



MINUTES

PALM BEACH COUNTY

BOARD OF ADJUSTMENT MEETING

NOVEMBER 18, 1999

9:03 A.M. - 9:40 A.M.

ADDRESS

100 AUSTRALIAN AVENUE  
WEST PALM BEACH, FLORIDA 33406

APPEARANCES OF BOARD MEMBERS:

GLENN WICHINSKY  
JOSEPH JACOBS  
RAYMOND PUZZITIELLO  
NANCY CARDONE  
STANLEY MISROCH  
ROBERT BASEHART  
CHAIR PERSON KONYK

APPEARANCES OF STAFF:

DAVID CUFFE  
BARBARA ALTERMAN, COUNTY ATTORNEY  
JOHN MacGILLIS  
JOYCE CAI  
MARK PENNEY  
NATALIE WONG

CHAIR PERSON KONYK: I'd like to call to order the November 18, 1999, Board of Adjustment meeting and start with a roll call, declaration of quorum.

MS. MOODY: Mr. Bob Basehart?

MR. BASEHART: Here.

MS. MOODY: Mr. Joseph Jacobs?

MR. JACOBS: Here.

MS. MOODY: Ms. Nancy Cardone?

(No response.)

MS. MOODY: Mr. Raymond Puzzitiello?

MR. PUZZITIELLO: Here.

MS. MOODY: Mr. Glenn Wichinsky?

MR. WICHINSKY: Here.

MS. MOODY: Mr. Stanley Misroch?

MR. MISROCH: Here.

MS. MOODY: Ms. Chelle Konyk?

CHAIR PERSON KONYK: Here.

We had no publication this month required because all petitions were previously advertised.

Next item on the agenda is remarks of the Chair.

For those of you who are not familiar with how the Board conducts its business, I'll give you a brief overview.

The agenda is divided into two parts, the consent and the regular. Items on the consent agenda are items that have been recommended for approve by staff either with or without conditions, the applicant agrees with the conditions, there's no opposition from the public, no Board member feels that the item warrants a full hearing.

If there's opposition from the public or a Board member feels the items warrants a full hearing, the item will be pulled from the consent agenda and reordered to the regular agenda.

If your item remains on the consent agenda, you're free to leave after the Board has voted on it. Items on the regular agenda are items that have been recommended for denial by staff or the applicant does not agree with the conditions recommended 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 have an opportunity to give their presentation. The staff will give their presentation. This point, 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 of staff and the applicant and vote on the item.

Next item on the agenda is approval of the minutes. Everybody received the minutes from last month. Does anybody have any corrections or additions?

(No response.)

CHAIR PERSON KONYK: Seeing none, is there a motion to approve?

MR. BASEHART: So moved.

CHAIR PERSON KONYK: Mr. Basehart makes the motion. Seconded by --

MR. WICHINSKY: Second.

CHAIR PERSON KONYK: -- Mr. Wichinsky.

All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: Motion carries unanimously. Next item is remarks of the zoning director.

MR. MacGILLIS: No comments this morning.

CHAIR PERSON KONYK: Next item is the agenda. Are there any corrections to the agenda?

MR. MacGILLIS: No.

CHAIR PERSON KONYK: First item on the agenda is B of A 99-00076, request for a thirty-day postponement to December 16th.

MR. BASEHART: Is this by right or is it by --

MR. MacGILLIS: You have to vote on this.

CHAIR PERSON KONYK: Yeah. We have to vote on this.

It's, I think, the third request.

MR. MacGILLIS: The first postponement was in September.

What their problem is with this petition, there's an easement where the buildings are located in that they have to try to abandon. And they can't abandon it. They need authorization. It's a private easement between the property owners, which they're trying to get authorization for. So they will be going forward in the December meeting.

CHAIR PERSON KONYK: Okay. Do we have a motion?

MR. BASEHART: I make a motion that we postpone this item for -- you want thirty more days; is that it?

MR. MacGILLIS: Time certain, December 16, 1999.

MR. BASEHART: To the December 16, 1999, agenda.

CHAIR PERSON KONYK: Motion by Mr. Basehart.

MR. PUZZITIELLO: Second.

CHAIR PERSON KONYK: Second by Mr. Puzzitiello.

All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: Opposed?

(No response.)

CHAIR PERSON KONYK: Motion carries unanimously.

First item on the consent is B of A 99-00078, Edgar and Tammy Benes, to allow a proposed room addition to encroach into the required front setback.

Is the applicant present?

MR. BENES: Yes.

CHAIR PERSON KONYK: Come forward and state your name for the record.

MR. BENES: My name is Edgar Benes.

CHAIR PERSON KONYK: The Staff has recommended four conditions. Do you understand and agree with those four conditions?

MR. BENES: Not a problem.

CHAIR PERSON KONYK: Okay.

Any letters?

MR. MacGILLIS: No. No letters.

CHAIR PERSON KONYK: Anybody from the public to speak on this item?

(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

authorize a variance.

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 property is located within Horseshoe Acres subdivision, which is part of the PB Farms Plat No. 3. The subdivision is located approximately .5 miles W of Florida's Turnpike and .5 miles north of Clint Moore Road. The land use designation is AGR and the zoning classification is AGR. This subdivision was part of the County initiated rezoning (Pet. 97-120, Resolution 98-851 that rezoned the property from AR to AGR.) The subdivision has access from Clint Moore Road by Wagon Wheel Drive. The subdivision supports approximately 66 single family lots. The lots are typically five acres in size or larger. However some lots are larger as a result of a property owner buying and combining lots, or smaller as the result of a property owner subdividing the lot prior to 1973 into 1.5 acre lots. The subdivision is rural in character with tree lined streets, large homes set back off the street, barns and paddocks.

What is unique about the subdivision and lot is the fact the land use and zoning designation was recently amended by the county. When the land use and zoning was amended many of the structures became legal nonconforming.

The original dwelling was constructed at the A-1 setbacks, which permitted a front setback of 40 feet. However, any improvements to this structure must now comply with the AGR 100 foot setback, if the literal application of the code is applied. This will place a hardship on the applicant since the minor changes to the existing front facade would not be able to be accommodated without this variance approval. The covered porch and bay window will only extend two feet beyond the existing legal nonconforming front setback line. The proposed master bedroom addition to the south side of the dwelling will align with the existing front setback line.

Therefore, special circumstances and conditions do exist which are peculiar to this parcel of land which are not applicable to other parcels within the same zoning district. The SFD located on the subject lot was constructed in 1972 when the district was zoned A1 (Agricultural District). The existing setbacks are a result of zoning regulations under the A1 designation. Zoning in this district has since changed to AGR (Agricultural Reserve). Thus, the applicants home is unable to meet AGR setback requirements as it was constructed according to A1 standards.

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

NO. As previously mentioned, the zoning designation in the applicants' district were recently amended by Palm Beach County in 1998. When the original dwelling was constructed in 1972 it was permitted at a front setback of 40 feet which the existing house meets. The applicant is

proposing to do renovations to this 27-year-old home that can only be accomplished if a variance is granted. The proposal will be consistent with the existing dwelling setbacks. The applicant could only construct the addition if it were added in the rear yard, since the entire existing house is in the 100 foot setback. Therefore, this is not a realistic solution and if the variance is granted, the applicant can proceed with the renovations that will allow them the best use of the property and dwelling.

