

PALM BEACH COUNTY
BOARD OF ADJUSTMENT
PUBLIC HEARING

Thursday, April 15, 1999
9:00 a.m. - 9:25 a.m.
100 Australian Avenue
West Palm Beach, Florida

REPORTING:
MICHELLE S. LANG

A T T E N D E E S

CHELLE KONYK, CHAIRMAN

ROBERT BASEHART

RAYMOND PUZZITIELLO

GLENN WICHINSKY

JOSEPH JACOBS

STANLEY MISROCH

STEVEN RUBIN

JON MCGILLIS

DAVID CUFFE

LAURA BEEBE, ESQUIRE

JOYCE CAI

RICHARD WALKER

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P R O C E E D I N G S

CHAIRMAN KONYK: I'd like to call to order the April 15, 1999 Board of Adjustment meeting and start with the roll call and declaration of the quorum.

MS. MOODY: Mr. Bob Basehart?

MR. BASEHART: Here.

MS. MOODY: Mr. Joseph Jacobs?

MR. JACOBS: Here.

MS. MOODY: Mr. Stanley Misroch?

MR. MISROCH: Here.

MS. MOODY: Mr. Gilbert Moore?

(NO RESPONSE)

MS. MOODY: Mr. Raymond Puzzitiello?

MR. PUZZITIELLO: Here.

MS. MOODY: Mr. Steven Rubin?

MR. RUBIN: Here.

MS. MOODY: Mr. Glenn Wichinsky?

MR. WICHINSKY: Here.

MS. MOODY: Ms. Chelle Konyk?

MS. KONYK: Here.

MS. MOODY: We have a quorum.

MS. KONYK: Okay.

CHAIRMAN KONYK: The next item on the agenda is proof of publication and I have before me proof of publication in the Palm Beach Post on, March 28, 1999.

The next item on the agenda is remarks of the Chairman. For those of you who are not familiar with how the Board conducts it's business, the hearing is divided into two parts the consent agenda and the regular. Item's on the consent agenda are item's that have been recommended for approval by staff either with or without conditions. The applicant has agreed with the conditions and there's no opposition from the public, and no Board members feels the item warrants a full hearing. If your item remains on the consent agenda you're free to leave when the consent has been voted on. Item's that have opposition from the public or the applicant does not agree with the conditions or a Board member feels the item warrants a full hearing will be pulled from the consent and reordered to the

regular agenda. Item's on the regular agenda are item's that have been recommended for denial by staff or the applicant does not agree with the conditions or there is opposition from the public or a Board member feels the item warrants a full hearing. The item will be introduced by staff, the applicant will make their presentation, the staff can then make their presentation at that point we'll open the public portion of the hearing. After the public portion of the hearing is closed the Board members will have an opportunity to ask questions of staff or the applicant and then vote on the item.

The next item on the agenda is approval of the minutes of the last meeting which was March 18, 1999. Does anybody have a motion to approve?

MR. JACOBS: I'll approve. Make that motion.

CHAIRMAN KONYK: Motion by Mr. Jacobs.

MR. BASEHART: Second.

CHAIRMAN KONYK: Second by Mr. Basehart.

All those in favor?

(ALL RESPOND AYE)

CHAIRMAN KONYK: Motion carries unanimously.

The next item on the agenda is remarks of the zoning director.

MR. MACGILLIS: No comments.

CHAIRMAN KONYK: No comments. Are there any changes to the agenda?

MR. MACGILLIS: Yeah, there's the subdivision item which is number ten on your agenda. SD-94, the engineering department has requested that that be placed on the consent agenda.

CHAIRMAN KONYK: Okay, so SD-94 will become part of the consent.

MR. MACGILLIS: Those are the only changes.

CHAIRMAN KONYK: Okay.

CHAIRMAN KONYK: The first item on the consent is item BOFA 9900015, Jerry Case, to allow for a reduction in the required -- oh, I'm sorry postponement. Is that by right?

MR. MACGILLIS: It's the second postponement. We did get a letter staff supports the additional thirty days. The applicant is exploring his options on how to proceed with this variance. I don't see -- it's Kilday and Associates and I don't see anyone here but we did get a letter

and staff doesn't have any problem postponing this thirty days.

CHAIRMAN KONYK: Do we need to vote on it?

MR. MACGILLIS: Yes, because it's the second request.

CHAIRMAN KONYK: Does somebody want to make a motion to allow them to have a thirty day postponement.

MR. MACGILLIS: That will be time certain to the May 20, 1999 hearing.

MR. WICHINSKY: So moved.

MR. PUZZITIELLO: Second.

CHAIRMAN KONYK: Motion by Mr. Wichinsky, second by Mr. Puzzitiello. All those in favor?
(ALL RESPOND AYE)

CHAIRMAN KONYK: Opposed?
(NO RESPONSE)

CHAIRMAN KONYK: Motion carries unanimously. BOFA 9900015 will be postponed to the May 20, hearing.

CHAIRMAN KONYK: The next item for postponement is BAAA 9900019, appeal of the zoning director's interpretation to suspend building permit B97020061 for a new relocated billboard. Is this by right?

MR. MACGILLIS: Yes, this item is not advertised it's one of the -- it's an appeal to the zoning director's decision. The applicant -- apparently they're trying to work something out, a settlement agreement on this site with the Board of County Commissioners. There's a meeting coming up next week where they're hoping maybe this appeal will no longer be required to this Board. So staff is -- I guess you have to take a motion on this because it's actually the second time.

CHAIRMAN KONYK: Do we have a motion for postponing?

MR. BASEHART: So moved.

MR. JACOBS: Second.

CHAIRMAN KONYK: Motion by Mr. Basehart. Second by Mr. Jacobs. All those in favor?
(ALL RESPOND AYE)

CHAIRMAN KONYK: Motion carries unanimously BAAA 9900019 will be postponed to the May 20, 1999 hearing.

CHAIRMAN KONYK: The next item for postponement is BOFA 9900020, E.H. and Marianne Vanden Bosch to allow a proposed garage to encroach into the required front setback. Is this by right?

MR. MACGILLIS: Yes, we did receive a letter -- actually staff requested the applicant postpone this item because we need additional information in order to process the application and we didn't get it in time.

CHAIRMAN KONYK: Is the applicant present?

MR. MACGILLIS: No.

CHAIRMAN KONYK: So we don't need a motion for this one?

MR. MACGILLIS: No, we did receive a letter about this.

CHAIRMAN KONYK: So BOFA 9900020 will be postponed to the May 20 --

MR. MACGILLIS: May 20, 1999 hearing.

CHAIRMAN KONYK: -- 1999 hearing.

CHAIRMAN KONYK: Items on the consent BOFA 9900021, Stanley Cohen to allow an existing swimming pool and a proposed screen enclosure to encroach into the rear setback. Is the applicant present?

MR. STEVENS: Les Stevens attorney for the applicant. We're obviously present and we agree with the recommendation of staff including the conditions that were set forth.

CHAIRMAN KONYK: The four conditions you understand and agree with?

MR. STEVENS: Yes.

CHAIRMAN KONYK: Is there any letters on this, Jon?

MR. MACGILLIS: No.

CHAIRMAN KONYK: Any Board member feel this item needs to be pulled?

(NO RESPONSE)

CHAIRMAN KONYK: Seeing none item BOFA 9900021 will remain on the consent agenda.

STAFF RECOMMENDATIONS

APPROVAL, based upon the following application of the standards enumerated in Article 6, Section 6.6.A.9 & 6.6.A.10. of the Palm Beach County Unified

Land Development Code (ULDC), which a petitioner must meet before the Board of Adjustment may authorize a variance.

