



1

MINUTES

PALM BEACH COUNTY

BOARD OF ADJUSTMENT MEETING

DECEMBER 16, 1999

9:08 A.M. - 10:34 A.M.

ADDRESS

100 AUSTRALIAN AVENUE  
WEST PALM BEACH, FLORIDA 33406

APPEARANCES OF BOARD MEMBERS:

HAIR PERSON CHELLE KONYK  
JOSEPH JACOBS  
NANCY CARDONE  
STANLEY MISROCH  
ROBERT BASEHART

APPEARANCES OF STAFF:

DAVID CUFFE  
LAURA BEEBE, COUNTY ATTORNEY  
JON MacGILLIS  
JOYCE CAI  
NATALIE WONG  
MARK PENNEY

## INDEX

- BOFA 99-00093 Ronald S. Elish agent for  
Miles Barish and Shari  
Barish, to allow the  
elimination of the required  
ZLL dwelling privacy wall  
along the rear of the Unit. 4
- BOFA 99-00094 Kilday & Associates agent  
for Indian Trails  
Improvement District, to  
allow an existing office  
building and proposed  
expansion to encroach into  
the required side interior  
setback. 7
- BOFA 99-00095 Steve Tate agent for Levitt  
Homes, to allow a reduced  
side corner setback for a  
proposed ZLL dwelling on lot  
61. 11
- BOFA 99-00098 Arbern Investors III, L.P.,  
to allow a reduction in the  
required off street parking  
based on a shared parking  
study. 16

THE COURT: I'm going to call to order the December 16, 1999, Palm Beach county Board of Adjustment meeting, starting with the roll call and declaration of quorum.

MS. MOODY: Mr. Bob Basehart?

MR. BASEHART: Here.

MS. MOODY: Mr. Joseph Jacobs?

MR. JACOBS: Here.

MS. MOODY: Ms. Nancy Cardone?

MS. CARDONE: Here.

MS. MOODY: Mr. Raymond Puzzitiello?

(No response.)

MS. MARY MOODY: Mr. Glenn Wichinsky?

(No response.)

MS. MARY MOODY: Mr. Stanley Misroch?

MR. MISROCH: Here.

MS. MOODY: And Ms. Chelle Konyk?

CHAIR PERSON KONYK: Here.

I have a before me proof of publication in the Palm Beach Post on November 28, 1999.

For those of you who are not familiar with how the Board conducts its business, the hearing is divided into two parts, the consent and the regular agenda. Items on the consent are items that have been recommended for approval by staff either with or without conditions, the applicant agrees with the conditions, there's no opposition from the public and no Board member feels the item warrants a full hearing.

If your item is pulled the from the consent for any of those reasons, being that the -- there's opposition from the public or you don't agree with the conditions or a Board member feels the item warrants a full hearing, you will be reordered on the regular agenda. Items on the regular agenda are items that have been recommended for denial by staff, or the applicant doesn't agree with the conditions, there's opposition from the public or a Board member feels the item warrants a full hearing.

The items will be introduced by staff. The applicant will give their presentation. The staff will give their presentation. At this time we'll hear from the public. After the public portion of the hearing is closed, the Board members will have an opportunity to ask questions and vote on the item.

Next item on the agenda is the approval of the minutes of November 18th. Everybody received a copy of the minutes.

Does anybody have any corrections or additions?

(No response.)

CHAIR PERSON KONYK: Seeing none, is anybody prepared

99-97, Petition of William R. Boose. They have requested, originally, a postponement on this, thirty days. But, after meeting with staff and taking our consideration to possibly redesign the site, they have requested now that this item be withdrawn without prejudice. Staff has no problem with that.

And the second item for withdrawal would be the subdivision item. SD 90 -- oh, that's four. I'm sorry. Postponement for thirty days. We got a letter from the agent, Land Design South with no reason just requesting a thirty-day postponement to the January 20th, 2000 hearing.

MR. BASEHART: That's number seven?

MR. MacGILLIS: Yes.

MR. BASEHART: Is that by right?

MR. MacGILLIS: Yes. I believe we received a letter five days prior to the meeting.

CHAIR PERSON KONYK: And okay so B of A 99-00097 has been withdrawn.

MR. MacGILLIS: Without prejudice.

CHAIR PERSON KONYK: Without prejudice, meaning that they can bring it forward again if they want to.

And SD-96 is postponed thirty days time certain, January...

MR. MacGILLIS: January 20th.

CHAIR PERSON KONYK: January 20th.

We don't need to vote on either of those things, correct?

MR. MacGILLIS: You may want to take one with prejudice just so it's on the record, the item for withdrawal --

CHAIR PERSON KONYK: Okay.

MR. MacGILLIS: -- just so we have it on the record.

CHAIR PERSON KONYK: So we have it on the record --

MR. BASEHART: The first item by Betty Rush, that's withdrawn with prejudice?

MR. MacGILLIS: What's happening with that petition, she never requested without prejudice; so it's assumed it's with prejudice. The applicant as been in the system for nine months with a code enforcement violation. We've done everything we can to work with the applicant. Apparently, they're tearing several of the buildings down and moving the other one.

So I would say staff really doesn't want this item back, so I would say with prejudice.

MR. BASEHART: So that one, then, you can withdraw by right. So that one's just gone?

MR. MacGILLIS: Yes.

Ellish, agent for Miles Barish and Shari Barish, to allow elimination of the required ZLL dwelling privacy wall

5

along the rear of the unit.

Is the applicant present?

Your name for the record.

MR. ELLISH: Ronald Ellish.

CHAIR PERSON KONYK: Okay. Could you come forward.

Staff has recommended two conditions.

Do you understand and agree with those conditions?

MR. ELLISH: Yes, I do.

CHAIR PERSON KONYK: Is there any letters?

MR. MacGILLIS: There were no letters.

CHAIR PERSON KONYK: Any opposition from the public?

(No response.)

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

(No response.)

CHAIR PERSON KONYK: Seeing none, your item will remain on consent.

MR. ELLISH: Thank you.

#### STAFF RECOMMENDATIONS

APPROVAL WITH CONDITIONS, 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. Special circumstances do exist that are peculiar to the parcel of land, building or structure that are not applicable to other parcels of land within the same district. The property owner has constructed a 123 sq. Ft. Addition to the rear of the house where a privacy wall was originally located. The wall of the addition is as long as the required privacy wall (10'), but substantially higher (13'). The addition currently serves the same function as a privacy wall, which is to provide minimum privacy between the two lots. Other homes located in Villa D'Este subdivision do not have a similar addition. Therefore, are required by code to provide a 5' high, 10'

or the wall constructed. The construction of a bedroom addition is permitted by code and provides the same

6

**3. GRANTING OF 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 shall not confer special privileges denied by the Comprehensive Plan and the ULDC to other parcels of land, buildings or structures in the same district. The existing addition wall serves the same function as a privacy wall. The current structure conforms with other homes in the neighborhood. The addition to the house maintains the required "privacy element" which is required between the two lots. The ZLL housing units allow for a unit on a 4,500 sq. Ft. Lot. One or more of the exterior walls can be located on the property line. The lots are relatively small and, therefore, outdoor private space is limited. The ZLL wall ensures that at least 10' of outdoor space is protected in the rear yard between the two units. The cost of the room addition on this dwelling unit ensures the intent of the privacy wall will be maintained. Therefore, the intent of the privacy wall to ensure/preserve privacy will be satisfied, if this variance is granted.

**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 existing room addition wall serves the same function as a privacy wall. To require the applicant to construct an additional privacy wall would result in the obstruction of the applicants and neighbors view of the lake which is located to the rear of the lots. Allowing the applicant continued use of the dwelling as it currently exists would avoid costly construction of a new wall. The bedroom addition is satisfying the general intent of the code provision regarding privacy walls on zero lot line dwellings.

**5. THE APPROVAL OF THE VARIANCE IS THE MINIMUM VARIANCE**

long wall will only impede views onto the lake.

