursuant to the provisions of Ordinance No. 1525 as amended and known as the "Zoning Code."

1. Grant a variance allowing freestanding shelter canopies for the existing playgrounds at Sunrise Harbor Park vs. all shelter canopies shall be attached to the building and may be located on the front, sides or rear of said building and no self-supporting or freestanding shelter canopy, carport canopy or entrance canopy shall be erected as required by Section 5-302(F)(2) and (3) of the Coral Gables "Zoning Code."
2. Grant a variance allowing a freestanding shelter canopy to maintain a twenty (20'-0") feet front street setback on Douglas Road vs. principal building and/or structures must maintain a twenty-five (25'-0") feet front street setback as required by Section 4-204(D)(a) of the Coral Gables "Zoning Code."

All as shown on plans which have received Final approval from the Board of Architects. Such approval is for architectural design only and is not an endorsement of any variance being requested by the Applicant.

**STAFF OBSERVATION:**

Item No. 1

The Applicant is requesting a variance to allow three freestanding shelter canopies over the existing playgrounds at Sunrise Harbor Park. Presently, the "Zoning Code" does not allow any self-supporting or freestanding shelter canopies. All canopies must be attached to the building.

After careful review of the plans submitted for the proposed canopies, staff has determined the canopies to be a necessity. The canopies provide relief from sun exposure and protection from the rain for the children using the playground. In addition, the canopies maintain the equipment at a cooler level.

The proposed canopies are aesthetically pleasing and enhance the appearance of the playground.

Item No. 2

The Applicant is requesting a variance to allow one freestanding shelter canopy to be installed at a distance of twenty (20'-0") feet from the front street property line which abuts Douglas Road instead of providing a twenty-five (25'-0") feet front street setback as required by the Coral Gables "Zoning Code."

The park is designated Special Use which is provided for and intended to accommodate uses to enhance the quality of the surrounding neighborhood. The canopy is another structure which would add to the enjoyment of the park and the well being of the citizens.

The Zoning Division staff recommends APPROVAL of Items 1 and 2 of the Applicant's request.

**STAFF RECOMMENDATION:** Pursuant to Section 3-806 STANDARDS FOR VARIANCES of the "Zoning Code," the Zoning Division staff finds and the Board of Adjustment shall find as follows in regard to the Applicant's proposal as presented in their application for a variance from the provisions of Ordinance No. 1525, as amended and known as the "Zoning Code," and makes the following recommendations:

1. That special conditions and circumstances do exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district.

THE CITY OF CORAL GABLES  
BOARD OF ADJUSTMENT

RECAP  
OCTOBER 6, 2008 PAGE 6

2. That the special conditions and circumstances do not result from the actions of the Applicant.
3. That granting the variance requested will not confer on the Applicant a special privilege that is denied by this Ordinance to other lands, buildings or structures in the same zoning district.
4. That literal interpretation of the provisions of the "Zoning Code" would deprive the Applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the "Zoning Code," and would work unnecessary and undue hardship on the Applicant (see also definition of "necessary hardship").
5. That the variance requested is the minimum variance that will make possible the reasonable use of the land, building or structure.
6. That granting the variance will not change the use to one that is different from other land in the same district.
7. That the granting of the variance will be in harmony with the general intent and purpose of the "Zoning Code," and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

Based on the findings in paragraphs 1 through 7 above, the Zoning Division staff recommends APPROVAL of items 1 and 2 of the Applicant's proposal.

A motion was made by Mr. Bello, seconded by Ms. Langer to Approve items 1 and 2 of the Applicant's proposal.

