

PALM BEACH COUNTY
BOARD OF ADJUSTMENT

Thursday, November 16, 2000
9:00 a.m. - 10:50 a.m.
100 South Australian Avenue
West Palm Beach, Florida

Reporting:

Sophie M. (Bunny) Springer
Notary Public

A T T E N D E E S

Robert E. Basehart, Chairman

Chelle Konyk, Vice Chairman

Mr. Stanley Misroch

Ms. Nancy Cardone

Mr. Raymond Puzzitiello

Ms. Meril Stumberger

Mr. Jonathan Gerber

David Cuffe, Civil Engineer II, Land Development

Donna Rainey, Assistant County Attorney

Jon P. MacGillis, Principal Planner, Zoning

Joyce Cai, Planner II

Alan Seaman, Senior Planner, Zoning

Mary Moody, Secretary

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CERTIFICATE OF REPORTER:

P R O C E E D I N G S

CHAIRMAN BASEHART: I'd like to welcome everyone to the November 16, 2000, Board of Adjustment meeting. I guess the first thing that we'd like to do is welcome Mr. Gerber who's been appointed as an alternate on the Board. You haven't been sworn in, have you?

MR. GERBER: No, I have not.

CHAIRMAN BASEHART: Bunny, can you do that?

COMMISSIONER KONYK: Let the attorney do it.

CHAIRMAN BASEHART: Oh, the attorney's going to do it?

MS. RAINEY: I would be happy to do it.

CHAIRMAN BASEHART: Why don't we start it off.

MR. MacGILLIS: Just for the record today, we have a new attorney, Donna Rainey from the County Attorney's Office.

MS. RAINEY: Yes, Lorna would like to have been here but she had a conflict today, so I'm stepping in at the last moment in her place.

(Whereupon, Mr. Gerber was sworn in as a member of the Board of Adjustment.)

MR. PUZZITIELLO: Now for the written test.

CHAIRMAN BASEHART: The last time we swore a member in they had to sing the National Anthem.

Okay. The first item on the agenda is roll call.

MS. MOODY: Ms. Nancy Cardone.

MS. CARDONE: Here.

MS. MOODY: Mr. Joseph Jacobs.

MR. JACOBS: (No response.)

MS. MOODY: Ms. Chelle Konyk.

VICE CHAIRMAN KONYK: Here.

MS. MOODY: Mr. Raymond Puzzitiello.

MR. PUZZITIELLO: Here.

MS. MOODY: Mr. Glenn Wichinsky.

MR. WICHINSKY: (No response.)

MS. MOODY: Ms. Meril Stumberger.

MS. STUMBERGER: Here.

MS. MOODY: Mr. Stanley Misroch.

MR. MISROCH: Here.

MS. MOODY: Mr. Jonathan Gerber.

MR. GERBER: Here.

MS. MOODY: And Mr. Bob Basehart.

CHAIRMAN BASEHART: Here. Okay. We have a quorum.

The next item is proof of publication. We have a copy of the proof that was published in the Palm Beach Post on October 29th. Do we have a motion to accept this into the record?

MR. PUZZITIELLO: Motion to approve.

MS. STUMBERGER: Second.

CHAIRMAN BASEHART: Okay. We have a motion and a second. All those in favor, say aye?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed.

(No response.)

CHAIRMAN BASEHART: Okay. Next item is remarks

of the Chairman. I'd like to for those of you that aren't regular attendees here, give you a little information on how the Board conducts its business.

The Agenda is broken into two parts, the first part being what we call the Consent Agenda. Those are items where the staff has recommended approval, where there has been no indication of opposition from the public, where conditions are recommended by the staff, the applicant has agreed with them, and has agreed to accept them. Those items are put on the Consent Agenda.

If the applicant is here and verbally agrees to the conditions and if there are no members of the public here that would like to have a full hearing and if the Board members agree with the staff report, then the items remain on consent and we approve them as a group.

The second item is the Regular Agenda and that consists of items where the staff is either recommending denial or denial in part or there are conditions of approval that the applicant does not agree with or there's been an indication of public opposition.

Those items will require a full public hearing and documentation and justification from the applicant. The Board will vote individually on those after the hearing is conducted. And that's basically how the agenda works. I think we have two items on the Regular Agenda today, but someone indicated one of those may have postponed or withdrawn the application.

MR. MacGILLIS: That's correct. The appeal.

CHAIRMAN BASEHART: Is there any other member of the Board that has anything they would like to address the public with?

(No response.)

CHAIRMAN BASEHART: Seeing none, we'll go to the approval of the Minutes. Given that the meeting was so short last month, we didn't get a disk. We just got a hard copy of the Minutes.

Has everybody read them? Do we have a motion to adopt the Minutes?

MR. PUZZITIELLO: Motion to approve.

MS. STUMBERGER: Second.

CHAIRMAN BASEHART: We have a motion by Mr. Wichinsky. Oh, I'm sorry. Mr. Puzzitiello. You're sitting in his chair.

Second by Ms. Stumberger. All those in favor indicate by saying aye.

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: The Minutes for October are adopted.