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 variances requested shall not confer upon the applicants special privileges denied by the comprehensive plan and this code to other parcels of land in the same district. The Comprehensive Plan permits additions to single family dwellings in this district. Other properties in the AGR zoning district and general neighborhood have single family dwellings with similar square footage. The proposed renovations and expansion to this existing legal nonconforming dwelling will not create an impact on the surrounding neighborhood. The hardship created on the applicant is the fact the land use and zoning classification were recently amended by the County resulting in the entire existing house encroaching into the current 100 foot setback. To enforce the literal 100 foot front setback would preclude any reasonable renovations or improvements to the exterior of the dwelling. The applicants' improvements are not significant and will simply allow them to enjoy their property to the greatest extent possible.

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. A literal interpretation and enforcement of the terms and provisions of the code would deprive the applicants of rights commonly enjoyed by other parcels of land in the same district. The setbacks in the AGR zoning district were established from a minimum five acre lot. The lot dimensions are 300 feet deep and 300 feet wide which would allow for a 100 foot front and rear setback. The subject lot is 1.59 acres and has a legal nonconforming structure constructed at a 40 foot setback.

The 40 foot setback was applied to many of the homes built prior to the zoning change in 1998. The proposed renovations to this property will basically have the addition aligning with the existing front facade setback or 40 feet. Only the covered entry and bay window will extend beyond the existing front facade. Therefore, the existing uniformity along the street will be maintained and adjacent property values and existing separations will be maintained.

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 variance requested is the minimum necessary to allow a reasonable use of the parcel of land and to allow the proposed renovations to the house to move forward. Due to the structural design and layout of the existing house, there is no rational alternative location for the proposed addition. The proposed addition is minimal enough to remain in keeping with the character of the other houses in the neighborhood. The proposed covered entry and bay window only extend two feet beyond the existing legal nonconforming 40 foot setback line of the existing dwelling. The applicant is proposing to change the appearance of the front of the house to bring it more in keeping with the '90s home style as well as the style of other homes in this rural subdivision.

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

YES. Granting of the variance will be consistent with the purposes, goals, objectives and policies of the Comprehensive Plan and the ULDC. The intent of establishing and maintaining front setback lines is to ensure consistency along the street. When the original dwelling was constructed in 1972, the land use and zoning permitted only a forty-foot setback on this lot. However, the current AGR land use and zoning requires 100 feet. There are homes in this rural subdivision constructed at varying front setbacks because of the change in land use and zoning in this area over the past fifty years. The applicants' proposal shall simply align a master bedroom addition to the same front setback line as the existing dwelling and to allow a new covered entry and bay window to extend two feet beyond the existing forty-foot setback line. There will be no significant impact on the street by these proposed improvements to the dwelling.

The required front setback for this property is one hundred feet. As a legal nonconforming structure the existing front setback is forty feet, the proposed front setback is 37 feet, 2 inches for the porch and 38 feet for the addition to the house. The proposed setbacks are sufficient to be consistent with the original approval and the general intent of the front setback for this community.

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

NO. The grant of the variance will not be injurious to the area involved or otherwise detrimental to the public welfare. The property to the north of the subject property will not be affected by the proposed addition since it is set back on the lot due to the configuration of the cul-de-sac. The property to the south is buffered by an 8 foot high ficus hedge that the applicant maintains. The property to the south is set back approximately 50' from the road and is surrounded by

mature native vegetation. The surrounding neighbors will not be negatively impacted by the approval of this variance request. The proposed front setbacks will be in keeping with the original setbacks applied to the existing dwelling and generally in character with other homes constructed with a forty-foot setback.

#### ENGINEERING COMMENT

The requirement that the Base Building Line for the subject property by thirty (30) feet from the centerline of Wagon Wheel Drive is hereby waived. Said Base Building Line is hereby established at the existing east right-of-way line, being the west property line of the subject lot, and following the interior easement line of any recorded access easement as may currently exist to accommodate the paved cul-de-sac turnaround within the northwest corner of said lot. Note, however, that the submitted survey does not reflect the existence of any such easement.

#### 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 June 21, 2000, the applicant shall apply for a building permit for the proposed renovations and additions to the existing single family dwelling. (DATE: MONITORING-BLDG PERMIT)
3. By September 21, 2000, the applicant shall obtain a building permit for the proposed renovations (bay window, covered entry) and master bedroom addition to the existing single family dwelling in order to vest the approved variances. (DATE: MONITORING-BLDG PERMIT)
4. All improvements to the existing dwelling shall be consistent with the setbacks shown on Exhibit 20, in the Board of Adjustment File BA99-78. (BLDG PERMIT)

CHAIR PERSON KONYK: Next item on consent is B of A 99-00087, Winston Lee, agent for Pete Cartier, to allow for the following variances.

Is the applicant present?

MR. LEE: Yes, ma'am. Good morning. Winston Lee.

CHAIR PERSON KONYK: Okay. The staff has recommended eight conditions.

Do you understand and agree with those eight conditions?

MR. LEE: Yes, ma'am.

CHAIR PERSON KONYK: Is there any letters?

MR. MacGILLIS: There was -- I had received several

phone calls just from neighbors. But they had no problem with the variance requests once it was explained to them.

CHAIR PERSON KONYK: Any member of the public here to speak on this item?

(No response.)

CHAIR PERSON KONYK: Any member of the Board 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 authorize a variance.

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 1.645 acre commercial lot is located within the Westgate CRA district. All necessary approvals and permits have been obtained for an office/warehouse use on this property. The site will support two office/warehouse buildings for a total of 20,072 square feet. There will be 15,072 square foot of warehouse and 5,000 square feet of office. The lot coverage is 28.01% and will have a total of 63 parking spaces. The two buildings are currently under construction (B99008413 & B99008414) on site. The first slab inspection passed in July, 1999, and it was after this date the property owner noticed a discrepancy in the survey and site plan dimensions. The survey was incorrectly prepared and put the entire site 2.5 feet off to the north. This shifted the buildings, being located further to the north, thereby reducing the north property line buffer width and resulting in one of the buildings in the side corner setback along the east property line (Donnell Road).

Therefore, what is unique about this site is there is an approved use for an office/warehouse and site plan. There was also a BA variance to reduce the width of the north landscape buffer from 10 feet to 5 feet approved in 1996. A survey error has resulted in the applicant's need to apply for variances. If the variances are granted, the site will be developed consistent with the approval and site plan. The variances are minor and will be mitigated by upgraded landscaping along the north property line and along Donnell Road.

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

NO. The applicant contracted various professionals to obtain all necessary approvals and permits for the use and buildings. The project was moving forward on the site with construction of the new buildings when it came to the property owner's attention that the survey prepared, after the first slab inspection was signed off, had the site



shifted to the north by 2.5 feet. The survey error has resulted in the applicant having to meet with staff and redesign a portion of the site along the north property line. Also, the applicant has agreed to install upgraded landscaping along the north and east property line to mitigate the reduced landscape buffer and to reduce the side corner setback along Donnell Road.

The applicant is working in good faith the County staff to resolve the reduced landscape buffer along the north property line and building setback along Donnell Road. The applicant has contacted the Westgate CRA and surrounding property owners and provided letters of support for the proposed changes to the design. The redesign of the buffer along the north property line will in fact be an improvement to the visual buffering between the two properties. With the shifting of the parking to the north property line from the building, the applicant has been able to gain additional space to accommodate the trees and shrubs. The trucks that will be using this accessway will now not interfere with the trees (limbs) since the parking spaces will allow the trees to grow to their natural habitat and size. The setback variance along Donnell Road is 2.5 feet and the applicant has agreed to install additional trees and shrubs to mitigate the minor encroachment.