**RESOLUTION NO. 4915-ZB**

**A RESOLUTION APPROVING A REQUEST FOR VARIANCES TO ORDINANCE NO.  
1525 AS AMENDED AND KNOWN AS THE "ZONING CODE," TO WIT:**

1. Grant a variance allowing freestanding shelter canopies for the existing playgrounds at Sunrise Harbor Park vs. all shelter canopies shall be attached to the building and may be located on the front, sides or rear of said building and no self-supporting or freestanding shelter canopy, carport canopy or entrance canopy shall be erected as required by Section 5-302(F)(2) and (3) of the Coral Gables "Zoning Code."
2. Grant a variance allowing a freestanding shelter canopy to maintain a twenty (20'-0") feet front street setback on Douglas Road vs. principal building and/or structures must maintain a twenty-five (25'-0") feet front street setback as required by Section 4-204(D)(a) of the Coral Gables "Zoning Code."

A Resolution was passed and adopted due to the following roll call: "Yea" - Mr. Artigues, Mr. Bello, Dr. Briggle, Ms. Langer, Mr. Pozo and Mr. Lukacs. "Nay" - None. "Excused" - Mr. McGrane.

THE CITY OF CORAL GABLES  
BOARD OF ADJUSTMENT

RECAP  
OCTOBER 6, 2008 PAGE 7

4. 8685-Z            Lot(s): North 110 feet of east 100 feet of west 200 feet of Lot A  
                          Coral Gables Biscayne Bay Section 1, PB/PG: 41/14  
                          (500 Gondoliere Avenue)

Robert C. Gilbert – Applicant  
Robert C. Gilbert and Nancy B. Gilbert – Owner(s)  
Carlos A. Estenoz, P.E. – Architect/Engineer

A hearing was held on case no. 8685-Z.

Present: Robert C. Gilbert – Applicant; Tony Recio and Stephen J. Helfman representing Applicant

**APPLICANT'S PROPOSAL:** In connection with the existing generator for the existing single-family residence at the subject property, the Applicant requests the following variance pursuant to the provisions of Ordinance No. 1525 as amended and known as the "Zoning Code."

1. Grant a variance to permit the existing generator to maintain a West side setback of three feet, eight inches (3'-8") vs. permanently installed stand-by generators shall maintain a minimum side setback of five (5'-0") feet as required by Section 5-2801(A)(3) and Section 5-1804(A) of the Coral Gables "Zoning Code."

All as shown on plans which have received Final approval from the Board of Architects. Such approval is for architectural design only and is not an endorsement of any variance being requested by the Applicant.

**STAFF OBSERVATION:** The Applicant is applying for a variance to permit an existing generator to encroach into the required five (5'-0") feet side setback and maintain a setback of three feet, eight inches (3'-8").

A permit was issued for the installation of a generator on June 16, 2006. The plans approved by City staff clearly indicate the required five (5'-0") feet setback from the generator to the side property boundary. However, the generator was installed at three feet, eight inches (3'-8") instead of five (5'-0") feet as required by the Coral Gables "Zoning Code."

The property is not unique in size or configuration. Allowing the Applicant to maintain a reduced side setback area would confer a privilege not afforded to other properties. An error in the location of the installed generator or any deviation from the approved plans, does not constitute a hardship and would set a precarious precedent for any similar cases in the future.

After review of the plans submitted, the Zoning Division staff recommends **DENIAL** of Item No. 1 of the Applicant's proposal.

**STAFF RECOMMENDATION:** Pursuant to Section 3-806 STANDARDS FOR VARIANCES of the "Zoning Code," the Zoning Division staff finds and the Board of Adjustment shall find as follows in regard to the Applicant's proposal as presented in their application for a variance from the provisions of Ordinance No. 1525, as amended and known as the "Zoning Code," and makes the following recommendations:

1. That special conditions and circumstances do not exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district.
2. That the special conditions and circumstances would result from the actions of the Applicant.
3. That granting the variance requested will confer on the Applicant a special privilege that is denied by these regulations to other lands, buildings or structures in the same zoning district.
4. That literal interpretation of the provisions of these regulations would not deprive the Applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these regulations, and would not work unnecessary and undue hardship on the Applicant (see also definition of "necessary hardship").
5. That the variance granted is not the minimum variance that will make possible the reasonable use of the land, building or structure.
6. That granting the variance will change the use to one that is not permitted in the zoning district or different from other land in the same district.
7. That the granting of the variance will not be in harmony with the general intent and purpose of these regulations and that such variance will be injurious to the area involved or otherwise detrimental to the public welfare.