ANALYSIS OF ARTICLE 6, SECTION 6.6.A.9 & 6.6.A.10
VARIANCE STANDARDS

1. SPECIAL CONDITIONS AND CIRCUMSTANCES EXIST THAT ARE PECULIAR TO THE PARCEL OF LAND, BUILDING OR STRUCTURE, THAT ARE NOT APPLICABLE TO OTHER PARCELS OF LAND, STRUCTURES OR BUILDINGS IN THE SAME DISTRICT

YES. As previously stated, the subject property is a zero lot line home within the Pipers Glen PUD. The subdivision is located North of Pipers Glen Blvd. and East of Jog Road in the RT- Residential Zoning District. The lot is conforming with respect to size and property dimensions. The single family residence complies with the setback requirements. The swimming pool and the paver deck located in the rear of the lot were constructed in the rear setback by Olympic Pool Services Corp., which was hired by the previous owner. The applicant recently purchased the property without knowing the pool and the paver deck were not built according to the approved building permit. It was at the time of final building inspection for the pool that the applicant was notified of the rear setback encroachment. The final C.O. for the pool and the paver deck is pending the result of Board of Adjustment hearing.

As previously indicated, to the rear of the subject property exists a 15-foot landscape buffer with a 6-foot-high wood fence. In addition, the adjacent commercial property when developed will require a 20-foot landscape buffer. The approved site plan for the commercial tract to the rear indicated a minimum of 40-foot setback from the east property line. Therefore, the open space created by the existing 15' landscape buffer, 20' required landscape buffer on the commercial tract and the additional 20' of roadway further west will mitigate this minor rear setback encroachment.

2. SPECIAL CIRCUMSTANCES AND CONDITIONS ARE THE RESULT OF ACTIONS OF THE APPLICANT:

NO. The previous owner hired the pool contractor to

start constructing the swimming pool and the paver deck prior to selling the property to the applicant. However, as stated by the pool contractor, it was their understanding that the existing open space to the rear of the property would permit the pool to construct 3 feet from the rear property line and the proposed screen enclosure to line on the rear property line, pursuant to a 25% rear setback reduction. However, staff informed the applicant that this provision of a 25% rear reduction can only be applied when a platted open space such as golf course, preserve area, canal exists to the rear, which does not exist in this situation.

It was not until the final inspections for the pool which occurred 3 days after the closing did the applicant discover that there were rear setback encroachments of the swimming pool.

In an effort to correct the setback encroachment, the applicant is applying to the Board of Adjustment for two variances so that the existing swimming pool and the proposed screen enclosure can be finalized and CO by the County.

3. GRANTING THE VARIANCE SHALL CONFER UPON THE APPLICANT SPECIAL PRIVILEGE(S) DENIED BY THE COMPREHENSIVE PLAN AND THIS CODE TO OTHER PARCELS OF LAND, BUILDINGS OR STRUCTURES, IN THE SAME DISTRICT: NO. The 2-foot setback encroachments are minor and presently mitigated with the existing 15-foot landscape buffer and 6 foot-high wood fence behind the rear of the lot. The swimming pool and the paver deck were constructed according to PBC codes. The pool cannot be relocated out of the rear setback, if the variance is denied. If the pool is demolished or filled, the deck also needs to be moved 2 feet towards the dwelling in order for the future screen enclosure to be able to cover the entire deck without a rear setback encroachment or variance.

Due to the fact that there will be a total of 35-foot landscape buffer between the structures on both properties including a 6' fence, the impact of the existing and proposed structures will be minimal on the adjacent property. As previously stated, the nearest future building to the rear of this property will be required to be constructed at least 55 feet

from the subject rear property line.

Granting the variances will ensure the applicant obtains all necessary permits and inspections to legalize the swimming and to allow the proposed screen enclosure to be constructed at the rear property line.

4. A LITERAL INTERPRETATION AND ENFORCEMENT OF THE TERMS AND PROVISIONS OF THIS CODE WILL DEPRIVE THE APPLICANT OF RIGHTS COMMONLY ENJOYED BY OTHER PARCELS OF LAND IN THE SAME DISTRICT, AND WOULD WORK AN UNNECESSARY AND UNDUE HARDSHIP:

YES. The setback variances, if denied, would required the swimming pool to be demolished and filled in. The paver deck would also need to be moved 2 feet towards the dwelling in order for the future screen enclosure to be constructed to cover the entire deck without a rear setback encroachment or variance.

The 2-foot rear setback encroachments are mitigated by the existing 15 foot PUD landscape buffer, 6 foot-high wood fence running along the subject rear property line and a future required 20-foot landscape buffer on the abutting commercial property. Therefore, allowing the pool and proposed screen enclosure to be constructed on the rear property line, will not impose any adverse impacts on the adjoining property.

5. THE APPROVAL OF VARIANCE IS THE MINIMUM VARIANCE THAT WILL ALLOW A REASONABLE USE OF THE PARCEL OF LAND, BUILDING OR STRUCTURE:

YES. As previously indicated, the requested variances are minimal and can be mitigated by existing and proposed buffering and fences. The swimming pool is a reasonable use of the rear yard of a private home in Florida. The lot does not allow for alternative design options that would further reduce the variance requests or eliminate the variance. The current property owner is putting forth all the efforts to correct this situation created by the pool contractor.

6. GRANT OF THE VARIANCE WILL BE CONSISTENT WITH THE PURPOSES, GOALS, OBJECTIVES AND POLICIES OF THE COMPREHENSIVE PLAN AND THIS CODE:

YES. The requests comply with the intents of the ULDC which are to ensure minimum rear setback separation between uses. The variances will not have negative impacts on the adjacent commercial use in the rear nor on the single family uses on both sides. As stated previously, the use to the rear will be buffered by a total of 35-foot-wide landscape buffer including 6-foot high fences.

7. THE GRANT OF THE VARIANCE WILL BE INJURIOUS TO THE AREA INVOLVED OR OTHERWISE DETRIMENTAL TO THE PUBLIC WELFARE:

NO. The structures in questions are located in the rear of the property. The vacant commercial property to the rear would not be impacted. There is an existing 15-foot PUD landscape buffer including a 6-foot high wood fence that mitigates the majority of the existing and the proposed structures. In addition, the required 20 foot landscape buffer and a 6 foot-high masonry perimeter wall that will be required for the future commercial development on the westerly adjacent property will further mitigate these minor rear setback encroachments.

Therefore, the requests are compatible with surrounding uses of the area. Approving of the variances will contribute to the promotion of the applicant's quality of life. The granting of the rear setback variances will allow the applicant to obtain necessary permits and final inspections to ensure the pool, deck and screen enclosure were it will be built to be consistent with the County codes.

ENGINEERING COMMENT(S)

No Comments (ENG)

ZONING CONDITION(S)

1) The property owner shall provide the Building Division with a copy of the Board of Adjustment Result letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application. (BLDG PERMIT:BLDG)

2) By May 15,1999, the BA Zoning staff shall

ensure the certified site plan has a notation on lot 6 indicating the approved rear setbacks for the pool and screen enclosure. (DATE:MONITORING-ZONING-BA)

3) Maintenance/Repair to the screen enclosure shall be conducted on the applicant's property. (ON-GOING)

4) By July 15,1999, the applicant shall provide the Building Division, Inspection Section with a copy of the BA Result Letter in order for the final Certificate of Completion for the pool (B98031 967) to be finalized. (DATE: MONITORING-BUILDING-INSP-C/O)

CHAIRMAN KONYK: BOFA 9900022, West Boca Development to allow a proposed architectural entrance feature to encroach into the required front and side street setback. Is the applicant present?

MS. WESS: Amber Wess with Kilday and Associates and we do agree with the conditions set forth on this.

CHAIRMAN KONYK: The two conditions you understand and agree with?

MS. WESS: Actually, I think Mr. MacGillis indicated there was a third one.

MR. MACGILLIS: I'm sorry I got the petition mixed up there's still only two, I'm sorry.

CHAIRMAN KONYK: There's only two.

MS. WESS: There's only two, okay.

CHAIRMAN KONYK: Unless you want a third one.

MS. WESS: The two are fine.

CHAIRMAN KONYK: Any letters?

MR. MACGILLIS: No letters, no comment.

CHAIRMAN KONYK: Any Board member feel this item warrants a full hearing?

(NO RESPONSE)

CHAIRMAN KONYK: Seeing none item BOFA

9900022 will remain on the consent.

STAFF RECOMMENDATION

APPROVAL, based upon the following application of the standards enumerated in Article 5, Section 5.7.E. of the Palm Beach County Unified Land Development Code (ULDC), which a petitioner must meet before the Board of Adjustment may authorize a variance.