Next item is the remarks of the Zoning Director. Jon?

MR. MacGILLIS: No comments.

CHAIRMAN BASEHART: Okay. Then we go to the Agenda. There's no change in the Agenda?

VICE-CHAIRMAN KONYK: Other than the one already mentioned.

MR. MacGILLIS: The first two items are postponed. Just for the record, the BOFA 2000-060, the applicant is still resolving some code enforcement issues and hopefully will be scheduled for the December hearing, time certain December 21st.

The BOFA 2000-061, the applicant is requesting to meet with staff to go over our recommendation currently of denial on the request. They're requesting a 30 day postponement. They will be time certain for the December 21, 2000, meeting.

CHAIRMAN BASEHART: And these are first postponements?

MR. MacGILLIS: Yes.

CHAIRMAN BASEHART: So they're as of right?

MR. MacGILLIS: Yes.

CHAIRMAN BASEHART: Okay. That will get us to the Consent Agenda.

CHAIRMAN BASEHART: The first item on the Consent Agenda is BOFA 2000-057. Is the applicant here?

MS. KELLEY: Yes.

CHAIRMAN BASEHART: If you can step forward, please?

MR. MacGILLIS: Mr. Chairman, just for the record, there's an amendment to condition Number three and Joyce Cai will read that into the record. It's related to the landscaping.

CHAIRMAN BASEHART: Okay. Joyce, do you want to do that?

MS. CAI: On page 19, condition number three will be revised to read as follows:

"Prior to issuance of final Certificate of Occupancy for the proposed single family dwelling, the applicant shall install the landscape material as indicated in its submitted conceptual landscape plan."

CHAIRMAN BASEHART: You agree with that?

MS. KELLEY: Yes.

MR. MacGILLIS: For the record, that's Exhibit 24.

MS. CAI: Oh, number 24, Exhibit Number.

MR. MacGILLIS: Just for the record so it's not confused, staff had written a specific condition on here, what type of landscaping had to go in, and the applicant once they got the staff report asked -- had the ability since they're in the landscape business to have more flexibility. So we asked them to draw their proposed landscaping up that would meet the intent of what our condition was.

So this exhibit then will be the conceptual landscape and will have to be installed to meet our requirements.

CHAIRMAN BASEHART: Okay. You agree with the other two conditions?

MS. KELLEY: Yes.

CHAIRMAN BASEHART: Okay. Your names for the record?

MR. KELLEY: I'm Doug Kelley.

MRS. KELLEY: And Karen Kelley.

CHAIRMAN BASEHART: Is there any member of public here to speak in opposition to this item?

(No response.)

CHAIRMAN BASEHART: Seeing none, are there any members of the Board that want to pull this item for any reason? Okay. It will stay on consent.

MRS. KELLEY: 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. The subject property is located 6516 Riparian Rd., approximately .5 miles N. of Hypoluxo Rd. and .4 miles W. of Congress Ave., within the Hypoluxo Village subdivision, in the RS Zoning District. The future land use designation is Medium Residential (MR-5) compatible with the RS zoning district.

The subject property consists of 3 lots under Unity of Title, which are lots 1, 2 & 3 of Block 40 within Hypoluxo Village subdivision. It is a conforming lot with 236' of lot width and 100' - 150' of lot depth. The 1,964 sq. ft. subject single family residence is a conforming structure completed in 1971 (B42664). The surroundings generally support single family residential lots.

There **are** special conditions and circumstances that exist on the subject property and not applicable to the other parcels in the same district.

The property is bounded by 2 canals along the rear and north side of the property lines. The canal system that has existed since 1950's reduce the buildable lot area. There is an existing seawall along the canal with its top approximately 2 feet above the water level. In 1999, due to Hurricane Irene, the water from the canal overflowed and the property was submerged with flooded water about 3 feet above the crown of the road which severely damaged the existing residence. In addition, the subject lot is the last property along Riparian Rd. The shellrock road currently ends before the applicant's property and tapers down to allow the adjacent residents to the west to have access to their property. According to the applicant's justification, the applicant did not know about this 50 ft. right-of-way but under the impression that they had a larger front yard.

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

NO. The above-mentioned special circumstances and conditions **are not** the result of actions of the applicant. In 1984, the applicant purchased the property in its configuration with the existing canal system. The applicant was limited with design options due to the reduced buildable lot area by canals and portion of the land submerged during 1999 flooding. If all the required setbacks are met, it will place the proposed house almost at the seawall, thus seriously threaten the safety of the foundation of the proposed dwelling.

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

NO. Granting the variance **shall not** confer upon the applicant special privilege denied by the Comprehensive Plan and Zoning Code to the other parcels in the same district.

The subject property is located within the Single Family Residential District (RS). The construction of the proposed single family residence is permitted by Comprehensive Plan and ULDC. The proposed house was designed substantially improve the quality of the structure, especially increase the safety by elevating the lowest floor elevation and moving further away from the existing canal. To mitigate the impact associated with the front setback encroachment, the applicant agreed to upgrade the landscape material in addition to the

existing plants along the front property line.