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 granting of the two requested variances will not grant any special privilege on the applicant. The two requested variances to reduce a landscape buffer and side corner setback can be mitigated with minor site modifications and the installation of additional vegetation. The applicant has met with staff to determine how the two requested variances can be mitigated in order for the construction on the site to continue. The buildings are existing and it would be extremely costly to move them at this point in the construction phase. The applicant has explored all other options available that would avoid the need for variances. However, since the site is limited in size and due to the nature of the use, there is little room for site modifications, other than what the applicant has agreed to do in terms of site along the north property line.

Therefore, the granting of the variance to reduce the north buffer width and side corner setback along Donnell Road will not grant a special privilege on the applicant.

It will also allow the project to obtain the necessary inspections prior to final Certificate of Occupancy.

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 HARSHIP:

YES. The project has moved forward in accordance

with the approvals and permits. It was an error made by the surveyor that has resulted in the applicant having to redesign a portion of the site and need to apply for variances. The requested variances are minor in nature and if granted, staff is recommending conditions of approval, to mitigate the reduction in the buffer and setback encroachment. If the variances are denied, the applicant would have to demolish the existing buildings and slabs and shift them to the south by 2.5 feet. This is not a viable solution considering the requested variances can be mitigated. The applicant contacted the surrounding property owners and the Westgate CRA regarding the variances and they are in support of their approval. The surrounding property owners would like to see the project completed. The granting of the variances with the condition of approval, recommended by staff, to install additional landscaping to mitigate the reduction and encroachment will ensure an unnecessary and undue hardship is not placed on the applicant.

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 granting of the two variances is the minimum necessary to allow this project to move forward. As previously stated, the property owner has obtained all the necessary approvals and permits for this project. The granting of the variances will allow the project to proceed and all necessary inspections to be finalized. The modifications to the site plan to mitigate the variances will enhance the overall buffer along the north and east property line. The applicant will be installing upgraded landscaping to mitigate the variances and existing native slash pines that have died during construction. The Board of Adjustment approved a reduction in the north buffer width from 10 feet to 5 feet in 1996. Staff informed the applicant that the current variance request would have to be from the original 10 feet since the overall intent of the original variance was not longer valid. The current proposal to relocate the vehicular parking along the north property line at an angle will in fact provide a better situation for buffering. The parking spaces will provide ample room in front of the vehicles to accommodate the trees while at the same time protect the tree limbs from trucks traveling along the access aisle along the north side of the building.

Therefore, granting of the variance will allow the approved project to move forward with construction and to final occupancy.

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 Comp Plan is to ensure the property is developed as commercial and is consistent with the surrounding land uses. The project, an office/warehouse, has been approved by the Board of County Commission with conditions. The conditions ensure the

property will be compatible with the existing residential to the north and east, while in harmony with the commercial to the west. The ULDC establishes minimum landscape buffer widths to protect adjacent land uses. To the north is an existing single family dwelling. The applicant is proposing to install all the required landscaping to mitigate the reduced buffer width. The property owner to the north has seen the revised site plan and is agreeable to the proposal. The side corner setback encroachment of 2.5 feet along Donnell Road will also be mitigated by upgraded landscaping. The minor 2.5 foot encroachment will not be visible from Donnell Road once the upgrade landscaping is installed.

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

NO. The variances are minor in nature and can be mitigated with upgraded landscaping. The applicant has also agreed to redesign the north portion of the site to relocate the parking to the north property line. That accomplishes two goals. It ensures the vehicular access way that will accommodate large trucks no longer interferes with the landscape buffer also the buffer width can be widened in front of the vehicles to support the root ball of the shade trees. This was a major concern of staffs that if the parking was not relocated, the 2.7 foot wide landscape buffer along the north property line could not accommodate the vegetation and therefore would not meet the general intent of the code. However, the current proposal will ensure the general intent of the code, which is to provide buffering to the residential use to the north is accomplished. The property owner to the north that would be most affected by the buffer reduction is in support of the variance. Also, the Westgate CRA, which reviews all projects in the Westgate Overlay District has received a copy of the variance request and is in support of the proposed modification to the site and variances.

Therefore, the conditions to mitigate the variances, if granted, will not be injurious to the surrounding area.

#### ENGINEERING COMMENT

No comment (ENG)

#### ZONING COMMENT

The proposed modifications to the north parking lot require the removal of several mature slash pines. The applicant has contacted the Department of Environmental Resource Management, and obtained a letter that the proposed modifications will be consistent with the Condition K of CA83-69(C). The applicant is required to obtain a revised Vegetation Permit from the ERM.

#### ZONING CONDITIONS

1. By December 18, 1999, the applicant shall obtain DRC approval for modifications to the approved site plan. The modifications shall be consistent with the Site Plan, Exhibit 32 and Landscape Plan 39, found in the BA file BA99-087. These

plans where presented to the Board of Adjustment on November 18, 1999, for variances from the north property line buffer width and a reduction with the side corner setback along Donnell Rd. (DATE: MONITORING-ZONING/DRC)

2. Prior to DRC certification, the applicant shall ensure the BOFA conditions are shown on the site plan. (DRC:ZONING)

3. By January 18, 2000, or issuance of a final landscape inspection, the applicant shall revise the approved landscape plans to reflect the upgraded landscaping as shown on the Landscape Plan, Exhibit 39, in the BA 99-087 file. (DATE:MONITORING-LANDS Section)

4. By January 18, 2000, the applicant shall revise B99008413 and B99008414 for the office/warehouse to reflect the approved variances for the north property line landscape buffer to 2.7 feet in width and the side corner setback along Donnell Road for 10,732 sq/ft building to 22.5 feet (DATE:MONITORING-BLDG PERMIT)

5. There shall be no modifications to the site layout or improvements, unless reviewed and supported by the Zoning Division BA staff as being consistent with the Board of Adjustment approval on November 18, 1999.

6. The landscaping shall be maintained in accordance with Article 7, Section 7.3.H. The landscape material along the north and east property line shall be allowed to grow to its natural shape and height prior to pruning. The upgraded landscaping along these buffers is to ensure mitigation of the two variances approved under BA99-087. (ONGOING)

7. By January 18, 2000, the applicant shall revise the Vegetation Permit for this site which was previously approved by the Department of Environmental Resource Management. (ERM:ZONING:BA)

8. The applicant shall ensure the condition K, for CA83-69(C) has been satisfied by submitting to the DRC a final landscape plan that clearly identifies existing native vegetation to be preserved and those trees that have either died or will be removed. Any required native upland vegetation that is to be replaced must be replaced with native vegetation consistent with the Landscape Code replacement chart. (DRC-Zoning)

CHAIR PERSON KONYK: So on the consent agenda, we have, B of A 99-00078 and B of A 99-00087.

Do we have a motion to prove the agenda?

MR. MISROCH: So moved.

MR. JACOBS: Second.

CHAIR PERSON KONYK: Motion by Mr. Misroch, second by Mr. Jacobs.

All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: Motion carries unanimously.

People with concent items are free to leave.

First item on the -- only item on the regular agenda, B of A 99-000075, Chris Macri, agent for Harold and Elizabeth Macri, to allow a proposed single family dwelling to encroach in the required require setback.

Is the applicant present?

Anybody that is to speak on this item needs to be sworn in. So if you'd raise your right hand, we'll swear you in.