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

7

YES. The existing addition to the dwelling meets the purpose, goals, objectives, and policies of the comprehensive plan of the code. The current state of the lot represents the best use of the property and dwelling, as stated in criteria #5. The applicant required additional space for in the home, a permit was issued, and the bedroom addition serves to satisfy the general intent of the code.

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

NO. Granting of the variance will not be injurious to the area involved or otherwise detrimental to the public welfare. Continued use of the subject dwelling as it currently exists conforms to the character of the community. However, not granting the variance would be detrimental to the neighborhood by obstructing views to the lake for both property owners.

ENGINEERING COMMENT

No Comment. (ENG)

ZONING CONDITIONS

1. By January 16, 2000, or prior to the final Certificate of Occupancy being issued for the room addition (B990103949), the applicant shall provide the Building Division, Inspection Section, with a copy of the Board of Adjustment Result Letter. (DATE:MONITORING-BLDG/CO)
2. By January 16, 2000, the zoning staff shall make a notation on the approved Site Plan that a variance to waive the ZLL privacy wall was granted for lot 48 within Parcel 8 Villa D'Este subdivision. (ZONING-BLDG)

MR. KERN: Yes.

CHAIR PERSON KONYK: Any letters?

MR. MacGILLIS: No letters.

CHAIR PERSON KONYK: Any opposition from the public?  
(No response.)

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

8

(No response.)

CHAIR PERSON KONYK: Seeing none, this item will remain on the consent.

MR. KERN: Thank you.

#### 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 is a legal non-conforming 2.48 acre AR lot which supports the Indian Trail Improvement District Offices. It is located at the SE corner of Avocado Blvd. And 61st St. The lot has 385 ft. Of width and 241 ft. Of depth and has access on to 61st St. Because the lot is non-conforming, the percentage setbacks are applied to structures on the site. The site supports special circumstances that 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. The form-boards survey conducted in 1992 by Shalloway Foy, Rayman and Newell, Inc., mistakenly indicated the south side interior setback of the 3,374 sq. Ft. Administration office building at 50 ft. Even though the actual setback was 30 ft. The measurement mistake was corrected on the current survey conducted on October 27, 1999, by the same surveyor, Shalloway Foy, Rayman and Newell, Inc., which indicates that the existing office building setbacks 30 feet from the south interior side



survey, conducted in 1992 by Shalloway Foy, Rayman and Newell, Inc., for the existing office building, mistakenly indicated the incorrect south side interior setback as 50 ft. The actual setback for the existing office building is 30 ft. As corrected by the same surveyor on the current survey dated October 27, 1999. The existing structure was issued a building permit (B92020118) in 1992 and a final C.O. in 1993.

As previously mentioned, without being discovered, the existing setback encroachment, the proposed structure

9

was also granted approval from the Development Review Committee (DRC) ON September 22, 1999 (Petition 92-016A). Shortly after the DRC approval, the non-conformity of the setback was discovered and a variance is required for both the existing and the proposed structures.

Therefore, the applicant is requesting a setback variance in order to legalize the existing non-conforming structure while to be able to construct the proposed 612 sq. Ft. Addition with the same south side interior setback as the existing building.

**3. GRANTING OF 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 shall not confer upon the applicant special privilege denied by the comprehensive plan and the code to parcels of land, buildings or structures in the same district.

The existing and the proposed structures are both permitted in the AR/SE zoning district (R-92-1817, Petition 92-16). As previously mentioned, based on the incorrect form-boards survey, the existing office building was considered as a conforming structure and issued a building permit in 1992 and final C.O. in 1993. This variance, if granted, will not give a special privilege to the applicant, but rather to resolve the existing non-conformities created by the previous surveyor's mistake and will allow a proposed addition to be constructed to align with the existing structure on the south side of the building.

In addition, as indicated in the applicant's

land in the same district and would work an unnecessary and undue hardship. Because of the existing form-boards survey error conducted by Shalloway Foy, Raymann & Newell, Inc., in 1992, the existing office building has not been in conformance with the interior side setback requirement.

The variance is necessary to correct the existing non-conformity and to allow for the proposed addition to be legal within the County code requirements.

As previously indicated, there is an existing 250-foot-wide canal along the subject south property line. The canal serves as an adequate buffer of separation to

10

mitigation while minimizing any impact associated with the variance request. There are no affected structures within at least 250 feet. Therefore, the requested variance will meet with the general intent of the code, which is to provide adequate separation between structures on the subject and adjacent properties to minimize any aural and visual impacts as well as to protect adjacent properties and maintain the adjacent properties' values.

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

YES. The approval of the variance is the minimum variance that will allow a reasonable use of the parcel of land, building or structure. The variance is subject to section 6.5.G.6. of the code which allows for a maximum 25% reduction in the required side interior setback of the subject lot abutting open space. The 250 ft. "M" Canal serves as a passive open space thus allowing the required setback to be reduced to 37.5 from the normally-required 50 ft. As indicated on the submitted Site Plan, the proposed structure is designed to be aligned with the existing non-conformity. The "M" Canal also acts as an adequate buffer to mitigate the impacts to the adjacent properties associated with the variance. Therefore, the requested variance is the minimum variance that will allow a reasonable use of the parcel of land and building.

**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 purposes, goals, objectives and policies of the comprehensive plan and this

AREA INVOLVED OR OTHERWISE DETRIMENTAL TO THE PUBLIC WELFARE:

NO. The variance will not be injurious to the area involved. The current use of the building is to service the Indian Trail District Improvement area. The District has recently acquired new responsibility in serving not only drainage issues, but also parks and recreation. The variance will only assist in the maintenance and improvement of the area by allowing the additional administration. The proposed addition is concordantly fit with the design of the existing structure. The southern property lot abuts the 250 ft. "M" Canal which provides an

11

adequate buffer between the subject building and the abutting property. Therefore, there will be no area injured or otherwise detrimental as a result of the public welfare.

ENGINEERING COMMENTS

No Comment. (ENG)

ZONING CONDITIONS

1. By September 16, 2000, the property owners 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. (DATE:BLDG PERMIT-Bldg)
2. By October 16, 2000, the property owners shall apply to the Building Division for building permit for the proposed 612 square foot addition to the existing administration office building (see Exhibit #9, BA99-094) (DATE:MONITORING-Bldg.)
3. By February 16, 2000, the applicant shall administer the amendment of the certified Site Plan to reflect the approved side interior setback on the existing building and approved addition. Furthermore, the BA conditions shall be placed on the Certified Site Plan (DATE:MONITORING-Zoning DRC)

(No response.)

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

(No response.)

CHAIR PERSON KONYK: Seeing none, this item will remain on the consent.

#### STAFF RECOMMENDATIONS

APPROVAL WITH CONDITIONS, 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

12

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 lot 61, is located within the Cida Geigy PUD, located 1 mile north of Boynton Beach Blvd., east of Florida's Turnpike. The land Use designation for the overall development is LR-2 with a Zoning designation for Board of County Commissioners (BCC) on April 23, 1999, (Petition 98-567). Lot 61 is .155 acres and is currently vacant. It is located within the undeveloped Ciba Geigy PUD, Pod "D", which abuts the western portion of the PUD, adjacent to Jog Road.

Adjacent to lot 61 is a 20 foot Lake Maintenance Access Easement (LMAE), which provides access to 3.98 acre lake that is located to the rear of 29 dwelling units. This tract, when platted encroached approximately 4.83 feet into lot 61 side yard, thereby reducing the lot width to less than required by code. There are other lots within this subdivision which abut LMAE to the lakes, however, they were platted to the correct dimension. The LMAE between lots 60 and 61 is the only access to the 3.98 acre lot and it was located in this particular location so it aligned with the access point across Catana Drive between lots 158 and 159 that provides access to the 6.39 acre lake. The location of the LMAE to these two lakes is such that vehicles can easily access the local street to

viable solution.