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

YES. Granting the requested variances **will meet** with general intent of the code, which is to ensure a minimum separation, privacy and compatibilities of uses as well as to maintain uniformity along property lines, protect adjacent property owners and protect property values.

According to the proposed floor plan, the setback encroachment occurs at the covered front porch and side-loaded garage. The covered porch covers 70% of the front facade with the garage having 2 windows facing the street. Additionally, between the subject property and the property across the Riparian Rd. is a 505 unimproved road, which dead ends to the canal along the side property line. The neighboring residence across the street is approximately 74 feet west of the proposed residence on the subject property. To mitigate the setback encroachment, the applicant agreed to upgrade the landscape material in addition to the existing plants along the front property line. Therefore, the impact from the proposed residence is minimal and will not be adverse to the adjacent property across the street.

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

YES. This **is** a minimum variance that will ensure a reasonable use of the property. As previously indicated, the developable lot depth is reduced by an existing canal in the rear yard. If all the required setback are met, the proposed house will be placed nearly at the seawall with its top of the wall only 2 feet above the water level. Therefore, moving the proposed structure away from the canal in addition to the elevated lowest floor level would contribute to the prevent the property from being flooded again.

As previously indicated, the neighboring residence across the street is approximately 74 feet west of the proposed residence on the subject property. To mitigate the setback encroachment, the applicant agreed to upgrade the landscape material in addition to the existing plants along the front property line. Therefore, the 13 ft. encroachment will not be visually detected.

6. GRANT OF THE VARIANCE WILL BE CONSISTENT

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

YES. The variance request complies with the general interest of the ULDC which are to ensure a minimum separation between the proposed structures and the adjacent properties. As previously indicated, the variance **will not** have negative impacts on the adjoining property to the west. The proposed structures will be in harmony with the residential character of the neighborhood and will not detract from the area.

The intent of the Comprehensive Plan is to encourage residential development to improve and maintain the living standards for people to better enjoy their community. The proposed residence is not an uncommon request. The requested variance will allow the property owners to promote their quality and enjoyment of life as well as safety from the future flooding while the adjacent property values will be maintained and not be adversely affected, if the variance is granted.

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

Granting the variance **will not** negatively impact the surrounding area. The subject lot is a last property along Riparian Rd., which ends to a canal along the subject north property line. The adjacent property to the subject front property line is separated by a 50 ft. wide road with the residence located approximately 74 ft. west of the proposed residence on the subject lot. The applicant agreed to upgrade the landscape material as recommended by staff along the front property line. Therefore, an adequate buffer will be provided to mitigate the 13 ft. of setback encroachment. In addition, staff received a supporting letter from the affected property owner across the street stating their understanding and full agreement of this variance.

ENGINEERING COMMENT(S)

1. Please note that the Base Building Line for Riparian Road has been established at the existing east right-of-way line, being twenty-five (25) feet east from the centerline of the 50 foot wide right-of-way as conveyed in O.R.B. 2075, Pg. 554, per Base Building Line Waiver issued on September 5, 2000.

ZONING CONDITION(S)

1. By March 16, 2001, the applicant shall provide the Building Division with a copy of the Board of Adjustment result letter and a copy of the Site Plan (Exhibit No. 9, BA2000057) presented to the Board, simultaneously with the building permit application. **(DATE:BLDG PERMIT-Bldg)**
2. By July 16, 2001, the applicant shall obtain a building permit for the proposed single family residence. **(DATE-MONITORING-Bldg Permit)**
3. Prior to Certificate of Occupancy, the applicant shall install the following material in addition to the required landscaping in front of the proposed residence. **(DATE: MONITORING-LANDSCAPE)**
 - Two 14 ft. high native shade trees;
 - Continuous 36" high native hedge planted 24" on center along the front property line **(CO-BLDG-LANDSCAPE)**.

CHAIRMAN BASEHART: Next item is BOFA 2000-058, CIAO Construction Investment Management. The applicant is here?

MR. CASARIEGO: Yes.

CHAIRMAN BASEHART: Your name for the record?

MR. CASARIEGO: Orlando Casariego.

CHAIRMAN BASEHART: Okay. The staff has recommended approval of your application with three conditions. Do you understand and agree with them?

MR. CASARIEGO: Yes, sir, I do.

CHAIRMAN BASEHART: Is there any member of the public here to speak in opposition to this item?

MR. MacGILLIS: I think this item might have to be pulled. This gentleman, the neighbor had contact with staff yesterday with concerns with the variances adjacent to his property line. I think we need to pull it to go over it.

CHAIRMAN BASEHART: Okay. We'll pull it. This will become the first item on the Regular Agenda.

CHAIRMAN BASEHART: Next items is BOFA 2000-062, Chuck Millar, agent.

MR. MILLAR: Good morning.

CHAIRMAN BASEHART: Good morning, Mr. Millar, for the record?

MR. MILLAR: Chuck Millar with Moyle, Flanigan representing MBS Spec Properties.

CHAIRMAN BASEHART: Okay. Mr. Millar, staff has recommended approval of your application with seven conditions. Do you understand and agree with them?