ANALYSIS OF ARTICLE 5, SECTION 5.7.E VARIANCE STANDARDS

1. SPECIAL CONDITIONS AND CIRCUMSTANCES EXIST THAT ARE PECULIAR TO THE PARCEL OF LAND, BUILDING OR STRUCTURE, THAT ARE NOT APPLICABLE TO OTHER PARCELS OF LAND, STRUCTURES OR BUILDINGS IN THE SAME DISTRICT:

YES. This 59 acre site will support a Planned Unit Development, known as Ponte Verde. The project was approved by the Board of County Commission in 1997, Petition PDD97-56, to support a total of 290 dwelling units. This will be an upscale residential community on the east side of 441 just north of Glades Road. The applicant has an approved site plan for this development. The project was moving forward with construction plans when the entrance features became an issue. When the site was designed special attention was given to the frontage and entrance on 441. The developer is proposing to install a privacy wall, lush landscaping and two 15' by 15' pavilion type structures on both the south and north side of the entrance into the development. The one on the north can encroach into the required setbacks because it is a bus shelter and setbacks are not applied to this type of structure. The southern structure which is for architectural character and symmetry to the entrance feature must comply with setbacks. If the southern structure is setback to meet code, the symmetry the designer is trying to accomplish will not be maintained. The ULDC does not allow address this type of structure in terms of permitting it to have a lesser setback because it will remain open on all sides and not be habital.

Therefore, the fact the front property line and entrance to this development is setback 145 feet from State Road 7 (441) the impact will be minimal. While the side street setbacks encroachment of 5' is minimal and will also be mitigated by landscaping.

2. SPECIAL CIRCUMSTANCES AND CONDITIONS ARE THE RESULT OF ACTIONS OF THE APPLICANT:

NO. The applicant proposed the landscaping, wall and architectural structures to provide a dramatic entrance statement for this proposed upscale residential development. The structure was designed to accent the entrance to the development. One is permitted to encroach the setbacks by right since it is a bus shelter while the other must meet code. The applicant has met with staff to discuss how to accomplish their client's desire to maintain the symmetry that is created by these two structures that frame the entrance. Staff informed the applicant that the ULDC did not exempt this structure from the required setbacks, even though it is a structure that will not be habital and will be open on all sides.

Therefore, the applicant is requesting a variance that will allow the entrance to be constructed as proposed by the designer and since the variances are minimal and will not create any impact it can be found that this is not a self created situation.

3. GRANTING THE VARIANCE SHALL CONFER UPON THE APPLICANT SPECIAL PRIVILEGE(S) DENIED BY THE COMPREHENSIVE PLAN AND THIS CODE TO OTHER PARCELS OF LAND, BUILDINGS OR STRUCTURES, IN THE SAME DISTRICT:

NO. The granting of these minor setback encroachments will not grant any special privilege onto the applicant. The applicant can comply with the general intent of the front and side corner setbacks for this proposed 15' by 15' open structure. The impact of this structure will be mitigated by the open space created by the land area between 441 and the front property line and the side corner setback will be mitigated by the proposed landscape material.

4. A LITERAL INTERPRETATION AND ENFORCEMENT OF

THE TERMS AND PROVISIONS OF THIS CODE WILL DEPRIVE THE APPLICANT OF RIGHTS COMMONLY ENJOYED BY OTHER PARCELS OF LAND IN THE SAME DISTRICT, AND WOULD WORK AN UNNECESSARY AND UNDUE HARDSHIP:

YES. The applicant is proposing a design that will provide a dramatic sense of entrance to this upscale development. The use of walls, landscape and architectural features is a very important part of creating this image and feeling that one is entering an upscale development. The fact that one of the architectural features is permitted to encroach the setbacks because it will be utilized as a bus shelter and the fact the other isn't since it is only decorative places a restraint on the applicant. In order to maintain the symmetry that is created by the two structures as one approaches the entrance to the development the two structures must align with each other. The landscaping that will be installed around the structures will mitigate any negative impacts associated with the minor setback encroachments. These encroachments will not be visible by those entering the site.

5. THE APPROVAL OF VARIANCE IS THE MINIMUM VARIANCE THAT WILL ALLOW A REASONABLE USE OF THE PARCEL OF LAND, BUILDING OR STRUCTURE:

YES. The granting of the variances will allow the applicant's client to move forward with the development of this site. The proposed landscape program for this entrance will significantly enhance the property owners enjoyment as they approach and enter the site from State Road 7. The two structures are designed to draw the visual perspective to the entrance as the user enters the site.

6. GRANT OF THE VARIANCE WILL BE CONSISTENT WITH THE PURPOSES, GOALS, OBJECTIVES AND POLICIES OF THE COMPREHENSIVE PLAN AND THIS CODE:

YES. The intent of the ULDC setback requirements is to ensure consistency is maintained between property lines and structures. The front setback will be mitigated by the distance that is created by the land area between State Road 7 and the front property line. The side setback of 5 feet is minimal and will be mitigated by the proposed landscape material. The intent of the code to ensure consistency in setbacks for structures will actually be accomplished by the granting of this variance. Since the northern structure has to be placed as

close to the front property line to allow for pedestrian access to the bus shelter, the northern structure will simply align with the structure and provide a uniform look from State Road 7.

7. THE GRANT OF THE VARIANCE WILL BE INJURIOUS TO THE AREA INVOLVED OR OTHERWISE DETRIMENTAL TO THE PUBLIC WELFARE:

NO. The granting of these two minor setback encroachments will be mitigated by the proposed landscaping. There will be no impact on the surrounding area or future residence of this development.

ENGINEERING COMMENT(S)

No Comment (ENG)

ZONING CONDITION(S)

1. The property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application. (BLDG PERMIT:BLDG)

2. Prior to DRC certification the BA conditions shall be shown on the site plan.(ZONING-DRC)

CHAIRMAN KONYK: BOFA 9900023, Charles and Cheryl Scardina to allow a proposed attached garage to encroach into the side setbacks. Is the applicant present?

MR. LELONEK: Joe Lelonek with Land Design South representing the applicant. We do understand and agree with two conditions that are imposed on this by the staff's director.

CHAIRMAN KONYK: Any letters?

MR. MACGILLIS: One letter from lot 79 he just had questions regarding the request but no objection.

CHAIRMAN KONYK: Any member of the public to speak on this item?

(NO RESPONSE)

CHAIRMAN KONYK: Any member of the Board feel this item warrants a full hearing?

(NO RESPONSE)

CHAIRMAN KONYK: Seeing none BOFA 9900023 will remain on the consent.

STAFF RECOMMENDATION

APPROVAL, based upon the following application of the standards enumerated in Article 5, Section 5.7.E. of the Palm Beach County Unified Land Development Code (ULDC), which a petitioner must meet before the Board of Adjustment may authorize a variance.

ANALYSIS OF ARTICLE 5, SECTION 5.7.E VARIANCE STANDARDS

1. SPECIAL CONDITIONS AND CIRCUMSTANCES EXIST THAT ARE PECULIAR TO THE PARCEL OF LAND, BUILDING OR STRUCTURE, THAT ARE NOT APPLICABLE TO OTHER PARCELS OF LAND, STRUCTURES OR BUILDINGS IN THE SAME DISTRICT:

YES. This conforming lot 90 is located within the Rio POCO PUD, Petition 77-142. This residential development is located west of 441 and south of Delray West Road. The lot is located in the northwest portion of the lot and is the last lot on a dead-end cul-de-sac. The lot is surrounded by canals and open space that will not be constructed on in the future. The lot currently supports an existing single family dwelling, pool and screen enclosure. The existing 5 car garage is attached to the house. The proposed 3-car detached garage will be located in the northwest portion of the lot. An existing 6 foot CBS wall exists on the property line. The proposed garage is being located in this particular location to utilize the existing driveway that is located in front of the house. Also, there

is no access to the rear of the house to support access to the garage in this portion of the lot. The applicant is an avid collector of cars and proposes to construct this 30' by 45' garage to accommodate the vehicles.