(Thereupon, the audience members were sworn by the

court reporter.)

CHAIR PERSON KONYK: If staff would like to introduce the item.

MR. MacGILLIS: This is B of A 99-75, petition of Chris Macri, agent for Harold and Elizabeth Macri, to allow a proposed single family dwelling to encroach into the required rear setback.

The property is located at 16965 Temple Boulevard. The Northeast corner of Temple Boulevard and 170th Canal, in the AR zoning district, found on pages three through thirty-seven of your back-up material.

This item was postponed since the October agenda. It was originally postponed in October at staff's request because the neighbor across the 80th Street, who's here in the audience who opposed this variance, because of the hurricane couldn't make it here. So staff requested the Board to give him additional time for him to come to the meeting.

And, in September, staff required -- I'm sorry. The last meeting, staff requested additional information on the property with respect to the muck the applicant informed staff of when he came in and had the preliminary meetings between the last postponement. So staff requested he go to an engineer and have soil bore samples done, which he has done.

He's also provided us in your back up -- that is found on page eleven through -- eleven through thirty-four is the additional information the applicant submitted to support his variance request for a rear setback. On page thirty-four, he also circulated a petition to his surrounding neighbors for support for his request.

Staff has now changed our recommendation of approval from the original. The applicant -- the property owner across the 80th Street is here in the audience to voice his concerns. He's also submitted a letter, which I've provided each of the Board members and the court reporter. It's a three-page letter. And I'm sure he can summarize it if he's coming up to the podium.

His primary concern is with decreasing his property values and the fact that there's alternative design options available to the property owner, that he was aware of these when he purchased the property because he's a contractor.

He has access on two roads. And if you used the access on Temple Boulevard, which is the access most of the other homes are using, he would not need this variance.

CHAIR PERSON KONYK: Okay. Thank you.

Jon, let the record reflect that Nancy Cardone is present now.

Your name for the record?

MR. MACRI: My name is Chris Macri. I'm agent for my parents.

CHAIR PERSON KONYK: Okay. Would you like to give us your presentation?

MR. MACRI: You know, we've been around this thing quite a few times, I mean, to try to put this thing into summary because it's unbelievably voluminous for what we're really trying to do.

We have a lot that's basically located between two roads out in Royal Palm. It's between Temple Boulevard, which is a nice stretch of road and it's paved and there's some nice residences going up there, and 80th Street, which is one block to the north. And kind of a unique piece of ground for the area because it has double frontage, as do every other lot, basically, that run east and west along Temple Boulevard.

There's a few things that make it a little bit more of a challenge to build on. The number one thing is we've got the 170th canal -- I think it's called that too. I'm not sure. It's a real big canal. It's one of the biggest arterial canals that's out there. And it takes up a pretty good section of this 2.29 acres for easements. And, in addition to that, we have front and rear easement problems with both roads. So we end up with a net area that's pretty small to work with to begin with.

In addition to that, then, there's a lot of muck that's on the south end of this which would be in the area that the house would typically be constructed if it conformed with the hundred-foot rear setback.

My whole contention on this thing has been that, you know, anybody that drives down 80th Street, number one, is driving down a dead-end road. When they get to my lot and the property across 80th Street, the canal's there. It's a dead-end street, for all practical purposes. My driveway is the last driveway before the canal, the one that's on 80th Street.

And the property that's across the street has a fifty-foot front setback. That house is fifty feet away from the same road that I'll be seventy feet from, when I -- if I can get the variance when I go to build.

So, I mean, to try to, you know, put the thing in brief, that's what it all boils down to. I've got some native trees that I'm trying to protect. And, if I was to try to jump across those trees to plant -- or to put the house even further south, closer to Temple, then I get into front setback problems, number one; and I'm getting into the real depth of the muck hole that, yes, I was aware was there when I started. I just wasn't quite sure how everything was going to pan out. And, for some reason, I just thought that moving the house a little closer to the dirt road wouldn't be that big of a deal. And, according to every neighbor that has a residence in the immediate area, it's not.

But we do have the neighbor across the street whose house is fifty feet away from the road who has a problem with the back of my house being seventy feet away from the road. And I'm doing a lot of things to mitigate that problem for him in terms of vegetation and buffers and things like that. That's all in the report.

CHAIR PERSON KONYK: Okay. Members of the public that want to speak come forward.

Your name, for the record?

MR. FLETCHER: My name, for the record, is John Fletcher.

CHAIR PERSON KONYK: And you have been sworn in, correct?

MR. FLETCHER: Yes, ma'am, Madam Chair, Commissioners.

CHAIR PERSON KONYK: I think we have your letter here. And you had asked that it be read into the record.

But we've all read your letter now and Jon has -- and I have discussed it. And, since you're here, we're just going to let you summarize it.

MR. FLETCHER: May I make any additions to this letter?

CHAIR PERSON KONYK: Sure.

MR. BASEHART: And your letter will be part of the record.

CHAIR PERSON KONYK: Your letter will be part of the record. But we're going to go ahead and let you give your presentation since you're here.

MR. FLETCHER: Okay. Do you want me to read it verbatim or no?

CHAIR PERSON KONYK: Well, if you feel that you have to, read it verbatim. But if you'd rather just give a presentation, that's fine.

MR. FLETCHER: Sure.

Let me say this, Madam Chair, Commissioners, that I've been out there almost five years. I've built. I knew the property was for sale across the street. I knew that it had a lot of muck and so forth. I'm not denying that.

Mr. Macri, when he first came down with another neighbor up the street, his name -- he's not here present; but his name is Eugene Narlashi, who showed him the piece of property -- his intention was to put up palms -- to use palm trees and, I guess, with the muck, to plant. He had no intention at the time to build.

However, things do change; and he's now choosing to build. The problem is the palms are in the way of where the house would normally go. These palms are near maturity, and it's a dollars thing. They do represent, each palm at full maturity, approximately a hundred dollars to him. And, if he has to remove these palms to put his house and even demuck, like other neighbors have had to demuck -- Mr. Grant, who's immediately beside him, had to do a little demucking himself and dug a pond and got fill from it in front of his house to be able to build the house and conform with the current codes as they stand.

Let me say this. He is a builder. He knows the rules and the regulations and what is required as far as easements, setbacks and so forth. I don't want to reiterate. But it's in there in my notes.

Let me say this. Who would know bet -- who would know better -- more -- I shouldn't say more better, because that's not correct English. But who would know better, just a regular resident purchasing a piece of property or a builder looking to, you know, put a home on a piece of property? He definitely has more knowledge.

And, as I say, his initial intention was not to build there. However, he's now chosen to. And I -- personally, I have no objection to him demucking, putting the house

according to all the other homes along Temple. And that's fine.

I have here just a brief little note here. I don't want to tie up your time. In his request and so forth, his property is actually four hundred feet almost. The easement on the front of Temple is a hundred feet. The easement off of the back, which is 80th Street, is a hundred feet. Now we have two hundred feet in which for him to place this house. The house is only forty feet deep.

And, surely, I don't want to reiterate; but he also contends in his request and his assessments, the seven assessments needed, that -- I think it's number four, he states that his lot happens to be the smallest. I've forgotten what page it is. It is not. His lot is actually 2.29 acres. Mr. Grant -- Norville Grant, which is beside him, is actually 1.82. The next property up happens to be 1.85.

I, myself, have to conform to the fifty-foot setback. I'm only 1. -- I think it's 1.12 acres. I mean, if I was surely 1.25 or 1.29 (sic), as he is, I would have put my house in the middle. I mean, if it required demucking and so forth, that's -- you know, let the buyer beware.