MR. MILLAR: Yes, sir, we accept them, certainly.

CHAIRMAN BASEHART: Is there any member of the public here to speak in opposition to this item? Any board member feel this item needs to be pulled?

(No response.)

CHAIRMAN BASEHART: Okay.

MR. MacGILLIS: Just one comment on that. There was one call of concern from a Darryl Snapp. He was concerned with the original landscape variance that was approved several months ago on this site. I explained to him that that's not the issue being addressed here today and then I explained the variance was for parking and with the conditions of approval it's specific to that use that's on there.

He indicated he and some other neighbors were concerned and they were possibly going to show up here this morning. But I don't see them, so.

And the other thing is we did get a call back from our survey department. Something was an issue with the survey, which is not anything to hold this up here today, but I wanted to put on the record that Mr. Millar --

MR. MILLAR: We have a revised survey to deliver to you this morning. I'll give it to Jenny (phon.) and we'll deliver one to Mr. Mark as well.

MR. MacGILLIS: Okay.

CHAIRMAN BASEHART: Okay. Given there is no public opposition, did the comments of the staff change anybody's mind?

(No response.)

CHAIRMAN BASEHART: Okay. Seeing none, this will stay on consent.

MR. MILLAR: 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. This legal non-conforming .73 acre commercial lot is located south of Belvedere Road, at the south west intersection of Military Trail and Evans Lane. The property currently supports the Jewish Thrift Store. The site has many conformities in terms of setbacks, parking, landscaping, loading, etc. The proposal is to demolish the existing building and redevelop the site to support an 8,000 square foot retail building. The site will be brought into compliance with current Unified Land Development (ULDC) requirements. The owner is being forced to relocate from their present site at the north west corner of Military Trail and Southern Blvd. as a result of the Southern Blvd. widening. This particular parcel of land is located along the Military Trail commercial corridor in the Airport Overlay District. There is currently a trend for redevelopment in this area. Properties are either being improved or redeveloped to support new or existing uses. As in this case, the existing use will cease and the site will be redeveloped to support the new commercial retail use. The applicant will comply with all code requirements with the exception of the ULDC landscape buffer widths along Evans Lane and the western property line, which variances were granted for in June, 2000 (BA2000-033) and the off street parking. The non-conforming size of the lot places a hardship on the applicant in terms of comply with all code requirements. Furthermore, this being a corner lot with access onto both Military Trail and Evans Lane increases the on-site area dedicated to vehicular circulation. With Traffic Analysis submitted by the applicant which was prepared by an Engineer, justifying the proposed 40 spaces will meet the user parking demand, this variance is warranted.

Staff is recommending a condition of approval that a restrictive covenant be recorded on this property limiting this site to this specific use. The applicant has agreed to this condition and realize that any change in use will require modification of the condition by the Board of Adjustment.

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

NO. The applicant purchased the property in June, 1999, in order to move his business, currently located at Military Trail and Southern

Blvd. The applicant states MBS Spec Properties, Inc. ("MBS") has been in PBC for approximately 45 years. MBS currently provides all types of western wear and accessories to their large client base. The business located at Southern Blvd. and Military Trail will be demolished with the road improvements that are to begin later this year. The applicant would like to remain in the same vicinity in order to continue to serve their customers. The applicant is proposing to relocate to 729 North Military Trail and redevelop this site for the new business. The improvement will result in the demolishing of the existing building and the construction of a new 10,000 square foot retail business. The applicant is proposing to comply with all code requirements with the exception of the landscape buffer width along both the north and west property line and off street parking. The applicant was granted two landscape buffer reduction variances in June 2000 (Petition BA2000-033). The applicant is currently seeking an off street parking variance of 10 spaces. The ULDC requires parking to be calculated on the gross square footage and not lease able square footage. In this situation approximately 3,752 square feet of storage area on the second floor will not generate additional parking. This storage area is only accessible by the staff of the business. However, the ULDC does not allow for an automatic parking reduction, the applicant must seek variance relief. Staff requested the applicant provided a Parking Analysis Study to support their justification that the 40 spaces provided will meet their user demand at peak times. Staff is recommending a condition limiting this variance to this specific retail use by a restrictive covenant.

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

NO. The applicant has demonstrated compliance with the variance criteria necessary to be granted the off street parking variance. This site is a legal non-conforming .73 acre commercial lot. The lot has a land use designation of C/L with a zoning classification of CG. The property will be developed in accordance with current property development regulations. The site currently has many non-conformities in terms: lot size, setbacks, parking, landscaping, etc. This site was developed many years ago and with the various widening that has occurred on Military Trail over the years has made it non-conforming. The

proposed redevelopment will eliminate the majority of these non-conformities. The applicant was granted two landscape variances in June, 2000 (BA2000-030) and now is requesting an off street parking variance. The off street parking variance for 10 spaces is justified since the spaces are not needed for the uses. The applicant hired an engineer to prepare a Traffic Analysis to determine if the proposed 40 spaces would meet the intent of the parking code. The Engineer concluded that based on this use of the 40 spaces would exceed the peak demand. With a condition recommended by staff to limit this variance to this use by a restrictive covenant the granting of this variance will not confer a special privilege on the applicant.