2. SPECIAL CIRCUMSTANCES AND CONDITIONS ARE THE RESULT OF ACTIONS OF THE APPLICANT:

NO. The applicant purchased the lot because of its location and the fact it is not surrounded by other single family lots, with the exception of the lot to the south. The north, west and east property lines abut open space (canal or easements) that provide both physical as well as visual openness to this lot. The applicant collects cars as a hobby and requires the extra garage space to protect the vehicles from the elements and for security purposes. Although the property already supports a five car garage attached to the house the extra 3-car detached garage is needed so the cars are not parked outside. The proposed garage will be in harmony with the architecture of the main house and will be located on the northwest portion of the lot so as to present the least minimal impact on the lot to the south.

Although the applicant is proposing a detached garage that will encroach the side interior setbacks and the fact the lot supports a 5-car attached garage. This lot has unique features that need to be given special consideration when applying the literal interpretation of the setbacks.

3. GRANTING THE VARIANCE SHALL CONFER UPON THE APPLICANT SPECIAL PRIVILEGE(S) DENIED BY THE COMPREHENSIVE PLAN AND THIS CODE TO OTHER PARCELS OF LAND, BUILDINGS OR STRUCTURES, IN THE SAME DISTRICT:

NO. The applicant is requesting the minimum variance to allow for the construction of the 3-car detached garage. The applicant has a unique lot that is surrounded by open space (canals and easements) that will prohibit the construction of structures on these adjacent lots. The intent of the setback requirement is to protect land values by establishing minimum property development regulations that apply to each lot. However, the applicant can satisfy the general intent of the side interior setbacks. Since no structure will be

constructed on the adjacent lots to the north and west the intent to maintain consistency and ensure minimum separation is not applicable.

Therefore, the granting of the two side interior setbacks will not grant a special privilege upon the applicant.

4. A LITERAL INTERPRETATION AND ENFORCEMENT OF THE TERMS AND PROVISIONS OF THIS CODE WILL DEPRIVE THE APPLICANT OF RIGHTS COMMONLY ENJOYED BY OTHER PARCELS OF LAND IN THE SAME DISTRICT, AND WOULD WORK AN UNNECESSARY AND UNDUE HARDSHIP:

YES. The lot currently supports a single family dwelling, pool and screen enclosure. The house and pool has been situated on the lot to take advantage of the views afforded by the canal to the rear. There is no other location on site to support an accessory structure. The detached 3-car garage is being located along the northwest portion of the lot so as no adjacent property owners are impacted. This lot is only surrounded by lot 89 to the south that will eventually support a single family dwelling.

Therefore, the minor setback encroachment will allow the applicant the best use of the property and needed space to accommodate the cars he purchases as a hobby. The cars could be parked outside, however, this is not practical in terms of protecting the vehicles from the elements or possible vandalism. The garage will allow the vehicles to be stored inside and thereby not be obtrusive to the property owner on lot 89.

5. THE APPROVAL OF VARIANCE IS THE MINIMUM VARIANCE THAT WILL ALLOW A REASONABLE USE OF THE PARCEL OF LAND, BUILDING OR STRUCTURE:

YES. The requested variances are the minimum necessary to allow for the proposed construction of the detached 3-car garage. The existing house and driveway limit the design options available to the property owner. Considering the unique location and configuration of the lot and surrounding land uses this variance request will allow the property owner to construct a garage to store the vehicles he purchases as a hobby.

6. GRANT OF THE VARIANCE WILL BE CONSISTENT WITH THE PURPOSES, GOALS, OBJECTIVES AND POLICIES OF THE COMPREHENSIVE PLAN AND THIS CODE:

YES. The intent of the ULDC side interior setback is to ensure uniformity is maintained between property lines and structures. Since no structures will be constructed on the lots to the north and west there will be no uniformity to maintain with respect to setback. The property owner is proposing to construct the garage to allow the vehicles to enter the garage using the exiting driveway. There is an exiting 6 foot CBS wall along both property lines that will buffer the majority of the wall of the garage from the west and north property lines.

7. THE GRANT OF THE VARIANCE WILL BE INJURIOUS TO THE AREA INVOLVED OR OTHERWISE DETRIMENTAL TO THE PUBLIC WELFARE:

NO. The properties to the north and west where the encroachment will occur will not support single family residence. There are canal and easements that restrict any type of structure from being constructed in the future. The only residential lot abutting this lot 90, is lot 89 which is to the south and will not be impacted by the detached garage encroaching the setback.

Therefore, the granting of the two requested side setback variances will not be injurious to the surrounding area or public welfare.

ENGINEERING COMMENTS

No comments(ENG)

ZONING CONDITIONS

1. The property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application. (BLDG PERMIT:BLDG)

2. By May 15,1999, the applicant through the Administrative Amendment Process , shall ensure a notation is made to the certified site plan for the

development indicating the setback variance on Lot 90. (DATE:MONITORING-ZONING-DRC)

CHAIRMAN KONYK: The next item BOFA 9900024, Theodore James Horne and Betty Murphy Horne to allow an existing stable to encroach into the required rear setback. Is the applicant present?

MR. GADOSH: Good Morning, my name is Steve Gadosh with Civic Engineering and we agree with the conditions.

CHAIRMAN KONYK: Thank you. Any letters?

MR. MACGILLIS: It was just one and they had no concern with the variance request.

CHAIRMAN KONYK: Any member of the public to speak on this item?

(NO RESPONSE)

CHAIRMAN KONYK: Any Board member feel this item warrants a full hearing?

(NO RESPONSE)

CHAIRMAN KONYK: Seeing none BOFA 9900024 will remain on the consent.

STAFF RECOMMENDATIONS

APPROVAL, based upon the following application of the standards enumerated in Article 5, Section 5.7.E. of the Palm Beach County Unified Land Development Code (ULDC), which a petitioner must meet before the Board of Adjustment may authorize a variance.

ANALYSIS OF ARTICLE 5, SECTION 5.7.E VARIANCE STANDARDS

1. SPECIAL CONDITIONS AND CIRCUMSTANCES EXIST THAT ARE PECULIAR TO THE PARCEL OF LAND, BUILDING OR STRUCTURE, THAT ARE NOT APPLICABLE TO OTHER PARCELS OF LAND, STRUCTURES OR BUILDINGS IN THE SAME

DISTRICT:

YES. The subject site is located south east of intersection of 152nd Dr. North and 69th Trail North on the west side of the Florida Turnpike and Interstate-95 and approximately 0.15 miles north of Donald Ross road in Jupiter. The lot is 1.4 acres in area and is located in the RR-10 land use designation within the AR-Rural residential zoning classification. The property is bound to the north by a 1.4 acre lot supporting a SFD and a vacant 1.4 acre lot to the south. To the east the site is bound by an 800' wide road and drainage easement. The large easement to the east of the property is created by the Florida State Parkway, and Interstate 95 right-of-ways, and it is upon this easement that the existing 297sq.ft. stable abuts. Therefore, there exists special circumstances applicable to this lot and structure, as the easement to the east upon which the structure abuts is large and will mitigate this minor rear setback encroachment.

2. SPECIAL CIRCUMSTANCES AND CONDITIONS ARE THE RESULT OF ACTIONS OF THE APPLICANT:

NO. The non-conforming structures existed in their current location for 15 or more years, prior to the applicants purchasing the property. The applicants took the necessary measures for the legal transfer of ownership. Furthermore the applicants applied for a building permit, as required by the ULDC, for the required repairs to roofs of the existing stables. To date the applicants have followed all the required legal procedures pertaining to their property and as such the current circumstances are not the result of actions by the applicant. If the variance is granted, a permit for the applicant's stable can be issued and final inspection will be performed by the Building Division to ensure the structure complies with the building codes.

3. GRANTING THE VARIANCE SHALL CONFER UPON THE APPLICANT SPECIAL PRIVILEGE(S) DENIED BY THE COMPREHENSIVE PLAN AND THIS CODE TO OTHER PARCELS OF LAND, BUILDINGS OR STRUCTURES, IN THE SAME DISTRICT:

NO. The existing stables were constructed along the rear property line. However, only a portion of the 297sq.ft. stable is actually encroaching 5 feet into the rear setback. The granting of a variance to legalize the existing structure would

not confer upon the applicant any special privileges that would be denied to other structures in the same district. The fact that there is no buildable lot to the rear of this lot and the open space created by the Florida Turnpike will ensure the general intent of the rear setback code requirement is satisfied.