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

NO. The need for the variance is a result of the engineer who finalized the plat which relocated the easement adjacent to lot 61. The applicant's client has proceeded in good faith to obtain all necessary approvals and permits for the development. The 20 foot LMAE is a subdivision platting requirement to ensure vehicle access to the lake from the public street. When the Site Plan for this subdivision was certified, the LMAE tract was located between lot 47 & 48 which met both Zoning and Engineering requirements. However, during the platting

13

process, the engineer for the project relocated the LMAE from lots 47 & 48 between lots 61 & 60. It was relocated to align with the other 20 foot LMAE across the street between lots 158 and 159. In doing so, 5' of the 20' easement was taken from the lot width of lot 61. The plat is final. Therefore, it would be very costly and time consuming to replat the subdivision to correct this error.

The variance request is minimal and will be mitigated by the open space created by 20' LMAE adjacent to lot 61. As previously stated, the plat is final and this is the only access point from the residential street to the lake. The project complies with all other property development regulations. If the variance is approved, the applicant will be permitted to move forward with permitting the dwelling units in this subdivision.

## 3. GRANTING OF 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 of the variance shall not confer any special privileges upon the lot that other parcels in the same zoning district would be denied.

The single-family dwelling proposed for the subject lot will conform to other zero lot line dwelling units within this development and be consistent with one of the four proposed models. While the side yard will be 4.83 feet narrower than others in the PUD, the fact the 20 foot

approval. In order to correct this setback issue on lot 61 without a variance, the subdivision would have to be replatted. This would cause significant delays in construction and would be very costly to the property owner in terms of requiring revisions to the site plan and plat.

The intent of the side setback is to ensure a minimum separation for privacy and compatibility between adjacent properties and structures is maintained. A denial of the variance would require the applicant to replat the subdivision or design a custom dwelling for the subject lot. There are four models currently proposed for this subdivision that will ensure consistency throughout the project. To introduce one "unique" specific unit for this lot would present a more significant impact for the future residences than the minor 4.83 foot variance. The

14

interior side yard is reduced as a result of the platting of the LMAE adjacent to this lot which took five feet from the lot width.

Therefore, considering the LMAE is required by code to provide access to the lot, it cannot be eliminated or reduced in width. This easement is the only one providing vehicular access to the lake. Only lot 61 is affected by this easement. Since the variance is to reduce a side interior setback adjacent to this tract, there will be no impact on the property owners. The 20 foot tract will provide the same spatial separation intended by the code setback provision.

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

YES. As previously stated, the applicant has limited alternative design options that would further reduce the variance request or eliminate the need for a variance. To construct the proposed dwelling on this lot consistent with one of the approved models is a reasonable request. The setback encroachment is the only practical choice for the applicant without having to design a "unique" custom home for this lot or replatting the subdivision. The required interior side yard setback for a zero lot line property is 10 feet. Permitting the applicant to encroach

received all necessary zoning approvals for the residential subdivision. Therefore, the use of this property to support a residential community is consistent with the LR-2 land use designation. The ULDC side setback provision is established to ensure a minimum separation between structures on adjacent lots. The proposed 5.17 foot side yard setback accompanied by 20' lake maintenance tract that is adjacent to lot 62 will provide adequate open space separation between the subject and adjacent vacant lot.

Granting the variance will allow the applicant to construct a dwelling unit that is consistent with one of

15

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

NO. As previously stated, the proposed 5.17 foot side yard accompanied by the 20' LMAE adjacent to this lot will result in adequate open space and separation between the subject and adjacent vacant lot. Granting the variance will also ensure the unit constructed on lot 61 is consistent with one of the four approved models for the subdivision. The open space created by the easement provides adequate separation to the vacant lot 60 to the east.

Therefore, the granting of this side setback variance will not be injurious to the future residents of this residential subdivision.

**ENGINEERING COMMENT**

While the Engineering Department has no objection to the proposed setback reduction, it should be noted that the reduced lot width and lake maintenance access location were proposed by the applicant's consultants as a means of meeting the code requirement that lake maintenance access be established over

the Site Plan presented to the Board, simultaneously with the building permit application. (BLDG PERMIT:BLDG)

2. By June 16, 2000, the applicant shall apply for a building permit for a single family dwelling on lot 61 (PCN 00-42-42-27-05-048-0011). (DATE:MONITORING-BLDG PERMIT)

3. By October 16, 2000, the applicant shall have initiated construction of the single family dwelling on lot 61 to vest the variance approval. (DATE:MONITORING-ZONING-BA)

4. By January 16, 2000, the Zoning Division staff shall make a notation on the Certified Site Plan to reflect the side setback variance for lot 61 within Pod D within Ciba Geigy PUD. (DATE:MONITORING-ZONING-BA)

CHAIR PERSON KONYK: B of A 99-00098, Arbern Investors, to allow a reduction in the required off-street parking based on a shared parking study.

MR. MacGILLIS: Madam Chairman, Staff has a concern with this item. When the packet went out, Staff was still working on the report with the Engineering and Traffic Division on the shared parking study.

The numbers that went out in the Staff Report, Staff assumed were going to be consistent with what was going to come back in the traffic analysis from Engineering. And they're not.

I've spoken to Bill Whiteford this morning about it, the Zoning Director, to go the discrepancies in the number and whether or not zoning can move -- will support this change. And at this point, we're not ready to do that.

The numbers have gone up from the original application of four forty-four to four sixty. And Staff has some concerns with that even with the conditions we put on there, that we would like thirty days. And I discussed this with the applicant yesterday and this morning, an extra thirty days to look at these numbers and make sure that zoning is all right with the changes that's gone out with the original four forty-four that was in the



where we are today. There is a shared parking agreement with the County that's in effect on the property currently. That shared parking study indicated that that, if this were any changes in the uses or the hours of operation of any of the uses out there, that the county would require a revised parking study be done.

At the time that the shared parking study was done, the nightclub that was operating in the premises was only open from eight o'clock. So that tenant was at some point undesirable, and there was some issues with the way the nightclub was being run.

Anyway, that tenant has been removed. And there's a new tenant that came into the premises and was interested.

Only, they're running a slightly more upscale, I guess, restaurant and nightclub. And they wanted to open at five o'clock rather than eight o'clock for a happy hour between five and eight p.m.

At that point the landlord, the Petitioner, went out and had a revised parking study done to determine whether or not this would be feasible because they understood that it would have to be adjusted under the terms of their existing agreement.

17

That shared parking study indicated that there was sufficient parking as it was. However -- and that was done using the same methodology as what had been done for all of the previous parking studies.

However, when it was presented to Traffic and to the County, they at that point determined that they were going to require a seasonal adjustment for the uses out there. And upon those kind of seasonal adjustments, the numbers increased, of course. And we ended up with the four forty-four based upon what, again, the Traffic Department had indicated would be acceptable methodology.

When that was presented, there was, I guess, some on-site actual counts that were done. And then the County also required -- the Traffic Department required that there be a full seasonal adjustment. Apparently, prior to that, the four forty-four just indicated that there was some uses there that were not subject to any seasonal adjustment. That's how we ended up with the four hundred and sixty.

But, quite frankly, the parking agreement we have in effect, if we were to use the same methodology, which is what we did for that kind of a parking study, we wouldn't be here because there wouldn't be any need for it. It's

are not just an overabundance of caution on the part of traffic, that there are safeguards in place to prevent there being any future problems with it.

So we believe that the rationale should be the same that we've met the criteria and that everything is in place and that the conditions to give you the safeguards that you would need for this.

The problem with postponing is that the tenant is moving forward with the improvements to the leasable premises. And they're looking forward to an opening date shortly after the first of the year. A postponement on this would, of course, directly impact in their ability to open as desired.

CHAIR PERSON KONYK: Have you changed your position as far as this being on the --

MR. MacGILLIS: Yes.

CHAIR PERSON KONYK: -- consent?

So, really, we should have pulled it from the consent to begin with?

MR. MacGILLIS: Unless she's willing to agree with the postponement. If she wants to discuss it, then we need to put it off the consent and put it on the regular, even if the Board wants to go forward with it.

MR. BASEHART: Given that this is the only item on the agenda that hasn't been dealt with so far, I thought

18

we were kind of having a hearing anyway.

CHAIR PERSON KONYK: So we should pull this from the consent, and then move --

MR. BASEHART: If they move forward, are you saying that you don't have a recommendation or that your recommendation is for denial?