The applicant is requesting the minimum variance that will allow this re-development project to move forward. It is the intent of the BCC to encourage the redevelopment and infill of properties along the major commercial corridors in PBC. There is a growing trend along Military Trail to revitalize or redevelop properties along Military Trail. This proposed 10,000 square foot retail business (country attire) provides a needed service to the many customers who have shopped at this business over the years.

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 of the parking code would deprive the applicant of rights enjoyed by other applicants who have been granted similar type variances for non-conforming lots. The ULDC currently does not have infill regulations that address non-conforming lots and a relaxation of the literal terms of the code. The applicant is proposing to make improvements to this site that will reduce the existing non-conformities. As many properties located along the major commercial corridors in the county, due to right-of-way expansion the size of the lots have been reduced. This places a hardship on the property owner in terms of complying with code requirements established for a 1 acre conforming commercial lot. The applicant is proposing a 10,000 square foot building with a split floor plan. The applicant was granted two landscape buffer variance in June, 2000, and now is requesting a parking variance. The parking variance is justified based on this unique use. The applicant provided justification and documentation (Parking Analysis) that this use, allocation of square footage (retail/storage) and

user demand can be met with the proposed 40 spaces. With a condition of approval limiting this variance only to this use the parking variance is warranted. The applicant understands that when selling the property the restrictive covenant on the property will possibly limit future users of the building and may require BA approval to remove or modify the condition.

Staff concluded the parking variance, if granted, would have a negative impact on the site and surrounding businesses.

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

YES. The previously approved landscape buffer variances (BA2000-033) along the north and west property line and the current parking variance will allow this redevelopment project to move forward to permitting. The applicant is proposing to invest considerable money in the property to redevelop it to support the proposed 10,000 square foot retail use. The applicant is being forced to leave their current location of business due to right-of-way expansion at Southern Blvd./Military Trail that will result in the demolishing the building. The applicant would like to remain in the general vicinity in order to continue to provide the customers with the best service.

With the conditions, recommended by staff, the general intent of the parking code **will be** met and the property owner will have the best use of this property.

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

YES. The land use designation of this property is C/L with a zoning classification of C/IND. The land use encourages commercial or industrial uses for this property. This property is located within the PBC Airport Overlay District, which also encourages low intense commercial or industrial uses. Military Trail is one of the counties major commercial corridors having business being developed over the past 75 years. In this particular section of Military Trail (between Southern Blvd. and Belvedere Road) there has been a trend to demolish smaller existing buildings and replace them with new buildings on larger properties, bringing the site into compliance with current code requirements. The literal intent of the parking code is to

establish minimum number of parking spaces for the use based on gross square footage. The applicant is proposing 3,752 square feet of storage on the second floor and 6,248 square feet of retail on the first floor. The applicant has to submit a Traffic Analysis that supports their justification that the 40 spaces will meet the peak user demand.

With conditions of approval the variance will meet the intent of the Comp Plan and ULDC parking regulations.

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

NO. Granting the parking variance **will not** be injurious to the general of surrounding area. This property is currently deficient in the majority of code requirement. The proposed site improvements will significantly improve the appearance of this site. The site will comply with all other code requirements in terms of building setbacks, lot coverage, parking, loading, ingress/egress.

ENGINEERING COMMENTS

Traffic Division advises that the existing Acme Boot Village is located in a poorly accessed strip shopping center with limited parking. Because of these limitations, it can be argued that the existing store site does not represent a typical business selling this product. If, however, it is accepted that the results of the submitted parking analysis are valid, any variance from required parking should be conditioned upon recordation of a suitable covenant restricting the use of the store to the sale of boots.

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, Exhibit 9, and the Building Floor Plan, Exhibit 21, presented to the Board of Adjustment at the November 16, 2000, Hearing. These Exhibits can be found in the BA2000-062 BA file in the Zoning Division. **(BLDG PERMIT-ZONING)**
2. The applicant shall construct the retail building on this property (PCN00424336190001440), consistent with the Site Plan, Exhibit 9, found in the BA2000-062 BA file in the Zoning Division. Any modifications to the submitted floor plan, Exhibit 21 or the Site Plan shall be submitted to the BA staff to ensure compliance with the

Board's approval. (**BLDG PERMIT-ZONING-BA**)

3. By January 19, 2001, or submittal or a building permit the applicant shall have received approval from the County Attorney's Office approval of a Restrictive Covenant, limiting this variance to this specific country/western retail clothing business, for the purpose of complying with the Parking Analysis Study. (**DATE: MONITORING-ZONING-CTTY ATTORNEY**)
4. By February 19, 2001, a copy of the recorded Restrictive Covenant shall be submitted by the applicant to the Zoning Division, BA Staff for inclusion in the BA2000-062 BA file. (**DATE:MONITORING-ZONING-BA**)
5. This parking variance is granted for 10 parking spaces for this specific retail business. Any change in use shall require BA staff review and approval to ensure the intent of the Board's approval is met. (**ONGOING**)
6. The applicant shall also comply with all conditions of approval of BA2000-033, approved on June 15, 2000, for two landscape variances on this site. (**ZONING-BA**)
7. The Concurrency Reservation for this site shall be amended by the applicant for the additional 2,000 square feet by Jan. 2, 2001, or submittal of a building permit, whichever occurs first. (**DATE:MONITORING-ZONING-CONCURRENCY**)

CHAIRMAN BASEHART: Next item is BATE 2000-064, Kilday and Associates. Is anyone here for this?
(No response.)