4. A LITERAL INTERPRETATION AND ENFORCEMENT OF THE TERMS AND PROVISIONS OF THIS CODE WILL DEPRIVE THE APPLICANT OF RIGHTS COMMONLY ENJOYED BY OTHER PARCELS OF LAND IN THE SAME DISTRICT, AND WOULD WORK AN UNNECESSARY AND UNDUE HARDSHIP:

YES. The applicants applied to the county for a building permit in order to legally repair the roofs of existing stables on their property. The applicant was issued a valid permit (B98-018953) for the required re-roofing of the existing stables, and hired a contractor at a price of \$1,150.00 to complete the work for which they were approved. The applicants stated that had they been notified by the County the structures had no legal building permits and were in the setbacks, they would have considered demolishing them. To have the applicants demolish the structure after legally obtaining a permit for improvements and financing those improvements would clearly be an unnecessary and undue hardship. The structures are used for storage by the applicant. They currently have to store equipment off site until the structures are legalized.

5. THE APPROVAL OF VARIANCE IS THE MINIMUM VARIANCE THAT WILL ALLOW A REASONABLE USE OF THE PARCEL OF LAND, BUILDING OR STRUCTURE:

YES. The requested variance is for a rear setback reduction for an existing 297 sq.ft. stable. This 5 foot encroachment into the rear setback, is adjacent to a 800' wide right-of-way easement to the rear. The stable has existed in its current location for 15 or more years and has had no adverse impact on any surrounding structures or uses. If the variance is approved, the stable can be permitted and inspected. Many lots within this rural residential subdivision support accessory structures such as stables, pole barns, and sheds. Therefore this structure is in keeping with the general character of this area.

6. GRANT OF THE VARIANCE WILL BE CONSISTENT

WITH THE PURPOSES, GOALS, OBJECTIVES AND POLICIES OF THE COMPREHENSIVE PLAN AND THIS CODE:

YES. The intent of the rear setback requirement is to ensure a minimum separation between property lines and structures. Also, that structures do not obstruct areas that are or may be required for utility or drainage easement purposes. By granting a reduction of 5 feet from the required 15 foot setback to 10 feet will not be contrary to the intention of the ULDC rear setback requirements.

7. THE GRANT OF THE VARIANCE WILL BE INJURIOUS TO THE AREA INVOLVED OR OTHERWISE DETRIMENTAL TO THE PUBLIC WELFARE:

NO. The stable has been in existed for 15 or more years in the present location and has created no negative impacts on the surrounding properties. The surrounding area consists of single family residences on large rural residential lots. The subject lot is also fenced around its perimeter with significant native of vegetation which mitigates the view of the stable from all angles and vantage points. Therefore, given the fact the stable exists and considering surrounding area the grant of the variance will not be injurious to the area involved.

ENGINEERING COMMENT

NO COMMENT (ENG)

ZONING CONDITION

1. By August 15,1999 or the issuance of the building permit for PR99002551,the applicant shall provide the Building Division with a copy of the Board of Adjustment Result letter and site plan. (DATE: MONITORING-BLDG PERMIT)

CHAIRMAN KONYK: BOFA 9900025, Jonathan's Landing Golf Club, to allow a reduction in the required number of off-street parking spaces. IS the applicant present?

MS. MORTON: Yes, Jennifer Morton with Land Design South and we agree with the three conditions and staff recommendations.

CHAIRMAN KONYK: Any letters on this item?

MS. CAI: Yes, our staff received five letters. Two are without objections and three with objections. The two letters to approve it is one from Town of Jupiter, the second is from the owner of 16997 Willowbend unit number 135. Those two are to approve it. The other three are against it, one is from 3562 Lanten Bay Drive and the concern is the expansion of the Golf Club will take away from the Golf Course and the green area.

CHAIRMAN KONYK: They belong to the Golf Club.

MS. CAI: The second objection letter without comment but staff did call and left a message with no response.

CHAIRMAN KONYK: Okay.

MS. CAI: And the last one opposed without comments and also I called to ask concerns and that person said he preferred a low key atmosphere of what it was. So it's not directly related to the parking.

CHAIRMAN KONYK: Is there any member of the public to speak on this item?

(NO RESPONSE)

CHAIRMAN KONYK: Any Board member feel this item warrants a full hearing?

(NO RESPONSE)

CHAIRMAN KONYK: Seeing none BOFA 9900025 will remain on the consent.

STAFF RECOMMENDATIONS

APPROVAL, based upon the following application of the standards enumerated in Article 7, Section 7.2.B.3 of the Palm Beach County Unified Land Development Code (ULDC), which a petitioner must meet before the Board of Adjustment may authorize a variance.

ANALYSIS OF ARTICLE 7, SECTION 7.2.B.3 VARIANCE

STANDARDS

1. SPECIAL CONDITIONS AND CIRCUMSTANCES EXIST THAT ARE PECULIAR TO THE PARCEL OF LAND, BUILDING OR STRUCTURE, THAT ARE NOT APPLICABLE TO OTHER PARCELS OF LAND, STRUCTURES OR BUILDINGS IN THE SAME DISTRICT:

YES. The existing Golf Clubhouse & Tennis/Fitness facility proposed to be expanded is located centrally in an upscaled residential community, the 1232-unit Jonathan's Landing PUD. The overall site consists of 54-unit single family detached, 467-unit zero lot line and 711-unit multifamily residences with approximate 3,080 residents (2.5 persons/unit). It is designed as a golf course community to allow residents the option to either drive golf carts or walk to the golf clubhouse facility. The entire facility provides multiple uses within the two structures (the clubhouse and the tennis center) and have a on-site parking lot with existing 150 parking spaces situated in between. Additional 66 parking spaces are planned to be added in the same parking lot in order to accommodate the proposed expansion by adding over 500 seats. As stated by the applicant, no additional members are projected and the membership is currently at a maximum.

The facility is private and open only to a limited number of members and the guests. (800-golf equity memberships and 100-tennis memberships)

The ULDC requires off-street parking to be calculated for each use anticipating that single destination trips are generated to each use. The applicant indicates that the residents utilize more than one of the uses during a single trip. As a result, the parking requirements for the multi-use facility may have been too stringent and in excess of the actual needs of the private membership clubhouse. The limited private membership and the multiple uses within one combined facility during one trip place this application into a special circumstance that is unique to this subject property.

The requested parking space reduction will not compromise the intent of the code to provide adequate on-site parking.

2. SPECIAL CIRCUMSTANCES AND CONDITIONS ARE THE RESULT OF ACTIONS OF THE APPLICANT:

NO. This application is requested by the applicant for an approval of the off-street parking space reduction for an existing Golf Clubhouse & Tennis/Fitness facility proposed to be expanded.

As previously mentioned, the special circumstance is associated with the unique nature of the facility which serves multiple uses to a limited private group rather than the public. Furthermore, the design standards and layout of the overall development that the subject facility including the golf course and tennis courts are centrally located within the PUD to allow the residents either drive a golf cart or walk to the facility and as a result reduce the actual needs of on-site parking spaces.

The requested reduction of the parking spaces will comply with the ULCD parking provision to ensure the proportion to the demand of the off-street parking created by each use.

Other similar type of residential developments have been granted parking variances in the past. These facilities have demonstrated that they can function adequately with a lower number of parking spaces than ULDC required.

3. GRANTING THE VARIANCE SHALL CONFER UPON THE APPLICANT SPECIAL PRIVILEGE(S) DENIED BY THE COMPREHENSIVE PLAN AND THIS CODE TO OTHER PARCELS OF LAND, BUILDINGS OR STRUCTURES, IN THE SAME DISTRICT:

NO. Granting the variance to reduce the overall parking by 16.9% will not grant a special privilege to the applicant. The current ULDC off-street parking provisions do not differentiate the parking rate for a single use from the rate for multiple uses within a limited private group. The applicant provided the staff with a Parking Statement (see back-up material) that the majority of the Golf Clubhouse & Tennis/Fitness facility members will utilize more than one of the facility's uses during a single trip and thus the parking requirements for both the existing facility and proposed expansion are in excess of the daily parking needs of the private membership club.