I've forgotten the thing -- the -- let me say this. That -- has my time --

CHAIR PERSON KONYK: No. You have time. Don't worry.

MR. FLETCHER: I've forgotten --

CHAIR PERSON KONYK: You're not on a time schedule here.

MR. FLETCHER: The other thing is that, as far as the muck is concerned for the palms and so forth, he did truck in a lot of vegetation to fertilize these palms and so forth. So, I mean, in his three feet of muck, there is an additional which I'm pretty sure he hasn't told you that he trucked in this additional vegetation and so forth.

Finally, let me say this. If you do go ahead with this variance and you do grant him that, I ask you, please -- he contends that he intends to put up a second floor on this house. And I definitely -- nobody would want a second two-story right in their front yard. Please have him flip the house around and have the front face me, at least. You know, I definitely would hate to, you know, look at the back.

I realize he's having an easement off of Temple. His access is coming off of Temple, as in the plans. There is a proposed roadway off of Temple that he is -- what do you call it -- going to use. So his access -- my house happens to be up here. I have -- if I could have come off of paved road, I surely would. I wouldn't be coming off the dirt road. He also has a driveway coming off the dirt road. I understand that. But I'm pretty sure that, after the house is said and done and so forth, is built, his access, main access, is going to be off of the paved road. He's not going to come down the dirt road.

And, as I say -- I don't know what else to say. You know, it's -- I mean, I respect -- I've spoken to Mr. MacGillis. I've spoken to Mr. Walker on it. I've told them this and my views and so forth. And I don't know what else to say. I mean, you know, it concerns me.

I mean, I've looked through the paperwork and everything else. I understand he's the agent. I have yet



to see the Power of Attorney or anything like that that give him -- you know, the sign -- signing by the property owners, which his parents are, giving him the legal to go ahead with all this. It's not on record. I can't find it.

The other thing too is -- I mean, there is -- I don't want to go on. There is a mobile home out there, and I'll just show you this. You can pass is around.

CHAIR PERSON KONYK: This becomes part of the record.

MR. FLETCHER: Yes, ma'am, if you want to make photo copies.

That was done by Mr. MacGillis. There's a permit that has been issued, and I don't understand how the permit was issued on the mobile home when there is no permit to build a house yet out there. And there's a mobile home sitting there.

The other thing too is the address is incorrect. And Mr. MacGillis, on that form -- I guess they attached their names. I just question the whole thing, ma'am?

CHAIR PERSON KONYK: Okay. That's fine.

Are you finished?

MR. FLETCHER: Yes, ma'am.

CHAIR PERSON KONYK: Okay. Thank you.

MR. BASEHART: I've got a couple questions.

MR. FLETCHER: Sure.

MR. JACOBS: Me too.

MR. BASEHART: Jon, maybe you can answer this or maybe the gentleman at the microphone can.

You indicated that your house is on the lot to the -- would be the north on 80th Road, right behind this property?

MR. FLETCHER: Yes, sir.

My house -- in fact, I happen to have with me a -- let me just --

MR. MacGILLIS: His is the one on the top picture there on the board.

MR. BASEHART: My question is is that the required setback is a hundred feet, and that's what this variance is to allow seventy feet instead. The gentleman has indicated his house is fifty feet set back. How does that happen? Did he get a variance or...

CHAIR PERSON KONYK: You don't want this to become a part of the record.

MR. FLETCHER: No. That's mine. That's where my house is.

CHAIR PERSON KONYK: Okay.

MR. FLETCHER: To try and clarify his -- to try and answer him --

CHAIR PERSON KONYK: We've got a map here. Because, if we take it, we have to keep it.

MR. FLETCHER: Oh, okay.

MR. BASEHART: My question is --

MR. MacGILLIS: The lots on the north side of 80th Street are less than three-hundred foot in depth. So the ULDC requires percentage setbacks. It's twenty percent of your depth is what determines your front setback. So...

MR. BASEHART: So he got to use a percentage setback calculation because of the depth of the lot?

MR. MacGILLIS: Correct.

MR. BASEHART: And this one's not eligible for that?

MR. MacGILLIS: Right, because this one is three -- over three-hundred foot of depth, this lot.

Actually, if you look at the tax map that's in your backup material, page five. Page five, the tax map at the top, you can see where his lot -- the lot in question is marked off as site. The lots there along 80th, you can see that they're approximately two hundred feet in depth.

So this lot and the ones -- it's kind of like it goes into -- it tapers off as you go east, these lots get smaller. But approximately all the lots that are located between Temple and 80th would require the hundred-foot setback. The ones on the north side of 80th and further on, because they're approximately 1.5 acres, and they only have two hundred foot of depth, the percentage setback is applied to that.

And as I've indicated in the staff report. In The Acreage and the other parts of the rural subdivisions in Palm Beach County, there's three setbacks applied to these, and we've lost a lot of the consistency because you have lots that are ten acres, we apply a hundred-foot front setback and a hundred-foot rear. If you have less than the ten acres and you have less than the three-hundred foot of depth, we apply a percentage.

And then there's another provision in the code that says, if you're less than 1.5 acres, you can apply twenty-five foot setbacks on all setback provisions. So what -- that was applied incorrectly for a while by the county because they were just looking at the lot, and they say 1.25, even though it was three hundred foot of depth, they were applying a twenty-five foot setback.

So there's certain areas of the county you drive through in these rural subdivisions, you're going to see there's -- we've lost a lot of the consistency in the setback which we used to have was a hundred foot.

MR. BASEHART: Right.

MR. MacGILLIS: So along here, what happens, when you drive up this street, you have the houses on the north side of 80th Street, which have a fifty-foot front setback established and on the south side, which is typically the back property lines of the homes that are facing onto Temple, like this gentleman's house, are set back at a hundred feet from Temple and a hundred feet also from the rear.

And what he's asking for, the gentleman here for the variance, is to pull it closer to 80th.

MS. ALTERMAN: Jon, just to straighten this out. The way this is being applied, is this being applied according to the code today?

MR. MacGILLIS: Yes.

MS. ALTERMAN: I just want to make sure that we're using the right standards.

MR. JACOBS: Can you tell me how many of these palm trees there are?

MR. FLETCHER: Sir, he has a tree farm. There's -- we're talking he has to have over two hundred. I mean, it's no small feat. And he's got irrigation through there -- through the property too, okay, that's been an expense to him.

There's no question that there's an expense. And when the trees -- there's -- let me say this that, from the ficus -- I'm not sure if it denotes it. Yes. From here, basically, this hundred-foot set line where the ficuses are -- actually, they're one-twenty -- forward it's all palms.

MR. JACOBS: Okay.

MR. FLETCHER: Okay?

If we were to take -- this is the line here, a hundred-foot setback and this is the other hundred foot. If we were to just take his house and put it up forward.

MR. JACOBS: Are there any other houses in the neighborhood that are used for, if you will, commercial agricultural purposes?

MR. FLETCHER: No, sir, not in the area, not commercial agricultural.

CHAIR PERSON KONYK: Wait a minute. If you don't have a specific question for Mr. Fletcher, I think the applicant should come forward and be answering these questions too.

We really need to close the public portion of the hearing. So why don't we do that, and why don't you come forward since it's your property and your petition.

MR. MACRI: Number one, the zoning is agricultural residential. Okay? I started a hobby of planting palm trees in muck. I said I've got muck on this lot. What better use could I have for it than to plant palm trees on it.