MR. MacGILLIS: It would be for denial based on the -- not having enough time to review it. I received this yesterday at four o'clock, so I've talked to Engineering. And it's a zoning issue because it's a variance from the parking regulations.

MR. BASEHART: Right. The Traffic Division is -- well, I guess we can discuss that was we go forward with the hearing.

CHAIR PERSON KONYK: Okay. Then item B of A 99-00098 will be pulled from the consent and reordered to the regular agenda. Okay.

MR. BASEHART: Now, we move to the regular agenda and that's it.

CHAIR PERSON KONYK: The items remaining on consent are B of A 99-00093 and B of A 99-00094 and B of A 99-00095

get sworn in at this time.

(Thereupon, the audience members were sworn.)

CHAIR PERSON KONYK: Staff, introduce the item.

MR. MacGILLIS: This is BA 99-98, found on page forty-two in your back-up material. The petition -- the agent, Janice Griffin, Esquire, agent for Arbern Investors L.P., to allow a reduction in the required off-street parking based on the shared parking study.

Location is the southwest corner of Powerline Road and Palmetto Park Road, within the NationsBank Plaza, in the CG zoning district. Zoning Petition 81115.

CHAIR PERSON KONYK: Okay.

The applicant would like to make their presentation.

MS. GRIFFIN: Good morning. My name is Janice Griffin; Mandel, Weisman & Kirschner. And we're here in reference to the request for the variance.

Briefly, again, I've gone over a little bit of the history of how we got here. And, again, if we were in a position of being able to rely upon the prior methodology used for the parking studies, we would not be here. We would have simply been able to provide the information to Traffic. They would have approved it, and we would have entered into the shared parking agreement.

I would like to clarify. It's my understanding that the concerns that Staff have are not as to the merits of the variance petition but, basically, based upon an inability or a lack of time to have been able to review

19

the information, if there was a change in the information based upon the idea that we're not looking at four sixty as opposed to four forty-four. And just a clarification that that is their position rather than actually a problem with the merits of the variance petition itself?

CHAIR PERSON KONYK: So, basically, it's a variance -- if what they're saying is correct, it's not a thirty-car variance, it would be, what, fifty?

MS. GRIFFIN: Actually, there would be --

MR. MacGILLIS: Forty-six.

MS. GRIFFIN: -- forty-six.

CHAIR PERSON KONYK: Forty-six. So we're talking sixteen cars?

MS. GRIFFIN: Again, we got here by virtue of the history of where we are on this. At this point, as I said, the landlord has entered into a lease with the tenant based upon our assumptions that the parking would be available based upon their shared parking study that was done.

take a look at these. So, if I may, just provide -- okay. I've highlighted the five o'clock hour. I don't know if that will be helpful at all for you on that.

If you look at --

CHAIR PERSON KONYK: So this is the same thing we already have, correct?

MR. MacGILLIS: Yes.

MS. GRIFFIN: Right.

And a couple of things to point out about -- first of all, the assumptions that are made in the parking study are based upon full occupancy. And, second of all, they're based upon a seasonal adjustment in an area that, in the past, has not -- Traffic had not seen it reasonable to expect that there would be the seasonal adjustment.

So the numbers that you see -- I think part of the evidence that maybe we are just looking at an overabundance of caution is, if you look at the hours from eleven o'clock to one o'clock, which are not changed. Those are the existing uses as they are right now and as they have been for the past number of years.

So those -- according to these numbers, those hours should be having a parking problem because it shows a requirement of four hundred and fifty-seven for the eleven o'clock hour. However, there have been no problems. There are no problems at this point. And I think that the problem here is that you're looking at numbers that are taking statistics, making adjustments for assumptions that aren't necessarily true out there.

And, again, there are no problems with the parking

20

during those hours and have not been even during full season. So I think that's a fairly fair indication that maybe what we're looking at is just, again, an overabundance of caution on the part of Traffic and the County.

However, the rationale for the approval of the variance remains the same. If you look at the criteria for and the support that the staff had given previously to our request for a variance, the rationale remains the same. And, again, the conditions that they're imposing upon the variance protects the County from any adverse effects from granting the variance. It gives them the opportunity that, if there, indeed, turns out to be a parking issue, that they can have it revisited and address the issue at that point.

The landlord has also taken the additional steps of requiring that the tenant who's going in there would be

used. It's always been used as a nightclub. And this tenant intends it to be a more upscale, creating less problems than there were in the past with the previous tenant. And their only requirement is that they would be allowed to open at five o'clock to take advantage of the happy hour time, if you will.

MR. BASEHART: Can I ask a couple questions?

MS. GRIFFIN: Absolutely.

MR. BASEHART: I've been involved in these parking studies and parking -- shared parking agreements before. And one of the requirements -- and I noticed it's been done here when I read the Staff report -- is that you have to show on the plan where parking shortfall could be put if, in fact, it turned out to be a problem. In this case what happens is the plan shows another deck of parking.

So my understanding is that, if we grant this variance and it turns out there is a parking shortfall, that you-all can go in and require them to put that additional parking in; is that correct?

MR. MacGILLIS: Correct.

MR. BASEHART: Okay. The other thing that -- just from the presentation that Ms. Griffin made, it seems to me if this is going -- the whole issue here is they want to open three hours earlier than the previous club did in what the original shared parking agreement provided.

Is there an -- just from my own experience, it would seem likely to me this is a fairly substantial office complex with people generally getting off work five, five-thirty, six o'clock. And it would seem it me that there's a high likelihood that a good number of people that go to the happy hour situation would be the same

21

people that are already parked on the site because their office is there. And was that considered?

MS. GRIFFIN: Well, I think that's probably one of the benefits that the tenant is hoping to have is that there are office areas, not just in their immediate project, but in the surrounding areas that would draw, you know, to the happy hour as well.

MR. BASEHART: Walk-in?

MS. GRIFFIN: Right. From the areas that surround it on the west and the south area.

So, I mean, that's -- again, what they're hoping to do is to be able to draw at least those that are closest to and then others who would end up driving will be coming after the hours from -- if they got off at five or five-thirty, they'll be arriving sometime after that.

office building, a McDonalds and a freestanding retail building.

When the project was approved in the early '80s, the applicant was required at that time to show a parking garage on the site because the site did not meet the parking requirements at the time. They also entered into a shared parking agreement which has been valid on the property until the applicant came in to revise that parking study because the nightclub in the original parking study was not supposed to open until eight o'clock in the evening, which allowed for -- there was no overlapping of the parking between the nightclub and the other uses on the site.

The applicant came to the Engineering Department and Zoning and requested us to review this request. When we originally met, we were looking at the numbers that were fairly consistent with the original parking study with the exception that of the overlap between the five and six o'clock, which staff didn't have a problem with.

However, when the applicant indicated to staff that the Engineering Department was requiring them -- which was different from the original study -- to accommodate seasonal counts in the new shared parking study, which kicked the numbers up. When the numbers came back to Staff now in the last couple of days from the original study that we looked at, we only saw an overlap at ten o'clock in the morning and between five and six.

Now we have come back and we have an overlap of -- there's not going to be enough parking on the site at ten, twelve -- ten, eleven, twelve and at six o'clock. And that's where part of Staff's concern is that we haven't had enough time to sit down and go over that because in the Staff report, we justified the five to six, as what

22

Mr. Basehart has indicated, that the -- in the staff report we've indicated that some of the people that were going to be going to the nightclub for the happy hour would be people that were leaving the office building. Therefore, since we were only over thirty spaces, there was a logical deduction that could be made that some of the those people would be going over to the nightclub.

And with these numbers being changed like this, we just haven't had an opportunity to go back through them all and to speak to Engineering directly. We've informally talked to Engineering, but have not sat down and said, are all these parking numbers correct because -- the County has very few shared parking studies on the books. They probably have four that have been executed

agreement.

If Staff is in agreement with these changes, then we could support it, and the nightclub then in -- you know, in January could open at the five o'clock that they're asking for, so...

MR. BASEHART: Let me ask you a question, not being a traffic expert.