CHAIRMAN BASEHART: All right. Seeing none, this is not an advertised item because it's just a time extension. Any member of the Board have a problem with granting the extension?
(No response.)

CHAIRMAN BASEHART: Okay. We'll leave that on the agenda.

STAFF RECOMMENDATION

Staff recommends a maximum of 2 months time extension for Condition #4 from October 21, 2000, to December 21, 2000, consistent with Section 5.7.H.2 of the ULDC, to provide additional time for the petitioner to commence development and implement the approved parking variance.

The property owner shall comply with all conditions of approval of BA99-089, unless modified herein:

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) COMPLETED**
2. By December 21, 1999, the applicant shall ensure the BA conditions are shown on the certified Site Plan. **(DATE: MONITORING-ZONING-DRC) COMPLETED**
3. This parking variance shall be limited to 45 additional spaces. The final site plan shall be revised to show a total 185 off street parking spaces for this site. **(DRC) COMPLETED**
4. By October 21, 2000, the applicant shall obtain a final inspection on the parking for this site to vest this parking variance. **(DATE: MONITORING-BLDG:CO)**

Is hereby amended to read:

By December 21, 2000, the applicant shall obtain a final inspection on the parking for this site to vest this parking variance.
(DATE: MONITORING-BLDG:CO)

5. By March 21, 2000, or prior to DRC certification of the site plan, whichever occurs first, the applicant shall receive approval of the landscape plan that reflects the additional 1,800 square feet of landscaping that will be installed around the proposed buildings as shown on Exhibit 20, in the BA99-089 File. **(DATE: MONITORING-ZONING/DRC) COMPLETED**

CHAIRMAN BASEHART: So I guess we're ready for a motion on the Consent Agenda.

VICE-CHAIRMAN KONYK: Oh, I'm sorry. That's my job.

I make a motion to approve the Consent Agenda with the following item moved to the Regular Agenda, BOFA 2000-058, to the remaining items BOFA 2000-057, BOFA 2000-062, BATE 2000-064 will remain on the Consent with the staff report becoming part of the record.

MR. PUZZITIELLO: Second.

CHAIRMAN BASEHART: Was that right?

MR. PUZZITIELLO: Yes.

CHAIRMAN BASEHART: We have a motion by Ms. Konyk, a second by Mr. Puzzitiello to approve the Consent Agenda as amended.

All those in favor indicate by saying aye.

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no?

(No response.)

CHAIRMAN BASEHART: Carries unanimously.

CHAIRMAN BASEHART: The first item on the Regular Agenda then will be here BOFA 2000-058, CIAO Construction Investment Management.

Do you want to introduce the item?

MR. SEAMAN: Okay. This is CIAO Construction Investment Management, Inc., Lot 44, Chad and Paula Lee are the owners of Lot 43. They are requesting to allow an existing pond which traverses lots 44 and 43 to continue encroachment of the required east, west and the common rear (north/south) lot line setbacks.

The subject properties, tract 43 and 44, were initially one lot of record equaling two and a half acres. The subdivision is within the Royal Palm Beach Acreage area. The two parcels identified as 43 and 44 are on 40th Lane and 40th Street North, respectively. The 0.33 acre pond which traverses the rear property line shared by both tracts has existed since 1988, prior to the August 31, 1991, the date the current ULDC Excavation Regulations were adopted.

The pond was excavated when the setback requirements for residential ponds were 25 feet on all property lines. When the current standards were adopted in 1991, the code established several types of excavations each with their own standards in terms of setbacks, sizes of the pond, depth, slope and littoral planting.

This particular pond is exempt from all these requirements because it is a legal, non-conforming pond. The only requirement that the applicant must comply with is the setback requirements for the pond.

Recently the applicant came to the Building Department to submit for a building permit and was told they had this issue of not meeting the setbacks of today's current code.

The Building Department informed the applicant that the existing pond was encroaching the required setbacks and that the pond was either to be filled to

reestablish the 25 foot setback in effect at the time when this pond was excavated or apply for a variance to allow the pond to remain in the existing setbacks.

Since both tracts 43 and 44 were affected by the pond, both owners have applied for the variances with CIAO Construction Investment Management acting as the representative for both.

The six variances that are being requested are listed on page 26, and I believe that rather than -- well, I guess I should read them aloud.

On Lot 43, the east property line showed a 15 foot setback and what's being proposed is 10. That would be a variance of 5 feet if granted by the Board. On the south property line, what's required for the rear setback is 15 feet; what's being proposed is zero, which would be a variance of 15 feet, if granted by the Board.