I don't know where I'm not conforming with this. I could raise pigs and chickens out there, okay, and not get a variance at all.

MR. BASEHART: Some people do.

MR. MACRI: Plenty of them. Plenty of them do. You know, let's just be real frank about this. Okay? The reason why I'm pushing it this way is because there's cypress trees as denoted right here.

Now, yeah, beyond here this is all muck. Cypress trees grow in muck. It's muck all the way across there. And, yeah, I could put this thing up here at considerable expense. It's not the three feet of muck because the three feet of muck is under three feet of fill. It's six feet of de-excavation. It's six feet of refilling. You don't just scrape this off and put that there.

Yeah. I'm a contractor. I'm state certified. And I do know what I'm talking about. That's my whole bone. I have more cypress trees right here, a real nice clump. These cypress trees are this big around. They're not these little spindly things.

MR. JACOBS: But if you didn't have the hundreds of palm trees -- how many palm trees are there, by the way?

MR. MACRI: To be honest with you, I haven't done an accurate count. But there's over two hundred.

MR. JACOBS: Okay. If you didn't have the two hundred palm trees on the premises, you wouldn't have any problem locating the house so you wouldn't need a variance?

MR. MACRI: Those palm trees are going to be gone.

CHAIR PERSON KONYK: Yeah. That has nothing to do with it.

MR. BASEHART: The palm trees are up here.

The problem is, he's showing two-hundred feet to his house. So, if the house were halfway -- it would be right where the muck is. If you went any further forward than that, then you would have to have a front setback variance.

MR. MACRI: It wouldn't matter. It gets deeper and deeper as it heads toward Temple. My soil boring suggests that. It just gets worse and worse as you go this way.

And, yeah, my neighbor Norville over here, he did do some demucking. And he shows up on the list of approving neighbors, incidentally. And he did do some demucking on the corner of his house. By the muck runs diagonally across his lot. It's a pocket. I'm sure they did a lot when they put Temple trough, and I'm sure they took some out when they did the canal along here. But it runs diagonally.

His affected area is much less than what mine would be. And I'm not crying about demucking. I'm just saying I'm just trying to move this thing thirty feet. That's all.

CHAIR PERSON KONYK: Okay. Everybody's gotten a copy of the staff report. And I think, for the record, maybe I should clarify that the Board of Adjustment has a fairly easy job because we have seven criteria. And, if the seven criteria have been met, then the applicant is entitled to a variance.

Now, it's our job right now to decide whether the staff is correct in their assumption that the seven criteria has been met. And I think that's what we need to focus on here is the seven criteria.

Does anybody else have any other questions?  
(No response.)

CHAIR PERSON KONYK: Is somebody prepared to make a motion?

MR. BASEHART: At the risk of getting some wrath from you, I'd like to ask one more question?

CHAIR PERSON KONYK: I said, If you want anymore questions.

MR. PUZZITIELLO: She's got us all scared, doesn't she?

MR. BASEHART: Yeah.

CHAIR PERSON KONYK: No. You're the one that wanted --

MR. BASEHART: You show that you have a drive on both Temple and 80th.

MR. MACRI: I have double frontage.

MR. BASEHART: Right. Just, it appears that the gentleman that's, of course, behind you is on 80th. And I think his concern is that moving the house closer to the north property line and the associated activity -- residential activity is going to cause some hardship to him.

Would you be inclined or willing to not have a driveway on 80th and simply have your access off of Temple, which would, you know, mitigate the impact somewhat?

MR. MACRI: I can tell you that, under the circumstances right now, I have a gate there. And as soon as my approach, which I've already got three applications for from Indian Trail Water Management District -- as soon as that permit is ready, I'm going to construct that driveway.

And, believe me, I have very little interest in using that gate. However, I would like to be able to maintain that for future. I mean, I do have two roads there. It's part of the reason that I liked this lot.

MR. BASEHART: Uh-huh.

MR. MACRI: I've made a lot -- I mean, we've had a lot of conditions met, I've got to be honest with you, Mr. Basehart. And, you know, at this point, I'm speaking for

both myself and my parents. And I know that they're very interested in being able to maintain that rear access.

I don't count on it being used. It's a dead-end street and it's a dirt road. We plan on using Temple as our primary access. I mean, naturally, if you've got a paved road in front of you you're not going to take advantage of, it doesn't make any sense.

MR. BASEHART: Okay.

MR. MACRI: It's just it took this long to get it developed to the point where I could actually traverse across that area to get out there and have that approach on a driverable situation.

MR. BASEHART: Okay.

CHAIR PERSON KONYK: Any other questions?

MR. JACOBS: Yeah. I have one more.

Would you be amenable to -- if the Board were to grant your variance -- changing the nature of your house to accommodate the suggestion made by the opponent?

MR. MACRI: I think it would be at the sacrifice of the neighborhood of Temple Boulevard to even consider that.

We're talking about a dead-end dirt street. I don't have anything negative to say about any of these property owners because I've built in the same scenario before. And I know what it's like. It's nice and quiet.

But when I have a stretch of residences such as are existent right now on Temple Boulevard -- if you drove that stretch of road, you know what I'm talking about -- I think the people that are on Temple would flip out if they were looking at the back of this house.

MR. BASEHART: I'm familiar with the area, and I've driven on that road.

MR. MACRI: It's not your typical --

MR. BASEHART: I agree. All the houses on Temple orient this way, and he would then be the only one facing the other way.

MR. JACOBS: I just asked a question.

MR. BASEHART: My questions are answered.

CHAIR PERSON KONYK: Do you have a question?

MR. FLETCHER: Yeah. I just wanted to state that, if he's going to put the house -- or if the variance were granted and he were to flip the house, at least -- even though he'd be in my front yard, I'd be looking at the front of his house, which is closer than the others on Temple.

I mean, you're then going to have from the back of his house by turn, you would then have a three-hundred-foot from there to Temple, which is all palms. And, you know, then you'd have to go across Temple, and then you'll be looking at -- there's no neighbors, actually, no house built directly across Temple from him.

MR. MACRI: But there is one diagonally. And Mitch signed the paperwork that he would be -- he's been informed that this is the way the thing is set up. Now, if it gets turned around, I can just see what Mitch is going to say; what are you doing? What's going on?

CHAIR PERSON KONYK: Okay. Thank you.

Any other questions?

MR. WICHINSKY: Madam Chair, just a question to staff.

Based upon the presentations this morning, is your

recommendation as it was before we got here?

MR. MacGILLIS: Yes. I did meet with Mr. Fletcher and I took into account, that's why we actually asked for the second postponement of staff because of the demucking reports and stuff.

And I actually went through conditions -- especially condition number four and stressed to the applicant that his responsibility of providing that fifteen-foot buffer along 80th Street with native plant materials -- he talked about putting Queens in there. And I want it clear on the record that at the time of the seal of his house, he's supposed to establish a tiered buffer there. So --

CHAIR PERSON KONYK: Is that in the condition?

MR. MacGILLIS: Yeah, condition number four.

There's various conditions here with restrictive covenants that he can't cut those trees down. He has to file that in the proper forum. It has to be filed with the circuit court so any future owners will realize that those trees that are part of this variance approval will have to be maintained. And, if they're ever removed or die, he's got to replace them according to the landscaping code replacement chart.

CHAIR PERSON KONYK: Okay.