The whole issue comes up because of the County's determination that you should add a seasonal adjustment. That's what's really -- is that what's really changing the situation here?

MR. MacGILLIS: Alan Ennis from the Traffic Division is here. He's the staff member from Engineering who actually reviews the traffic studies and comments on them.

Alan, perhaps you could address the --

MR. BASEHART: That was part of the -- I mean, it seems to me, if that is the issue then, we're not talking about anything that affects the functioning of the site year-round. It would be for a certain period of months. So we're not talking about a whole year.

But the other thing that struck me when you're discussing this is that you said that, when you look at the seasonal adjustment, it creates potential problems at, like, ten and twelve, you know, in the afternoon. That doesn't have anything to do with this variance because the nightclub isn't going to be open until five o'clock.

So it seems like a paper chase to me. You're saying, well, we're asking for a variance simply to allow a restaurant to open at five instead of eight. But, when you adjust the way you calculate the parking demand and add a seasonal factor, now we've got a problem during the middle of the day.

But my understanding from a legal point of view is that the only thing that's relevant to our consideration

23

of a variance are factors that affect the variance that's being requested, that variance being a request to be able to open at five o'clock instead of eight.

MR. MacGILLIS: No. That's not correct. The variance does not have anything to do with hours of operation. It's to do with the shared parking study reduction. On-site you're required X amount of parking spaces. If you can't meet that and you have multiple uses and have flex hours, then you can come in with a shared parking agreement.

The shared parking agreement will obviously have less parking than regular required code --

MR. BASEHART: R. I. L.

wrong when she said that if they weren't asking to change the hours of operation, this new tenant could have gone in; and there wouldn't have been a requirement to reconsider this?

MR. MacGILLIS: Right. They'd be under the original, executed shared parking agreement.

MR. BASEHART: So then, really, the issue is changing the hours because, if they weren't changing the hours, they would have to come here?

MR. MacGILLIS: Right.

CHAIR PERSON KONYK: But they're not open between ten, eleven, twelve and one.

MR. BASEHART: Yeah. So what relevance does --

MR. MacGILLIS: Well, because the original shared parking study didn't have the seasonal factors worked into it. So maybe the original study would have never worked, if it had the seasonal in it as well.

MR. BASEHART: Right. But the original study is proved --

MR. MacGILLIS: But it's going to be null and void if we approve the new one.

MR. BASEHART: Because the hours are changing?

MR. MacGILLIS: Right. Then we have to look at the whole thing again. We look at every use again. It's like any zoning process.

CHAIR PERSON KONYK: Right.

MR. MacGILLIS: Once somebody's approved for something, you're vested for that. But, if you want to come back in and start saying, well, I want this privilege to open three hours earlier, then we say, okay. But we have to look at everything over again, so you lose your vested approval. And then we review it again --

MR. BASEHART: Yeah. I mean, every time you come back with a new pigeon, they want to hang you for something your grandfather did, you know, is what it boils down to.

24

MR. MacGILLIS: Okay. No comment on that.

MR. JACOBS: I have a question of Ms. Griffin. Forgetting the variance issue of -- aside, is your client in a position to open the nightclub when? When are you in a position to open the nightclub?

MS. GRIFFIN: To open for business, I'm going to have to defer to Jason Harris.

MR. HARRIS: I'm not sworn in.

CHAIR PERSON KONYK: You can answer that question.

MR. HARRIS: I represent the ownership of the



mine who are in the restaurant business, it's like department stores, they usually do a higher volume of business, particularly bars and such --

MS. GRIFFIN: Over the holidays.

MR. JACOBS: -- during the holidays.

MS. GRIFFIN: They will miss that no matter what.

MR. KIRSCHNER: May I say a word?

MS. GRIFFIN: Sure.

CHAIR PERSON KONYK: You have to get sworn in.

MR. KIRSCHNER: I'm sorry. May I?

(Thereupon, Mr. Kirschner was sworn by the court reporter.)

MR. KIRSCHNER: Mitch Kirschner also with Mandel, Weisman and Kirschner.

Mr. Jacobs, in answer to your question, not only does this tenant, needless to say, want to get in as close to season as possible, there's a little bit more of an overriding and potentially prejudicial issue.

As we stand here today, we have a signed, sealed and delivered lease with this tenant. And, under the terms of the lease, somewhat reticent to say, but we, as the landlord, would potentially be in default under the lease because we executed the lease with a criteria that this tenant could open at five o'clock.

It wasn't done in a cavalier manner. We passed it by our expert Joe Pollock who's, needless to say, very well thought of in County, and asked him, run the same numbers you've run in the past on the same criteria, can we enter into this lease? And he said, subject to it being approved; but I see no reason why it shouldn't be approved because I'll use the same methodology.

So, if we leave here today without an approval, in fact, as people of goodwill, we'll have to go back to the tenant and say that we cannot tell you in good faith now to go ahead with your improvements because, very likely, we cannot promise you that you would be able to move forward.

I'd just also like to say that, relative to what Mr.

25

Basehart said, I think his point is very very well taken in that what I'm hearing is that, under the new study, that which works on our concrete day in and day out for the last ten years simply won't work on paper. This is -- I think it's a question of change of hours.

I was a tenant in the building for ten years. There's ample space. So, just by opening up a restaurant at five o'clock when most people are leaving, if that, by

position is that it will not fail. I think their position is that they haven't had enough time to review it. And I think that's what the problem is.

And, really, I'm sorry that you entered into this lease. But that's really nothing that we have to consider here. That's probably something that you should think about in the future.

MR. KIRSCHNER: If I may?

As I say, these are not cavalier people. They are a very substantial group. The reason they did it was in reliance on the fact that, if the parking study just followed the previous orientation, there would have been no problem.

The problem is that that the parking study -- we're now being told by traffic, give us I hundred percent occupancy as a presumption, which, of course, there never is and also, across the board, maximum seasonality. And, in fact, the building is, with the exception of the nightclub and the McDonalds, an attorney, accounting, insurance office. Which, while there may be some seasonality, it is not retail.

So we're having applied to a office building a whole new set of parameters which have changed which have -- really, it's apples and oranges to everything we've relied upon in the past.

CHAIR PERSON KONYK: Okay. But I don't think Staff's saying that they're making a position that they're not going to recommend approval for this. I think the position is is that they received the information at four o'clock yesterday, and I think that's where the problem is, and I think that's why they're asking for the extra time to review it.

MR. POLLOCK: Madam Chairperson? I'd like to make one comment related to the change.

I'm Joe Pollock, the person who has prepared all of these numbers. And I apologize that there are so many numbers. But, given the methodology that we were faced with, we tried to present it in a concise manner.

The point I wanted to address is the differences in the numbers between what happened in the report going from

the four forty-four up to the four-sixty.

The four forty-four number did include adjustment factor for about half of the office building itself as well as all the retail and restaurant uses. The other half of the office building, pure -- basically what we call pure office uses, we did not apply the seasonal

feet of the building. So we just did not see that it was appropriate to apply the seasonal adjustment factor to all of the office uses in the building.

So that is the only difference between the four forty-four and the four-sixty number. I just wanted you to understand that. And, hopefully, maybe that might help zoning staff a little bit too.

MR. BASEHART: Can I ask a question?

When did the County ask for the changes to the traffic?

MS. GRIFFIN: Well, when we -- we presented the initial study, which was based on the previous methodology. At that point they reviewed and said -- I think they requested an on-site count. And then they also requested for an adjustment for seasonality. There were meetings -- I wasn't part of. It was my understanding their were meetings on exactly how they were going to do that.

The revised parking study was prepared, I believe, November 22nd and presented to staff at that point, traffic -- and then the Traffic Engineering, again, I understand did an on-site count themselves. I don't know the exact results. It was my understanding that it pretty much supported the idea that there was sufficient parking based upon an actual count --

CHAIR PERSON KONYK: I think we should hear from Traffic. Thank you.

MR. BASEHART: You came all the way over here.

CHAIR PERSON KONYK: And he looks awful nice today, too.

MR. BASEHART: He ought to be able to say something.