In addition, to increase the amount of pavement area and impervious surface that will not be utilized is not good site or environmental planning practices nor an efficient use of the land which could be dedicated to open space and landscaping. It is in the applicant's best interest that the adequate parking be provided to accommodate the existing and the proposed activities and this facility is well aware of this. It is also the applicant's position to base on the nature of multiple-use facility for the entire community in order to satisfy the intent of the code and the users' needs.

4. A LITERAL INTERPRETATION AND ENFORCEMENT OF THE TERMS AND PROVISIONS OF THIS CODE WILL DEPRIVE THE APPLICANT OF RIGHTS COMMONLY ENJOYED BY OTHER PARCELS OF LAND IN THE SAME DISTRICT, AND WOULD WORK AN UNNECESSARY AND UNDUE HARDSHIP:

YES. The applicant obtained previous approval for the existing Golf Clubhouse & Tennis/Fitness facility. To redesign the site to accommodate extra parking that will not be utilized on a daily basis would require further delays in site plan review, permitting and construction of the proposed Clubhouse expansion. The land area that is not being utilized for these parking spaces will be dedicated to open space and landscaping to enhance the proposed amenities. To redesign the parking layout to obtain land area for these 44 parking spaces would result in a loss of land area that can be better utilized to serve the community residents.

5. THE APPROVAL OF VARIANCE IS THE MINIMUM VARIANCE THAT WILL ALLOW A REASONABLE USE OF THE PARCEL OF LAND, BUILDING OR STRUCTURE:

YES. The applicant has clearly demonstrated to the staff that the total provided (existing and proposed) parking with a reduction of 44 spaces is sufficient to satisfy the existing needs of the members and their guests as well as the future needs after the facility expanded without adding more memberships. Considering the proposed number of parking spaces being provided as compared with the ULDC standards for each individual use, the parking variance is minimal in terms of the private nature of the multi-use facility and should it be granted, the pedestrian nature of the community will be enhanced.

6. GRANT OF THE VARIANCE WILL BE CONSISTENT WITH THE PURPOSES, GOALS, OBJECTIVES AND POLICIES OF THE COMPREHENSIVE PLAN AND THIS CODE:

YES. The general intent of the off-street parking provisions, Section 7.2, is to ensure the provision of off-street parking in proportion to the demand created by each use.

The existing and expanded facility is in close proximity to the residents' homes which reduces the needs for parking since the residents can either walk or ride golf carts. Additionally, the on-site parking lot is located between the Golf Clubhouse and the Tennis/Fitness structures allowing the multiple users to have access to either one of the structure.

Staff believes that the applicant makes a logical argument that the requested variance will be consistent with the intent of the Comprehensive Plan and the ULDC.

7. THE GRANT OF THE VARIANCE WILL BE INJURIOUS TO THE AREA INVOLVED OR OTHERWISE DETRIMENTAL TO THE PUBLIC WELFARE:

NO. The parking variance is compatible with the surrounding area which are mainly private residences and open spaces. Also since this parking variance is for the parking within the Golf Clubhouse & Tennis/Fitness facility, only internal residents and club members will be affected by this variance and, as previously stated, 216 spaces will be adequate to meet the members/staff needs. The variance is considered minimal in nature if compared with the multiple single-use commercial requirement that is open to the public. Therefore, it will not impose any negative impacts on the adjoining areas.

The applicant states that the parking spaces reduced with this request will be dedicated to the open space and landscaping so that the general community residents in the surrounding areas will benefit better from the non-paving area that will not be utilized.

ENGINEERING COMMENT(S)

No Comments (ENG)

ZONING CONDITION(S)

1. The property owner shall provide the Building Division with a copy of the Board of Adjustment Result letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application. (BLDG PERMIT:BLDG)
2. Prior to DRC certification, the applicant shall ensure the BA conditions are shown on the approved Site Plan. (DRC-ZONING)
3. This variance is to reduce the parking by 44 spaces. (ONGOING)

CHAIRMAN KONYK: BOFA 9900026, Berean Baptist Temple to allow a Lake Worth Drainage District easement to overlap 10 feet into the portion of the required E property line. Is the applicant present?

MS. MORTON: Yes, Jennifer Morton with Land Design South and we agree with staff's recommendation and we agree with the two conditions placed on the project.

MR. MACGILLIS: This is the one where there's a third condition on it.

CHAIRMAN KONYK: You're the one that got the third condition.

MR. MACGILLIS: It's just all the required plant material shall be installed in a 15 foot portion of the landscape buffer tract that is not encroached by the ten foot Lake Worth Drainage Easement.

MS. MORTON: We can agree with that.

CHAIRMAN KONYK: So there's three conditions you understand and agree with them?

MS. MORTON: Yes.

CHAIRMAN KONYK: Is there any letters on this item?

MR. MACGILLIS: Just one letter they didn't have a problem with it.

CHAIRMAN KONYK: Any member of the public here to speak in opposition of this item?

(NO RESPONSE)

MR. MACGILLIS: Actually, I'm sorry. This one did have a letter. I did receive a letter yesterday from Henry Hebner, a doctor who lives in the adjacent development he wanted this letter read into the record and it's quite lengthy, but he couldn't be here this morning. I strongly oppose this applicants request. I was at the hearing for the original variance to build this facility and Commissioner Roberts and Marcus were at that meeting. At that time I agreed with others not to oppose the request based upon the agreement to leave the buffer of tree's and shrubbery between residents and their borders. And that was never done and that they would not request a stop and go light. Those were specific items. When this applicant built the facility they removed all of the vegetation buffer against the fence property lines of the western neighbors. Therefore, they did not comply with the original agreement.

Within the last year when I went to vote I saw that they had put in new planting against the western property line. Therefore it appears to me that they are trying to recreate a 25 foot buffer that their first agreement stipulated to appear in compliance and then they ask you for removal of a portion of the buffer in another site. The applicant is trying to circumvent the original agreement with the commission and the neighbors.

In addition they gave verbal assurance that there would be no major outside event but there have been. However, the neighbors including myself have not complained because those events have been infrequent and we are better neighbors then they are and tolerate occasional noise. If this petition is going to be approved I would like my commissioners to provide me with information of my rights to pursue my disapproval accordance to county regulations.

I did speak to him yesterday and indicate that this is a zoning variance and it was specific t the request just to have an extra five foot overlap in the buffer and it wasn't going to effect

the actual buffer and it would be still the plantings and everything there. So I think he understood that this is going to the Board of County Commissioners that's what he thought they were going in to eliminate part of the buffer but he still wanted this letter read in.

CHAIRMAN KONYK: I just have a question. It's a Lake Worth Drainage District Easement, how can they plant on that?

MR. MACGILLIS: Actually it's only a paper maintenance easement they want coming down on the site. You have a 25 foot buffer.

CHAIRMAN KONYK: And so it's not, okay.

MR. MACGILLIS: Typically we were allowing the five foot to go on and they want another five feet. So the 15 foot remaining is going to have the buffer and the tree's and so forth.

CHAIRMAN KONYK: Okay, so there won't be any plantings on those ten feet?

MR. MACGILLIS: No.

CHAIRMAN KONYK: Okay, but the buffer will still be there?

MR. MACGILLIS: Right.

CHAIRMAN KONYK: Anyone from the public to speak on this item?

(NO RESPONSE)

CHAIRMAN KONYK: Any Board member feel this item warrants a full hearing?

(NO RESPONSE)

CHAIRMAN KONYK: Seeing none this item will remain on the consent agenda.

STAFF RECOMMENDATIONS

APPROVAL, based upon the following application of the standards enumerated in Article 5, Section 5.7.E. of the Palm Beach County Unified Land Development Code (ULDC), which a petitioner must meet before the Board of Adjustment may authorize a variance.