On the side interior setback what's required again is 15 feet. What's proposed is 6, with a variance of 9 feet.

Lot 44 the same variances are required because the pond is geometrically equal in shape and does traverse both the north and south property lines.

That's pretty much the summary of what's taken place out there.

CHAIRMAN BASEHART: Okay. Will the applicant step forward, and actually, anyone that intends to speak on this item, if you would please rise and be sworn in?

(Whereupon, the speakers were sworn in by Ms. Springer.)

CHAIRMAN BASEHART: Okay. Sir, if you would give us your name for the record?

MR. CASARIEGO: Yes, Orlando Casariego.

CHAIRMAN BASEHART: Okay. Would you spell it?

MR. CASARIEGO: C-A-S-A-R-I-E-G-O. Casa-rego, they say.

CHAIRMAN BASEHART: Mr. Casariego, do you have anything that you'd like to add to the presentation that was made by the staff?

MR. CASARIEGO: No, other than the fact that the pond has been there for over 12 years, I think that if we landscape around it, it will look very nice.

We didn't want to disturb what's already in there and since there's a house already in the rear, they're building one west of us. We didn't think that it was going to adversely affect anybody -- you know, just landscaping the pond the way it was and leaving it the way it is.

And basically, that's what we wanted to do. That's the house where -- although it's owned by CIAO Construction, it's where my family and I are going to move into.

CHAIRMAN BASEHART: Okay. Thank you.

This is a public hearing, are there any other members of the public that would like to speak either in favor or in opposition to this item? Step forward, sir.

Would you give us your name for the record?

MR. BUSHA: John Busha, B-U-S-H-A.

CHAIRMAN BASEHART: And you've been sworn in?

MR. BUSHA: Yes, sir.

CHAIRMAN BASEHART: Okay.

MRS. BUSHA: My name is Eloise Busha, E-L-O-I-S-E, Busha.

CHAIRMAN BASEHART: And you've been sworn in?

MRS. BUSHA: Yes, I have.

CHAIRMAN BASEHART: Okay. If you could present to the Board your concerns about this?

MR. BUSHA: A couple of problems I have is the gentleman first stated the only requirement that the applicant is to comply with is the setback. They're applying for a required setback of 15 feet, but it says even here in the report that at the time of the excavation the requirement was 25 feet.

So are they to -- I mean, it's a discrepancy is what I'm saying. Which is it? Are they supposed to comply with the 25 foot setback, which was in effect at the time of the excavation, or are they complying with the 15 foot setback which took effect in August of 1991?

CHAIRMAN BASEHART: Well, let's ask that question to staff.

MR. MacGILLIS: As a Board, you've probably heard 15 of these excavation cases over the last three to four years. We came into a significant problem after we adopted the current excavation regulations, especially in the Acreage and the unrecorded subdivisions where contractors excavated fill and took it off site and in certain cases didn't respect the required setbacks.

The only requirements that were in the Code prior to August, 1989, were you had to meet a 25 foot setback all the way around and you weren't supposed to take any of the fill off site. So what's happening now because there was no permitting requirement as Alan has stated and no inspections, it was impossible for staff to catch it.

So when all these started coming in to get building permits because there's a -- with the amount of building that's going on in these rural subdivisions now, they were all coming in and they were at a standstill at the building permit stage.

So the Zoning Division sat down with the Building Division and the County Attorney's Office and tried to resolve this. How could we address this and not hold everyone's building permit up?

So what we looked at is that even though the requirement at the time, to vest something is typically what's in effect at the time which would have been the 25 foot setback, since the Code now only requires 15, the Zoning Director adopted a policy that we would -- when people came in to get variances, we would get them to require what today's Code would be, which would be 15, and that would be the only requirement they would have.

We wouldn't get into looking at all the depths of the slopes and anything else that was under the current requirement. It was presumed to be vested.

VICE-CHAIRMAN KONYK: I have a question real quick of Jon.

CHAIRMAN BASEHART: Okay. Sure.

VICE-CHAIRMAN KONYK: When this pond was originally dug, that was one line at the time. So it probably did in fact meet the 25 foot setback that was in effect at the time that the pond was dug.

And then when it was subdivided, that's what created the setback problem; am I correct?

MR. MacGILLIS: Like on page 27 you can see the diagram of the two lots. In response to your question, yes, on the two variances that --

VICE-CHAIRMAN KONYK: I'm not talking about the variances. I'm talking about when the pond was originally dug before this was subdivided, did it meet the setbacks?

MR. MacGILLIS: Well, see, that --

VICE-CHAIRMAN KONYK: You don't know?

MR. MacGILLIS: -- goes back to we don't know.

VICE-CHAIRMAN KONYK: Okay.

MR. MacGILLIS: Typically, what staff does is go to an aerial. When you're talking looking at an aerial and the difference between 15 feet and 25 feet, because today we even allow for 5 feet from-- you're required a 15 foot setback, but actually after a -- a year after the pond is excavated, you only really have to have ten feet because we give five feet for erosion.

VICE-CHAIRMAN KONYK: Okay. But I guess my point is is that the rear setback on these two lots was created because these lots were subdivided?