MR. ENNIS: Members of the Board, Madam Chairperson. I'm Alan Ennis from the Traffic Division. And I don't know if I need to get sworn in or not.

CHAIR PERSON KONYK: Yeah.

(Thereupon, Mr. Ennis was sworn by the court reporter.)

MR. ENNIS: The original traffic -- or parking study was submitted back in June for this project. And at that time we asked for an actual field count of the parking conditions, and we also did ask for seasonal adjustment.

Now, this is not the first time that we've asked for

a seasonal adjustment. We have asked for a seasonal adjustment on the Crocker Center parking study, which was done a couple of years ago. And it has really come about as a result of some problems that we've had in the past

about two o'clock, so just to explain some of the circumstances involved.

CHAIR PERSON KONYK: Is this shopping center source of complaints because people have not be able to find parking? I know that there's a shopping center in my area that we complain about all the time because we're unable to find parking there. Is this something, to your knowledge, that you have concerns -- people have concerns about or have made complaints?

MR. ENNIS: To my knowledge, we have not gotten any complaints on this particular shopping center or the office building.

There is a shopping center that goes around this particular office building, but their parking lots are separated by a circumferential roadway.

CHAIR PERSON KONYK: Okay.

MR. MacGILLIS: The Zoning Division had complaints -- Mr. Whiteford had indicated that he had -- months ago. But that's when they were building the freestanding out-parcel for the Blockbuster. They actually had roped off a lot of the parking. So there was some of the doctors' offices, some of the patients were complaining that there was no --

CHAIR PERSON KONYK: That was because of a construction issue that was resolved once the construction was completed?

MR. MacGILLIS: Right.

CHAIR PERSON KONYK: Other than that?

MR. MacGILLIS: They would go through code enforcement.

It gets into all -- we get complaints like that if we go and look at the site plan and say it's approved for four hundred sixty parking spaces and that's what's out there. If it's a tenant and landlord problem, there's nothing we can do because it's meeting code. That's why, if we approved something like this, we have to scrutinize it even more because if the complaints come back and we have approved a shared parking agreement or a variance on something that reduces it below the code, the tenants feel that we, then, have an obligation to explain to them why we reduced the parking and they have no spaces because the landlord is saying, you need to park further away from the building or we'll provide valet for you.

CHAIR PERSON KONYK: Obviously, this item was

around two o'clock in the afternoon; and the majority of the parking in front of this building was utilized. It's kind of unusual when you go to a parking lot, you tend to -- you can drive around and find spaces everywhere. But that was just Staff's observation that one day that we had been there.

MR. JACOBS: What's the date of the lease?

MR. HARRIS: I don't recall. I don't have that information with me. It's been within the last few months. We've been working on this about the same time.

MS. GRIFFIN: One thing I would like to point out. First of all, that's not a shopping center. It is mainly office use. There are a couple of retail. But it's primarily office space.

And, again, the thing is one of our concerns with the signs as they were posted was that it references a reduction in the parking. And I want to make it clear. We're not reducing the parking. We still have the same number of parking spaces.

What we're requesting is the variance to accommodate the change in the hours, that part of the problem -- initially, it was a little convoluted as to exactly what it was that we were looking for. I had originally thought that perhaps what we were looking for was a change in the operating hours under the shared parking study. That would have effectively changed what we needed -- would have done what we needed.

But the determination was that there was -- what, technically, was required was a variance as to the parking itself which required an entire new parking study. If we had, again, just had a change in the hours under the parking agreement. But that's not how we needed to proceed with this particular issue.

CHAIR PERSON KONYK: Even though it was advertised, nobody even voiced a concern that they had a problem with the parking?

MR. MacGILLIS: No.

CHAIR PERSON KONYK: Doesn't that say something to you? I mean, usually --

MR. MacGILLIS: No. Because -- when it's a parking -- actual problem out on the site, they call and -- they call the Code Enforcement Division.

CHAIR PERSON KONYK: But don't you think that being that these yellow signs were up there that they would have called you -- that they would have called here if they already had a problem?

MR. MacGILLIS: My experience dealing with these

valid approval. And...

CHAIR PERSON KONYK: Okay. I just wondered. You know, I mean, it -- for instance, the one parking lot that I always refer to, if yellow signs went up there and they were asking for a reduction in parking, I can guarantee you there would be a hundred and fifty people in this room because of the situation being the way that it is.

And it seems to me that the tenants and the patrons of this establishment aren't having a difficult time finding parking now. I'm making that assumption just because we haven't had a lot of people in here and you haven't gotten any phone calls, et cetera.

And I understand your situations where you don't get phone calls until after the hearing. But that just makes me wonder if there's possibly not a real problem in this area. I'm not familiar with the area. So that's why I'm asking the question.

MS. GRIFFIN: If I could also point out. I think it's important to remember that the conditions that are being imposed specifically address the issue of what happens if we're wrong; what happens if our estimation of what is really happening out there is incorrect and the count does start getting complaints about it.

Those conditions do address that. They provide for the fact that, if there are problems coming in, then the County has the right to void the variance to require that they -- a new parking study be issued or to require that there is a parking garage, if, again, we're wrong in our estimation.

So, again, I think that the conditions that the County has adequately protect them from the possibility that you weren't being cautious and that we were being...

CHAIR PERSON KONYK: Does it? That's correct, right? What she just said.

MR. MacGILLIS: Based on the numbers that we have reviewed.

I'm not here to disagree with the applicant. I think, in all fairness to Staff, we've asked them not to place this item on the agenda until we have the numbers back from Engineering. They request us to move forward and guaranteed me that the numbers were going to be consist with what they were presenting.

I said, okay. The report will go out. I didn't want to do it. I asked them to take a thirty-day postponement, and they said, no. Everything's going to work out. I didn't want Staff in a position against the applicant because we were recommending approval based on what they had presented to us.

And, when the numbers came back differently, I spoke

same page so that if we do get a call in six months that there are parking problems out there we're all on the same page; the tenant, Staff and Engineering are all in agreement that there's going to be another shared parking study submitted and there's no confusion on what's going on.

MS. GRIFFIN: I would say that we were, again, hoping that the numbers were working out. And I appreciate the fact that Staff has been very helpful with respect to this and understanding it.

Our position today is based upon a review of the Staff Report, a review of the rationale and a review of the conditions and just a considered opinion that the change in the numbers from the four forty-four to the four sixty don't really constitute a substantive change in what the variance petition is about.

If I could, I'd like to take a minute and just discuss the issue of the postponement to find out if that's a huge problem. I don't want to be putting Staff in position where they feel uncomfortable with what's going forward on it. This is something that there's going to be ongoing discussions anyway because the conditions provide for an ongoing relationship with respect to this. We certainly don't want to putting them in a position where they're uncomfortable with it.

Again, the position we're taking today is simply that their review of the numbers would be no different because, again, the rationale is the same; the conditions are there for protection; and we're making a good faith effort to move forward for the benefit of the tenant, for the benefit of what our relationship with the tenant is as well. And those are the concerns that we have.

It's certainly not to put Staff in a position where they don't feel they have been able to review the numbers and the issues adequately.

MR. JACOBS: An observation.

I don't know that the traffic study really addresses the parking availability with respect to this particular spot. I happen to be familiar with that area. And the proposed restaurant and Blockbuster abut.

MS. GRIFFIN: Yeah. The Blockbuster is in that southeast --

MR. JACOBS: Yeah.

MS. GRIFFIN: -- quadrant, right.

MR. JACOBS: And I can tell you from personal experience it is extremely difficult to get a parking space anywhere near Blockbuster.

MS. GRIFFIN: Okay. The few times I've been in there, the parking was adequate. But I don't frequent it very often. So I'd have to defer to your on-site

MR. BASEHART: And a big part of the problem is people don't like to walk more than a few feet --

MR. JACOBS: Exactly.

MR. BASEHART: -- and so, you know, if you have to walk fifteen or twenty parking spaces to go to the Blockbuster, you have to go too far.

MR. JACOBS: That's right. And, you know, particularly bad weather or what have you.