ANALYSIS OF ARTICLE 5, SECTION 5.7.E VARIANCE STANDARDS

1. SPECIAL CONDITIONS AND CIRCUMSTANCES EXIST THAT ARE PECULIAR TO THE PARCEL OF LAND, BUILDING OR

STRUCTURE, THAT ARE NOT APPLICABLE TO OTHER PARCELS OF LAND, STRUCTURES OR BUILDINGS IN THE SAME DISTRICT:

YES. This 26 acre site supports a church, school and day care which was approved by the BCC in 1985. (Petition 8484), Berman Baptist Church. The applicant has recently received approval by the BCC to relocate the new church on-site to the west of the existing church. The existing church will be converted to offices for the school and administration in addition to supporting a day care center. The new church will have a Mediterranean architectural appearance with barrel tile roof. When the architect designed the church he had to take into account the placement of the structure in order to preserve existing native vegetation in addition to designing a facility that met the needs of the congregation. The applicant has received Development Review Committee certification of the site plan. The applicant's client is ready to proceed with obtaining building permits for the structures. When an application was made to the LWDD, for a drainage permit, it was determined that an additional 5 feet easement would be required along the inside edge of the east property line. The applicant has a Site Plan approved with a 5 foot LWDD easement that is within the required 25 foot landscape buffer. The extra 5 (total 10 foot) easement is necessary for the LWDD to have access along the E-2 Canal. The applicant can accommodate the extra 5 foot encroachment into the landscape buffer, however, the ULDC only permits a 5 foot encroachment of an easement into a landscape buffer.

Therefore, the unique circumstance in this particular situation is the fact the applicant has an approved site plan that was approved and signed off by all the applicable agencies. The request for the extra 5 feet of easement along the east buffer was not made until the actual drainage permit for the site was applied for after the site plan was certified. The applicant can accommodate the extra five feet of easement and still ensure the intent of the 25 foot PUD is maintained.

2. SPECIAL CIRCUMSTANCES AND CONDITIONS ARE THE RESULT OF ACTIONS OF THE APPLICANT:

NO. The applicant obtained all necessary approvals to amend the site plan to accommodate the new church

and daycare. The BCC has approved the use and the DRC has certified the site plan. As stated above, all applicable agencies reviewed and approved the site plan. It was not until a drainage permit was submit to the LWDD that the extra 5 feet of easement was requested. The applicant is willing to accommodate the LWDD request, however, the ULDC code requirement not to overlap a landscape buffer by more than 5 feet with an easement cannot be satisfied. The applicant will be able to install the 25 foot buffer and have the required 10 foot LWDD along the outside edge (east property line) of the buffer. All the required landscaping will be installed in the buffer.

Therefore, the applicant proceeded in good faith to obtain all necessary approvals for the modifications to the site. This situation was not the results of action by the applicant. It was a requirement that should have been required during the review process and prior to DRC certification of the site plan. If the applicant was made aware during the design phase of the site plan the 10 foot easement could have been accommodate outside the 25 foot landscape buffer. To modify the site plan now would be costly and cause delays in the construction of the facility.

3. GRANTING THE VARIANCE SHALL CONFER UPON THE APPLICANT SPECIAL PRIVILEGE(S) DENIED BY THE COMPREHENSIVE PLAN AND THIS CODE TO OTHER PARCELS OF LAND, BUILDINGS OR STRUCTURES, IN THE SAME DISTRICT: NO. The fact that the applicant is willing to accommodate the 10 foot easement in the buffer there will be no special privilege granted, if this variance is approved. The literal intent of the code cannot be complied with, however, the general intent can be met. Since the applicant will install the 25 foot landscape buffer and landscaping and will accommodate the 10 foot easement along the east property line. The vegetation will be placed in the 15 feet of the buffer that is not encroached by the easement. This will allow the root system and branching of the trees to mature as intended by the buffer without conflicting with the easement.

Therefore, granting of this variance will not confer any special privilege on the applicant. It will

allow the easement, which is required by the LWDD, to be accommodate while still ensuring the buffer requirement is satisfied

4. A LITERAL INTERPRETATION AND ENFORCEMENT OF THE TERMS AND PROVISIONS OF THIS CODE WILL DEPRIVE THE APPLICANT OF RIGHTS COMMONLY ENJOYED BY OTHER PARCELS OF LAND IN THE SAME DISTRICT, AND WOULD WORK AN UNNECESSARY AND UNDUE HARDSHIP:

YES. The applicant has a certified site plan that was developed to meet county codes and incorporate the existing building and native vegetation on-site. To redesign the site to shift the 25 foot eastern perimeter buffer 5 feet to the west would require a revision to the site plan. This would delay the proposed construction and be costly to the property owner.

The required 25 foot wide PUD buffer along the east property line will be installed. The 10 foot wide LWDD easement can be accommodate in the buffer. Both the buffer and easement requirement can be satisfied.

5. THE APPROVAL OF VARIANCE IS THE MINIMUM VARIANCE THAT WILL ALLOW A REASONABLE USE OF THE PARCEL OF LAND, BUILDING OR STRUCTURE:

YES. The site has an approved site plan that has been certified by the various county agencies. The ULDC provision to allow only a five foot overlap of an easement into a required landscape buffer can be satisfied, if this variance is approved. The required trees and shrubs will be planted in the inside 15 foot of the buffer while the outside 10 feet will accommodate the LWDD easement. The granting of the variance will allow the site plan to remain as approved without costly modifications and delays in construction.

6. GRANT OF THE VARIANCE WILL BE CONSISTENT WITH THE PURPOSES, GOALS, OBJECTIVES AND POLICIES OF THE COMPREHENSIVE PLAN AND THIS CODE:

YES. The ULDC code intent to require buffers and easements for the public purpose can be satisfied, if this variance is approved. The 25 foot buffer will be installed and landscape and the 10 foot easement will allow the LWDD access along the east property line for maintenance purposes for the E-2 canal.

Therefore, the granting of the variance will satisfy the general intent of the code which is to ensure easements do no conflict with landscape buffers that supports trees and shrubs. The fact the easement will be on the outside 10 feet of the 25 foot buffer will ensure both the buffer and easement function as intended.

7. THE GRANT OF THE VARIANCE WILL BE INJURIOUS TO THE AREA INVOLVED OR OTHERWISE DETRIMENTAL TO THE PUBLIC WELFARE:

NO. There will be no noticeable difference to the adjoining property owner, if this variance is approved. The required buffer will be installed as required by code. The 10 foot easement will ensure the LWDD has access along the west side of the canal for maintenance.

ENGINEERING COMMENT

No Comment (ENG)

ZONING CONDITION(S)

1. The property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application. (BLDG PERMIT: BLDG)

2. By May 15, 1999, the applicant shall ensure a notation is made on the certified site plan to reflect the approved variances and conditions of approval. (DATE:MONITORING-Zoning-DRC)

CHAIRMAN KONYK: Items on the consent are SD-9 --

MR. BASEHART: Wait a minute.

CHAIRMAN KONYK: I was moving it I wasn't going to ask but now that you want me to I will.

SD-94, petition of Henry W. and Joyce Walpole, requesting a variance from the requirement for access by means of a County standard local street. Is the applicant present?

MR. CARLSON: Yes, Richard Carlson for the record representing the Walpole's.

CHAIRMAN KONYK: Is there any conditions on this?

MR. CUFFE: No, there are no conditions on this the engineering department is recommending approval?

CHAIRMAN KONYK: Any letters?

MR. CUFFE: There are no letters and no calls.

CHAIRMAN KONYK: Seeing none any member of the public to speak on this item?

(NO RESPONSE)

CHAIRMAN KONYK: Any Board member feel this item warrants a full hearing?

(NO RESPONSE)

CHAIRMAN KONYK: Seeing none SD-94 will remain in the consent.

STAFF SUMMARY:

Land Development Division, Traffic Division, Zoning Division, and the County Attorney's Office reviewed this request.

Traffic Division and County Attorney's Office had no comments.

Zoning Division had no comments. They further stated that when the Board of County Commissioners approved the Brynteson Nursery PUD, the access easement through the residential development for the Walpole "Back Six", access was a condition of approval.