Based on the findings in paragraphs 1 through 7 above, the Zoning Division staff recommends DENIAL of item 1 of the Applicant's proposal.

Testimony was heard by the Applicant and City staff members indicating that there were errors made by both the contractor and engineer as to the installation location of the generator. A combination of factors such as manufacturer specifications, improper measurement to the setback property line and not accounting for the actual size of equipment, lead to an error in the location of the installed generator. The Applicant offered that he became aware of the generator's noncompliance with the setback requirement only after a neighbor's complaint about the noise caused by the generator triggered an inspection of his property.

Zoning Director Edward Weller stated that during the time the Gilberts had their generator installed (2006-07), the City was inundated with permits for generator installations due to an extremely active hurricane season. Consequently, at the time there was not a comprehensive setback inspection system in place to deal with the onslaught of requests; therefore, the onus of proper installation was placed on the experts and professionals contracted to do the work.

Aida Serra, the Applicant's next door neighbor, was in attendance and testified that the noise caused by the generator has been an issue since its installation. Although the noise is bothersome for Ms. Serra, she stated her biggest concern is the carbon vapors produced when the generator is in use. With her bedroom window twenty (20'-0") feet away from the generator, Ms. Serra is fearful that emissions could travel into her home and endanger her family.

Stephan Helfman, a representative for the Applicant, testified that the generator installed at the Gilbert's residence runs on propane gas and therefore emits no harmful carbon vapors into the air.

A motion was made by Ms. Langer, seconded by Dr. Briggle to Approve item 1 of the Applicant's proposal subject to the existing generator being modified with a noise reduction apparatus to be inspected and approved by the City of Coral Gables.

**RESOLUTION NO. 4916-ZB**

A RESOLUTION APPROVING A REQUEST FOR VARIANCES TO ORDINANCE NO. 1525 AS AMENDED AND KNOWN AS THE "ZONING CODE" SUBJECT TO EXISTING GENERATOR BEING MODIFIED WITH A NOISE REDUCTION APPARATUS TO BE INSPECTED AND APPROVED BY THE CITY OF CORAL GABLES, TO WIT:

1. Grant a variance to permit the existing generator to maintain a West side setback of three feet, eight inches (3'-8") vs. permanently installed stand-by generators shall maintain a minimum side setback of five (5'-0") feet as required by Section 5-2801(A)(3) and Section 5-1804(A) of the Coral Gables "Zoning Code."

A Resolution was passed and adopted due to the following roll call: "Yea" - Mr. Bello, Dr. Briggle, Ms. Langer and Mr. Artigues. "Nay" - Mr. Pozo and Mr. Lukacs. "Excused" - Mr. McGrane.

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**5. Election of Chairperson and Vice Chairperson**

A motion was made by Mr. Bello to nominate and move for approval Mr. Lukacs as Chairperson of the Board. The motion was seconded by Mr. Artigues.

**RESOLUTION NO. 4917-ZB**

A Resolution was passed and adopted due to the following roll call: "Yea" - Dr. Briggle, Ms. Langer, Mr. Pozo, Mr. Artigues, Mr. Bello and Mr. Lukacs. "Nay" - None. "Excused" - Mr. McGrane.

A motion was made by Ms. Langer to nominate and move for approval Dr. Briggle as Vice Chairperson of the Board of Adjustment. The motion was seconded by Mr. Lukacs.

**RESOLUTION NO. 4918-ZB**

A Resolution was passed and adopted due to the following roll call: "Yea" - Ms. Langer, Mr. Pozo, Mr. Artigues, Mr. Bello, Dr. Briggle and Mr. Lukacs. "Nay" - None. "Excused" - Mr. McGrane.

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Meeting adjourned at 10:30 a.m.

THE CITY OF CORAL GABLES  
BOARD OF ADJUSTMENT

Elizabeth L. Gonzalez, Acting Secretary