But I do know from personal experience that it's difficult to get a parking space in that limited portion of that complex. So I'm just wondering whether overall numbers with respect to the complex as a whole really reflect higher usage in portions of the complex?

MS. GRIFFIN: I don't know that it's that large of a parking area that you really need to be able to address focus on specific areas --

MR. BASEHART: As Mr. Basehart says, people don't like to walk and --

MS. GRIFFIN: It's so much better for them if they do.

CHAIR PERSON KONYK: Jon, after hearing the presentation, are you any more familiar with this? Has your position gotten clearer? Or do you still feel like you need to take postponement?

MR. MacGILLIS: I have to speak with Bill; and Bill, unfortunately, is not here.

The last discussion I had with him -- because we were -- when I did the review and looked at the chart that I had on the back page, the numbers on -- I was only looking at really between five and six. And that's what I had in the justification -- in the analogy between the office building -- people coming out and leaving and the nightclub opening.

And now we've got those hours where there's obviously -- the numbers have gone up. All we need to do is look at them. An, if it's fine, then zoning won't probably have a problem with this request. Having just got this thing at four o'clock -- you know, if I had it yesterday morning, I --

MR. BASEHART: What did you do last night?

CHAIR PERSON KONYK: You're not under oath.

MR. MacGILLIS: I was at a hearing.

MS. CARDONE: Madam Chairman, the applicant had asked if she could have a moment so that they could discuss that proposal. Could we allow them that moment?

CHAIR PERSON KONYK: Sure.

(Thereupon, a recess was taken.)

CHAIR PERSON KONYK: I guess we're back on the record.

MR. KIRSCHNER: Thank you.



moment of background. Club Boca was the former tenant. Club Boca had always paid their rent. And, when the lease came up, this landlord said get out because it wasn't in keeping with the best interest of the community with the building.

The tenant that is very desirous of moving in and is up on Clematis Street as well. Their reputation is terrific, and we think it will be an improvement to the building and an improvement to the community.

Unfortunately, under this particular circumstance, we executed a lease in good faith. And I believe that the lease is in substantial consideration for what they believe to be the need for a five o'clock happy hour.

I think Mr. Basehart's comments, I couldn't agree with them more -- or at least where I thought you were going. I really think at five o'clock the -- the patrons of the happy hour will be people coming out of the elevator going to the lobby on their way home.

This landlord is very well known. He has an interest in Blue Lake. He has an interest -- owns the Northern Trust Bank Building. And I'm very concerned that he will face a default action by this tenant, that the tenant may very well decide to cut bait; and there probably would be an action for damages.

So, Madam Chairman, your point was well taken. And maybe it was a leap of faith. But it wasn't a bad leap of faith to say, well, we'll go to Joe Pollock. Run your numbers the way it's been approved in the past. See if the numbers still work. And, yes, they still work.

That said, what I'm hearing from the Staff -- and I certainly don't want to put words in their mouth. They're much better at what they do than I would ever say is, as an abundance of caution, we let this place open at five, if on the numbers people at ten o'clock who park -- I was a tenant at that building, as I say, for over ten years -- people who now find there's no trouble parking at ten will find there's parking at ten because the restaurant's coming in at five. I'm asking you. I know it's not something that you would typically want to do, but I think -- I'm asking you to consider that Staff is being very cautious. But we must throw somewhat caution to the wind because I don't think they have thirty days to come back.

I think if we don't have it today, we've got to tell this tenant that we can't -- we, first, now have to go through publication again. We have to put signs up again. I don't think --

CHAIR PERSON KONYK: No. You don't have to do publication, again, as far as it being published. It's just being postponed.

MR. KIRSCHNER: It would be thirty day --

The Staff report, which I read thoroughly, you know, before, you know, I came to the meeting this morning, you know, was a hundred percent in support of the variances.

I understand the changes that were required with the seasonal adjustment factor being required. But seems to me in looking at that and having discussed it here, what that does it says that, well, if you add a seasonal adjustment, there's a problem here; and the problem is during the middle of the day. But then that's on paper.

As a practical matter, this facility as been operating for years. And, as a practical matter, there isn't a problem during the middle of the day. So, you know, the paper problem and the reality are not consistent with each other.

And, given all of that -- and I think, really, the crux of this matter is a request to open a facility that's already been approved and -- although a different tenant has been operating for years at this facility. And there's never been a problem. And even the shared -- the knew updated study doesn't show any kind of a problem during the five o'clock hour.

And I'm familiar with these types of facilities, you know, in what are primarily office complexes. And, you know, my experience has been that most of the people who go to them are people that work in the building. So those cars are already parked on the site.

All of that combined with the fact that the conditions of approval provide all the safeguards in the word for corrective action if it turns out the study's wrong and there's a problem, you know, and then there's one other issue. The landlord is the only one that will really suffer if it doesn't work because parking's important to people. And, if parking doesn't work, if parking isn't sufficient, tenants move out. Then you don't have a problem with the parking anymore, but you also have a lot of vacant space that you're leasing.

So given the fact that there's been a shared parking agreement in effect on this property for many years and it's worked and that, as a substandard matter, that the changes being requested here I believe will have no affect on the practical day-to-day operation of the facility. And, given the hardship that would be created by not being able to replace the tenant and the safeguards that Staff has recommended as conditions of approval, which you're agreeing to accept?

MR. KIRSCHNER: Absolutely. Sure.

MR. BASEHART: And --

CHAIR PERSON KONYK: (Inaudible.)

MR. BASEHART: Well, I just wanted to make sure. I might not have made the motion if they didn't accept it.

MR. BASEHART: C... H... T...

CHAIR PERSON KONYK: We have a motion by Mr. Basehart and a second by Mr. Jacob.

Any discussion?

I want to say one thing. I understand Jon's position, and I understand that he received the report four o'clock yesterday. And I do think that that was an imposition to the Staff. But, on the other hand, after hearing the presentation today and understanding everything you said, other than the fact that you've already signed the lease, which didn't matter to me, I'm going to say that I agree with Mr. Basehart's motion. So I will be supporting it.

So can we have a vote?

We have a motion and a second.

All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: Opposed?

MS. CARDONE: (Indicates aye.)

CHAIR PERSON KONYK: One.

So the motion carries four to one.

MR. KIRSCHNER: Thank you very much.

CHAIR PERSON KONYK: You have your variance.

MR. KIRSCHNER: Thank you. Thank the Board and thank Staff as well.

CHAIR PERSON KONYK: Jon, I'm sorry. I should have asked.

MR. MacGILLIS: Page forty-two --

CHAIR PERSON KONYK: Conditions would remain the same or do we have to make some corrections?

MR. MacGILLIS: Yeah. We have changes. On page forty-two with the variance will be required parking based on the shared parking will be four-sixty, the proposed four fourteen and the variance if for forty-six spaces.

And conditions on page fifty, there will be a correction to condition number two. The variance is to reduce the required off-street parking for Parcel "A" Boca Bank site from four-sixty to four fourteen.

So those are the only changes to the conditions. Just so it's clear on the record that the Zoning staff does not support this variance only because we had not ample time to review the new information and that the staff report was based on the numbers -- of the four forty-four, not the four-sixty, so there's no misunderstanding on the record in the future.

MR. BASEHART: I just want to make it clear. My motion was based on the revised -- you know, the revised report and the revised numbers.

CHAIR PERSON KONYK: And you understand and agree with those conditions as revised?

MS. GRIFFIN: Yes, we do.

MR. KIRSCHNER: Thank you very much.

A motion to adjourn by Mr. Basehart.

MR. JACOBS: Second.

CHAIR PERSON KONYK: Second by everybody.

All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: The meeting is adjourned.