Land Development Division stated the following:

UNIQUENESS:

Standard met. The subject 5 acre lot was created in 1975 by deed to the applicant of a portion of a larger agricultural property, along with a 10 ft. wide access easement through the residual property sufficient to operate a family-owned plant nursery on the lot, which lies south of the LWDD L-16 Canal.

The applicant subsequently purchased additional abutting property to the northeast, extending from the canal to Lantana Road. However, the properties share only 35 ft. of common property line, which is insufficient to create the minimum 50 ft. wide local street from Lantana Road to the subject (south) property required to serve as access for subdivision of that property into single family residential lots in a standard (i.e. non-planned development) zoning district. The entire abutting property to the west has been approved for development as a PUD, and the property east of the subject acre lot is fully developed, precluding purchase by the applicant of the additional 15 ft. strip from either of the abutting lands needed to provide the required 50 ft. street width.

In addition, as a condition of approval of the adjacent PUD, the BCC required the PUD developer to provide development access to the subject lot. However, it did not require that such access be at least 50 ft. in width, but only of such width as mutually agreed to in accordance with an access agreement between by the PUD developer and the applicant. Since the approved PUD development plan called for a 40 ft. wide residential access street to serve patio homes adjacent to the subject lot, the access agreement limited the required access to an extension of that same residential access street.

This combination of insufficient access width between the applicant's abutting properties and the limitations on alternative access imposed by the BCC's condition of PUD approval for the adjacent property creates a unique set of circumstances with regard to available standard access for subdivision of the applicant's property.

NOT SELF-CREATED CONDITION:

Standard met in part. The variance is predicated on the applicant's desire to subdivide the property, as opposed to other available development options such

as multi-family (rental) residential units. However, the applicant originally purchased agricultural land which has since been reclassified to medium density residential use by the County's land use plan, and has neither the ability to acquire sufficient additional land to allow rezoning to a PUD nor to create standard local street access for non-PUD subdivision of the property. Therefore, the unusual conditions imposed on the property were not of the applicant's own making.

NO SPECIAL PRIVILEGE:

Standard met. Granting of the variance will simply allow access to the subject property to be by a 40 ft. wide residential access street (normally allowed to serve only zero lot line residential units within a PUD) in accordance with the BCC condition of approval for the adjacent PUD. However, internal access to the lots created by subdivision of the subject property will still be by standard local streets in full conformance with the applicable requirements of the ULDC.

UNDUE HARDSHIP:

Standard met. In order for the subject property to be developed in accordance with its MR-S land use designation per the Comprehensive Plan, it must be rezoned from its current AR zoning to a compatible district such as RS or RTU. However, the property does not have the minimum street frontage required for development as a single lot under the zoning regulations and, in addition, must be developed at a density of not less than 3 units per acre under the MR-S designation. Therefore, the only reasonable means of development is by subdivision into single-family residential lots, and granting of the requested variance is necessary in order to allow the available residential access street to serve as access to the property for such development.

MINIMUM VARIANCE:

Standard met. Since the 40 ft. residential access street is only one level below the standard local street in the hierarchy of allowable access under the subdivision regulations, and will only be used as access to the subject property (with standard local street access to the subdivision lots themselves) , the requested variance is the minimum

that would allow proposed subdivision of the property.

CODE'S INTENT:

Standard met. The intent of the code is to ensure provision of safe, convenient access for vehicular and pedestrian travel to and from the subdivision by means of a street constructed to County standards. Since the proposed 40 ft. residential access street pavement structure, travel lane width, alignment, and drainage requirements are the same as those of a standard local street, and pedestrian access is provided by a sidewalk on one side of the street, the code intent would be met.

PUBLIC WELFARE:

Standard met. The access streets to and within the proposed subdivision of the subject property will be privately owned and maintained, and will not be part of the public street system of the County.

ENGINEERING DEPARTMENT RECOMMENDS:

The Engineering Department recommends approval of the variance request, based on substantial conformance with the standards for granting of a variance.

MR. BASEHART: Madam Chairman, I'd like to make a motion that we approve the consent agenda.

MR. PUZZITIELLO: Second.

CHAIRMAN KONYK: Okay, item SD-94, BOFA 9900021, 9900022, 9900023, 9900024, 9900025, 9900026 on the consent agenda. Mr. Basehart has made a motion for approval all those in favor?

(ALL RESPOND AYE)

CHAIRMAN KONYK: Motion carries unanimously.

MR. RUBIN: Can I say something?

CHAIRMAN KONYK: Yes, I was trying to get a record here.

MR. RUBIN: Just for the record I'm not asking that any item be pulled from consent agenda but I would vote against BOFA 99-21, 99-23, 99-24, and 99-26.

CHAIRMAN KONYK: Okay, items 21, 23, 24 and 26 the vote is six in favor one against. And the other items are unanimous.

MR. CARLSON: Madam Chair did that include SD-94?

CHAIRMAN KONYK: Yes, unless you don't want it to.

MR. CARLSON: I didn't here the number.

CHAIRMAN KONYK: I said that first SD-94.

MR. CARLSON: Okay, thank you.

CHAIRMAN KONYK: You're welcome.

Everyone is free to leave.

(WHEREUPON THE CONSENT AGENDA WAS CLOSED)

CHAIRMAN KONYK: Now, we'll have our annual workshop. Everybody received a package. Can't we adjourn and then do the workshop.

MR. MACGILLIS: Yeah, that's what she asked if we don't want we could just tape it. For the record you might want to say we're closing.

MR. BASEHART: I'd like to make a motion that we adjourn the April 15, 1999 meeting of the Board of Adjustment.

MS. MOODY: Excuse me did you do the absences?

CHAIRMAN KONYK: No, I didn't. I wish everybody would just leave me alone and let me do this my way.

MR. RUBIN: How can we adjourn the meeting aren't we here meeting in public?

MR. BASEHART: We're adjourning the hearing.

MR. RUBIN: The hearing but not the meeting?

CHAIRMAN KONYK: Correct.

MR. RUBIN: Why not just go to the next item on the agenda?

MR. BASEHART: So we can let the court reporter go.

MR. RUBIN: Just tell her to go.

CHAIRMAN KONYK: Okay, at the last meeting we had two absences. Mr. Puzzitiello for business and Mr. Moore for business. I think that Mary has told me that Mr. Moore has resigned so do we really

need to vote on his absence?

MR. MACGILLIS: I don't think it's official until July, right.

CHAIRMAN KONYK: Okay, well then we need to vote on it. I need a motion as to whether these absences are excused or unexcused?

MR. BASEHART: I'll make a motion that we consider both of the absences to be excused absences because they both called in and let them know.

CHAIRMAN KONYK: A motion is made by Mr. Basehart, second by?

MR. MISROCH: Second.

CHAIRMAN KONYK: Mr. Misroch. All those in favor?

(ALL RESPOND AYE)

CHAIRMAN KONYK: Opposed?

(NO RESPONSE)

CHAIRMAN KONYK: Motion carries unanimously.

MR. RUBIN: I'd like to move that we declare the workshop materials excellently prepared and self explanatory. Well that's my motion.

CHAIRMAN KONYK: Motion by Mr. Rubin. Second by --

(NO RESPONSE)

CHAIRMAN KONYK: Everybody wants the workshop. Okay, we're going to have the workshop. Motion fails for lack of a second.

MR. MACGILLIS: I think the court reporter.

CHAIRMAN KONYK: We can dismiss the court reporter for this portion.

(Whereupon, the meeting was adjourned.)

C E R T I F I C A T E

THE STATE OF FLORIDA)

COUNTY OF PALM BEACH)

I, Michelle S. Lang,

DO HEREBY CERTIFY that the above-entitled and numbered cause was heard as hereinabove set out; that I was authorized to and did report the proceedings and evidence adduced and offered in said hearing and that the foregoing and annexed pages, numbered 4 through 34, inclusive, comprise a true and correct transcription of the Board of County Commissioners hearing.

I FURTHER CERTIFY that I am not related to or employed by any of the parties or their counsel, nor have I any financial interest in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of April, 1999.

Michelle S. Lang