MR. MacGILLIS: The six conditions all relate specifically to the preservation of the trees which he is claiming -- which is the major part of the justification, other than the muck, on this site that he's trying to preserve.

MR. BASEHART: All right. Well, Mr. Macri, do you agree with all the conditions of approval that are recommended?

MR. MACRI: Yeah. And, if you read them -- I mean, this -- I mean, this is the meat and potatoes of what I'm doing to make things right.

MR. BASEHART: Okay.

MR. MACRI: I mean, that's everything. And there's -- you know, there's effort here.

MR. WICHINSKY: Madam Chair, I'd like to make a motion?

CHAIR PERSON KONYK: Okay.

MR. WICHINSKY: Move for approval of B of A 99-00075 as recommended by staff with the stated conditions and have the staff report become part of the record.

CHAIR PERSON KONYK: We have a motion by Mr. Wichinsky.

Do we have a second?

MS. CARDONE: Second.

CHAIR PERSON KONYK: Second by Ms. Cardone; is that correct?

(Ms. Cardone nods head.)

CHAIR PERSON KONYK: All those in favor -- or any discussion?

(No response.)

CHAIR PERSON KONYK: All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: Opposed?

(No response.)

CHAIR PERSON KONYK: Motion carries unanimously.

#### 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.

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 subdivision, lot and structure that warrant special consideration when applying the literal intent of the rear setback. This lot is located in the Palm Beach Acreage Subdivision. The lot is located east of Seminole Pratt Whitney and South of Northlake Boulevard. The lots in this rural residential subdivision range in size from 1.5 acres to 5 acres. The applicable setbacks for this subdivision vary based on the lot size and property depth/width. This legal nonconforming 2.29 acre lot has 380 feet of depth and 266 feet of width. The lot has double frontage onto Temple Boulevard, and 80th Street. There is 60 foot wide by 380 feet deep road and drainage easement that runs parallel to the east property line that decreases the buildable lot by .52 acres. Also, the lot, like many other lots in the Acreage, supports significant native stands of mature slash pines and individual cypress trees. Also, the applicant has presented staff with supporting documentation (soil bore samples, maps) that support that the South portion of this lot supports several feet of muck. In order to construct in this area (the required setback line) would require costly removal of the muck and replacing it with clean fill. These factors affect the location of the proposed dwelling, garage, well, septic and other site amenities. In order to accommodate these improvements the applicant must address each of the county regulations in terms of separation from on another. With the recommended conditions of approval, the requested variance will meet the intent of the code and recognize the unique circumstances surrounding this particular lot.

Therefore, the applicant is requesting the Board of Adjustment to approve a reduced rear setback for the proposed single family dwelling and attached garage at 70 feet from the base building line along 80th Street.

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

NO. This is not a self created hardship. The applicant has a 2.29 acre legal nonconforming AR lot in the Acreage. The applicant is proposing to preserve the existing native vegetation on the lot to enhance the property value and improve the overall enjoyment of the property. Also, other property owners along Temple Boulevard and 80th Street have constructed homes that have respected the existing native vegetation by preserving it and incorporating it into the site design. What is unique about this lot and other lots along this block is the property owner chose where to have legal access onto either Temple blvd., or 80th Street. In the AR zoning

district the front and rear setbacks are both 100 feet for these lots since the lot depth complies with the required 100 feet of depth for an AR lot. The majority of the property owners that have constructed on their lots have chosen Temple Boulevard as their front setback and 80th as their rear yard. However, the applicant has chosen 80th Street as his legal access and will orientate the front of the house to Temple Boulevard. The applicant is proposing a 164 foot front setback and a 70 foot rear setback. Under typical site conditions, staff would recommend the house be shifted 30 feet forward in order to accommodate the portion of the lot supporting several feet of muck, staff supports the setback request contingent on conditions of approval. This lot has unique amenities and constraints that require careful placement of the dwelling, septic and well to ensure the native vegetation is preserved and costly demucking can be avoided.

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 granting of this variance will not grant any special privilege upon this applicant. The lot has unique features that separate it out from other lots in the Acreage that have been given reduced setbacks under similar circumstances. In the AR zoning district there are three ways staff can apply setbacks to a lot:

- a) The lot is conforming in terms of size (acreage) and depth/width, the 100 foot front and rear setback is applied.
- b) The lot is nonconforming in terms of depth/width, then percentage setbacks are applied.
- c) When either a or b above cannot be met, staff can determine through unique circumstance (shape of lot, existing structures on site) that prohibit the 100' or setbacks from being applied to structures, then a 25 foot setback can be applied.

In the Acreage and other rural subdivisions in Palm Beach County, property owners have been given special consideration when applying setbacks on their nonconforming lot. In this particular situation, the lot is 2.25 acres and has 380 feet of depth. Therefore, even though this is a legal nonconforming lot, since the property depth meeting the minimum 300 feet, the % or 25 foot setbacks cannot be applied. Staff has applied the required 100 foot front and rear setbacks to the proposed structures. The applicant has a valid building permit with these setbacks shown on it. However, the applicant is requesting that the plans be amended to shift the house closer to 80th Street in order to maintain the maximum amount of native slash and cypress trees on the lot. This will allow the portion of the lot between the south side of the dwelling and Temple Boulevard to remain open.

Since this lot is located on the south side of 80th



Street that dead-ends at this lot due to the canal, all

the lots located on the north side of 80th Street, due to their depth of less than 300 feet had percentage setbacks applied to the front and rear resulting in a 50 foot front setback. The proposed 70 foot setback on this dwelling and garage will be consistent with the house immediately located across 80th Street. In addition, there is existing mature native slash pines located along this property's north property line that will be preserved. The vegetation will mitigate any negative impacts associated with this setback encroachment.

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 AR setbacks on this lot will work an undue hardship on the applicant. The applicant is attempting to construct a single family dwelling and accessory garage while preserving the natural beauty of the lot that is created by the native stands of slash pines and cypress trees. The slash pine tree root system is very sensitive to any type of construction or impact to the root system during construction. The cypress trees are very sensitive to changes in grades that might reduce the standing water. Therefore, the applicant is being sensitive to where the house is located in order to impact the least amount of trees. The building pad is currently constructed and the trees remaining at this point will be preserved. If the variance is denied, the house pad would have to be shifted further to the south (towards Temple Blvd.) which would impact the existing vegetation. Also, toward the South portion of the lot is 3 feet or more of muck that cannot support a building unless removed. The muck must be removed and replaced with clean fill. The applicant would like to avoid removing the much, which is very costly, by placing the house closer to 80th Street. The required conditions of approval to buffer the encroachment along 80th Street will mitigate the 80 foot encroachment.

Therefore, the granting of the rear setback variance will meet the general intent of the code. The setbacks along 80th Street vary from the north to south side of the street. The north side of the street is these dwellings' front yard with a setback of 50 feet. While the south side of 80th supports the rear of the house and supports a 100 foot setback. This lot 818, which is the last lot on this dead-end street (dead-ends at canal) will have a rear setback consistent yet greater than the front setback of the homes on the north side of 80th Street.

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 granting of this rear setback of 70 feet along 80th Street will be consistent with the code and be the minimum necessary to accommodate the proposed residence and detached garage, while preserving the majority of the native upland and wetland vegetation.

Also, the front portion of the site supports much that would have to be removed prior to establishing a building pad. The removal of muck that is approximately 3 feet deep in some areas would be costly to the property owner.