#### STAFF RECOMMENDATIONS

APPROVAL WITH CONDITIONS, 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. There are unique circumstances surrounding this property that warrant special consideration when applying the literal intent of the off-street parking regulations. This overall approved site is 48 acres and supports five parcels which support office buildings, retail and shopping center. There is cross access agreements for access and parking between the parcels. Parcel "A", which is the subject of this reduced parking variance, based on a Shared Parking Study, is located at the southwest intersection of Palmetto Park Road and Powerline Road. The project supports a 6 story office building, free standing restaurant and retail building. The site is currently built-out consistent with the approved site plan. The parking for the entire project is existing. The applicant's client has a tenant that is currently renovating a nightclub that has recently changed tenants. The current tenant would like to open the night club at 5 p.m. to serve food and drinks. In doing so, the existing Shared Parking Study, that was executed several years ago on this site, must be revised. The site can only meet off street parking requirements, if there is a valid Shared Parking Agreement on the site. The Shared Parking Agreement was based on a Shared Parking Study that was required pursuant to the ULDC, Article 7.2, parking regulations. If a property owner can demonstrate that mix uses and hours of operation occur on site and that not all required parking is utilized during the typical peak times of the day, a Shared Parking Study can be submitted to Engineering to reduce the required number of off street

standards, the site would be short only one space. However, by adding the seasonal trips into the final calculation, the site will be short 63 spaces.

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

NO. This is not a self created hardship. The intent of the ULDC parking regulations is to ensure adequate parking is provided on site to meet the tenant and user needs. The applicant's client has a new tenant for the nightclub that has existed on this site for many years. The new nightclub owner has requested to the property owner to open for business at 5 p.m. instead of 8 p.m., as is currently permitted under the approved Shared Parking Agreement. The applicant was made aware that in order to accommodate the new hours of operation for the club, a revised Shared Parking Study must be submitted. A revised study was submitted, however, Engineering has requested it be amended to include seasonal traffic counts. In doing so, the Shared Parking Study revealed that a total of 444 parking spaces would be required in order for the Shared Parking Agreement to be approved. The site can only accommodate 414 spaces, therefore, a 30 space variance is needed in order for the Shared Parking Agreement to be approved. The applicant's client is well aware of the parking needs and demands on site and is confident that the parking provided will meet all the tenants' needs. They are willing to accept conditions of approval that existing unbuilt square footage on the site be eliminated and that in the event the parking complaints are received by the Code Enforcement Division that Shared Parking Agreement can be revoked or re-evaluated by the County staff.

## 3. GRANTING OF 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 has complied with all code requirements in terms of demonstrating adequate parking will exist on site to meet the tenants and customers' needs. The applicant has submitted a revised Parking Study, prepared by a registered Engineer outlining the existing tenants, parking needs and demand. The property owner has a new tenant for the night club that has existed on this site for many years. The night club is located within the 6-story office building. There is an existing Shared Parking Agreement on this site that recognizes all

the Shared Parking Study to be acceptable to the Engineering Department, Traffic Division, even though it is short 30 spaces. The Engineering, Traffic Division has informed Zoning Staff that the proposed variance is acceptable and if granted would still ensure that in the event the parking is not adequate at some time in the future, staff could require a revised Parking Study to be submitted. If the Parking Study could not demonstrate adequate parking on site, the variance would lapse and the required above ground parking garage would have to be constructed.

**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 literal enforcement of the Shared Parking Regulations would require the property owner to either construct an above ground parking garage or limit the nightclub to not opening before 8 p.m. The site has supported the office building and McDonalds restaurant since the early 1980s, while the freestanding retail building that support a Blockbusters and sit down restaurant was constructed in 1998. When the site was approved in the 1980s, a Shared Parking Study and Agreement was approved to allow off street parking to be reduced to 414 spaces from the required 477. The justification for the reduction at that time was the night club would not be open until 8 p.m. and the parking used for the office building could be used by the night club customers. The parking count has worked for many years on this site based on the Shared Parking Agreement. However, with the new tenant who is taking over the night club and the request to alter the hours of operation to 5 p.m., the parking counts will not meet the Shared Parking Agreement minimums. Therefore, the applicant was required to submit a revised Shared Parking Study that shows the required parking for the site based upon the new hours of operation of the club to be 444. However, since the site is built-out and the existing 414 parking spaces exist, there is no room to accommodate the additional 30 parking spaces. The Engineering, Traffic Division, has reviewed the revised Shared Parking Study and supports the requested variance.

If the variance request is denied, the applicant would have to construct the above ground parking garage on

the opening hour at 5 p.m. The Shared Parking Study establishes a minimum number of parking spaces for the various uses on site contemplating varying hours of operation. The revised Shared Parking Study currently being reviewed by the County Engineering Department, Traffic Division, is acceptable to Engineering, if the variance is granted. The variance to reduce the parking by 30 spaces is based on the Shared Parking Agreement parking calculations. As previously stated, the original approved Parking Study did not account for seasonal traffic, as is currently being requested by the Engineering Division. The site currently has adequate parking to meet the tenant and customer needs. The only overlap in parking between the nightclub and other uses on the site will be from 5 to 6 p.m. this is when the office workers will be leaving for the day and the club will be opening. The applicant's client does not expect the parking required for the night club to interfere with the parking of the office building.

Therefore, granting this variance will allow the night club tenant to open at 5 p.m. instead of 8 p.m. and the Shared Parking Study and Agreement to be approved by Engineering.

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

YES. The property has a CH-8 land use classification and a CG zoning designation. The overall 48 acre site is approved by the BCC for a PCD, Zoning Petition 81-115. The site has been developed consistent with all approval and permits. This Parcel "A", which is 8 acres is part of the 48 acre commercial development. It supports a 6 story office building, free standing restaurant and retail building. The required parking for these uses is 477 spaces, however, when the site plan was approved, the applicant was granted a Shared Parking Agreement, which allowed for 414 spaces for the site. The Shared Parking was based on the fact the nightclub use in the office building would not open until after 5 p.m. This would allow users of the office building time to leave at the end of the work day and at 8 p.m. when the club opened these parking spaces would be available. However, the new night club tenant would like to open at 5 p.m.. This requires a revised Shared Parking Study to be submitted to the Engineering Department. The revised Shared Parking

NO. The granting of the variance is to provide less parking spaces than required by the Shared Parking Study. However, the parking for this Parcel "A" is self contained on this 8 acre site. The office building utilizes the majority of the parking spaces. Considering that the users of these spaces leave at 5 p.m., a large portion of the parking lot is vacant. The Engineering Department, Traffic Division, has reviewed the revised Shared Parking Study and has informed Zoning staff they can support the request. The applicant had met with both Zoning and Engineering staff to determine if a variance from the required parking would be required or from the Shared Parking Study. Staff informed the applicant that if any parking reduction would be applied for from the Board of Adjustment that it be from the Shared Parking Study total number of spaces. The reason staff suggested a variance from the Shared Parking Study was that in the event that complaints are received and warrant review of the off-street parking situation, a revised Shared Parking Study could be requested from the applicant. If the applicant had applied for a variance from the total number of parking spaces for this site (presuming no Shared



recorded in the public records. If it is determined at a future date the 414 spaces is not adequate to meet the parking demand for this site, the applicant agrees to submit a revised Shared Parking Study to the Engineering Department, Traffic Section. (ONGOING)

4. If the Shared Parking Agreement is executed and recorded in the public records prior to December 16, 2000, the variance shall be considered vested and will not have to provide the Zoning Division with proof of a building permit for the purposes of vesting the approval. (DATE:MONITORING-ZONING-BA)

C E R T I F I C A T E

THE STATE OF FLORIDA)  
COUNTY OF PALM BEACH)

I, RACHELE LYNN CIBULA, Notary Public, State of  
Florida at Large,

DO HEREBY CERTIFY that the foregoing Proceedings were  
taken before me at the time and place stated herein; that the  
oath was administered unto the witnesses to testify the truth,  
the whole truth, and nothing but the truth; that they were there  
and then orally examined and testified as herein set forth; and  
that this transcript of said proceedings, numbered 1 through 40,  
inclusive, constitutes a true and correct transcript of said  
proceedings.

I FURTHER CERTIFY that I am neither related to nor  
employed by any counsel or party to the cause pending, nor  
interested in the event thereof.

IN WITNESS WHEREOF, I have hereunto affixed my hand  
and official seal this 6th day of January, 2000.

---

RACHELE L. CIBULA, NOTARY PUBLIC