With the recommended conditions of approval, the 30 foot rear setback encroachment will be mitigated and allow a reasonable use of this property. The applicant has a building permit approved for the rear setback at 100 feet which he is requesting to change to 70 feet.

Therefore, granting this rear setback variance is a reasonable request based on the constraints of the site and the applicants proposal to preserve existing native vegetation.

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 Comp Plan in this area is to encourage and preserve the rural residential subdivision. The Acreage subdivision supports lots that vary in size from 1.5 acres to 5 acres. These lots typically support native vegetation such as slash pines and cypress trees that enhance the overall quality of the community. Many residents that decided to buy in this rural community do so because of the larger lots, native vegetation and rural amenities (horse trails, ponds, etc). The ULDC AR setbacks are established to ensure the openness of the lot is maintained in both the front and rear yards. The ULDC established a 100 foot front and rear setbacks, which helps maintain a feeling of openness when one drives down the street. It also allows for preservation of vegetation in this 100 foot setback and an area to accommodate horses and other domestic animals.

In this particular situation, the applicant has every intent in maintaining both the intent of the Comp Plan and ULDC. The applicant is proposing to construct a single family dwelling and attached garage. The request to deviate from the required rear setback of 100 feet to 70 feet will allow additional trees on the site to be saved and incorporated into the site design. The preservation of the slash pines and cypress trees will not only enhance the proposed structures but maintain the ambience of this rural subdivision. Also, the applicant has provided documentation that the soil on the South portion of the site supports muck that would be required to be removed and replaced with clean fill prior to construction.

The fact the applicant is preserving native vegetation and having to contend with the South portion of the lot supporting several feet of much, staff supports the setback request contingent on conditions of approval.

The applicant could comply with the setback if the trees are removed and the muck was excavated. However, the 30 foot front setback variance request can be mitigated by preserving and enhancing the existing vegetation along 80th Street.

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

## WELFARE:

NO. The granting of this variance will not be injurious to this area. The proposed rear setback would only have an impact on lot 817, which is located on the north side of 80th Street. This lot currently supports a single family residence that has a front setback of 50 feet. Staff is recommending conditions of approval that establish a 15 foot native buffer along 80th Street. This buffer will support native vegetation (slash pines, oaks, understory shrubs) that will provide a visual buffer to the lot to the north across 80th Street. Therefore, the proposed 70 foot rear setback on the structures on this lot will be consistent with existing setbacks. The native vegetation located between the dwelling and the detached garage and 80th Street will mitigate the setback encroachment.

## ENGINEERING COMMENT

No Comment (ENG)

## ZONING CONDITIONS

1. By December 16, 1999, the applicant shall submit a copy of the Board of Adjustment Result Letter and a copy of the site plan presented to the Board of Adjustment at the hearing. The applicant shall also revise the building permit B99006912 & 13 to reflect the single family dwelling and attached garage at the 70 foot rear setback from the base building line for 80th Street. The native slash pines and cypress trees shown on the Site Plan in the BA99-75 BA file in Zoning shall also be shown on the revised building permit Site Plan. (DATE:MONITORING-BLDG PERMIT)
  2. Prior to any further site preparation or construction, all the required slash pines and cypress trees to be preserved, as shown on the approved Site Plan, Exhibit 18, in the BA File 99-75, shall be properly barricade with wood to ensure no construction vehicles or supplies are placed within 15 feet of the base of the tree(s). (BLDG INSPECTIONS-ZONING-BA)
  3. By December 16, 1999, the applicant shall provide the Zoning Division with a copy of the Restrictive Covenant that is recorded on this property to ensure the existing native vegetation shown on Exhibit 18, in the BA99-75 file in the Zoning Division, is preserved in perpetuity. This document shall be recorded by the applicant, after acceptance by the County Attorney's office. A copy of the recorded Covenant shall be provided to the Zoning Division and Building Division for inclusion in the file and building permit. (DATE:MONITORING-ZONING-BA)
  4. The existing native slash pines located adjacent to 80th Street shall be preserved and supplemented with additional slash pines, oaks and native understory to provide a visual 15 foot wide preservation buffer along 80th Street. This buffer shall be preserved and maintained by the property owner at all times.
- Any trees that die due to natural cause shall be removed and replaced according to the Landscape Code, Article 7.3. -2, (Tree credit and replacement chart). (ONGOING)

5. This variance is limited to a reduction in the rear setback for a proposed single family dwelling and detached garage as shown on Exhibit 18 in BA99-75 variance filed in the Zoning Division. The rear setback is measured from the base building line off 80th Street. (ONGOING)

6. By November 30, 1999, or prior to any construction or further site preparation, which ever occurs first, the applicant shall contact the Landscape Section to arrange a site inspection to verify all native vegetation to be preserved on site is properly tagged and protected. All tagged and protected vegetation shall be present on site prior to the final Certificate of Occupancy on the single family dwelling. (DATE-MONITORING-INSPE/CO)

#### ZONING COMMENT

At time of completing the final report, the applicant did not provide staff with the requested tree survey. The survey will show tree location, type and size in order to ensure trees are saved to mitigate the setback encroachment. Staff is recommending several conditions related to preservation. (ZONING)

MR. MacGILLIS: I don't know if all the Board members knew that Mr. Rubin --

CHAIR PERSON KONYK: I was going to mention that.

MR. MacGILLIS: Okay.

CHAIR PERSON KONYK: I forgot earlier. Yeah.

Before we adjourn, we have a couple of items that need to be taken care of, one of which is the fact that we all received a letter of resignation from Mr. Rubin who was one of our two alternates.

He has been appointed as a special master of the code enforcement -- the new code enforcement board, and it was a conflict, so he had to resign.

I just wanted to tell the members how important it is for you to make every effort to be here now because we're down an alternate. And sometimes we come to meetings and had only two board members and two alternates present. So, in order to make sure that we always have a quorum, I'd just like everybody to remember we're down to one alternate.

MR. WICHINSKY: Jon -- sorry, Chelle.

Jon, can we have the County Commission contacted, being that this is an at-large alternate position, that it's not specific to a certain district resident.

MS. MOODY: They've already been contacted.

MR. WICHINSKY: Have they?

Any movement on the other seat?

MR. MacGILLIS: Maude Ford Lee? She didn't fill hers since --

CHAIR PERSON KONYK: Bart.

MR. MacGILLIS: -- Bart.

Mary's been on it. She's been every month on something.

I think the at-large ones are usually quicker to fill. It's usually individual ones --

CHAIR PERSON KONYK: I think we have a commissioner that usually jumps right in and grabs that position. I won't mention who.

Anyway, the next item that we need to look at is the attendance. Everybody was here except for Mr. Puzzitiello last month. And he was away on business. We just need to have a motion to have this as an excused absence.

MR. JACOBS: So moved.

CHAIR PERSON KONYK: Motion by Mr. Jacobs.

MR. BASEHART: I'll Second.

CHAIR PERSON KONYK: Second by Mr. Basehart.

All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: Motion carries unanimously.

Now we need a motion to adjourn.

MS. CARDONE: So moved.

CHAIR PERSON KONYK: Motion by Ms. Cardone.

Second by --

MR. PUZZITIELLO: Second.

CHAIR PERSON KONYK: -- Mr. Puzzitiello.

All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: Meeting's adjourned.

(Thereupon, the proceedings were concluded at 9:40

o'clock p.m.)

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 I  
administered unto the witnesses their oath 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 29  
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 December, 1999.

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RACHELE L. CIBULA, NOTARY PUBLIC