MR. MacGILLIS: That's correct.

VICE-CHAIRMAN KONYK: That was my point.

MR. BUSHA: That's not the issue I have. I don't have a problem with the north and south setback. What I have a problem with is the west setback.

The pond is dug right on the property line in the back. It goes 55 feet past the property line to the south, okay? I don't have a problem with what they do between those two. He bought the lot, you know, that's his problem. I don't have a problem with that.

What I have a problem with is that the pond, which is almost -- they say it's 0.33 of an acre, the pond. I think it's bigger than that. My problem is the pond comes right to my property line, okay? And I dug a pond myself, okay? And I built a dam in between the two with dirt that I had to pay money for, and every time we get a big rain, it just overflows because their pond is right to my property line. I mean, I have a picture.

CHAIRMAN BASEHART: According to the staff report, they're on the west side of this?

MR. BUSHA: The survey is inaccurate.

CHAIRMAN BASEHART: They say that the pond is six feet from the west property line.

MR. BUSHA: That's inaccurate. I asked -- I spoke with Mr. Seaman yesterday and asked if anybody had visited the site, and they said no, that the surveyor's reputation --

VICE-CHAIRMAN KONYK: Have you? We haven't. The Board never does.

MR. BUSHA: No, but somebody from the County.

VICE-CHAIRMAN KONYK: Did anybody from the County?

MR. SEAMAN: Yes, I actually have some photographs and I want to give them to you for the record.

VICE-CHAIRMAN KONYK: Okay.

MR. BUSHA: And I have some photographs, also. But I'm not here to try and, you know, be a bad person or anything.

All I want is for when it rains for his pond not to overflow and flood my property, and I don't want to have to pay to bring in 80 loads of fill to bring my property up for something that they did that isn't done right.

CHAIRMAN BASEHART: How far is your pond from the property line?

MR. BUSHA: It says seven feet, but --

VICE-CHAIRMAN KONYK: No, your pond.

MR. BUSHA: Right. It says seven feet on their survey, but I have pictures of when I excavated it.

There's no telling now because like I said, I built a dam and every time we get a big storm, their pond is so big that the pressure from the water just caves in the dirt and it's just washing in on my side, and then it floods, you know, like a quarter of my property on that side.

Now the neighbor behind me, he brought in 100 truck loads of dirt, plus they're selling their house, so they really don't care. They filled up their property so when that lake fills up, it doesn't flow onto their property.

I don't think it's right for me to have to pay to bring in dirt to bring up my property to fix something that they did that was wrong to begin with.

CHAIRMAN BASEHART: Well, you know, maybe I'm a little confused here, but it seems to me that that issue doesn't relate to how big the setback of the pond is; it has to do with the design of the pond, and whether it was five more feet during normal times away from your property line, would that make a difference when it rains as to whether it overflowed onto your property?

MR. BUSHA: Of course it would.

CHAIRMAN BASEHART: How so?

MR. BUSHA: Of course it would. If they have to stay 15 feet back, okay, at least the dirt in between there isn't going to keep washing back.

VICE-CHAIRMAN KONYK: Have you applied for a variance because your pond isn't 15 feet from the setback?

MR. BUSHA: No. I don't -- what do I need a variance for?

VICE-CHAIRMAN KONYK: Well, I'm just saying, if your pond isn't 15 feet from the setback?

MR. BUSHA: According to their survey, but how can you get an accurate survey when both ponds are filled with water?

According to my survey, my pond is 15 feet from the property line.

VICE-CHAIRMAN KONYK: What would you suggest would be a solution to the problem?

MR. BUSHA: I would suggest that they fill that

side to -- I mean, he's saying that they have a policy that is in effect that only requires a 15 foot easement. I want to know is that policy in writing? Is that law? Is that code or is that just something that everybody got together with and agreed on?

CHAIRMAN BASEHART: Fifteen foot is the Code requirement --

MR. BUSHA: But at the time of the -- I'm sorry, I don't mean to interrupt, but at the time of the excavation, the Code that was in effect was 25 feet, which is how it's supposed to work.

CHAIRMAN BASEHART: Maybe we need to ask the County Attorney's Office, but the practice has always been in zoning that if the code requirement is changed and there's, you know, existing facilities that do not meet that code are vested and they don't have to meet the requirements, and if a code requirement is relaxed, people that have existing facilities that met the old requirement are entitled or even if it didn't meet the old requirement are eligible to be considered under the new requirement. Is that basically --

MS. RAINEY: I would think that that's to be consistent with non-conforming uses being grandfathered in and then the code provision could be more relaxed because, you know, the vested right arises out of the non-conforming that's now conforming.

CHAIRMAN BASEHART: That's right.

MR. BUSHA: That's not always true because sometimes -- say you do an addition to your house, okay, and at the time you built the residence it wasn't required to have shutters, okay?

And you put one window in your new addition, you're required to shutter that window.

MR. MacGILLIS: That's a building code requirement which is a whole -- that's the Southern Building Code which is different from the Zoning Code.

The Zoning Code is clear that if you have a house that's built under a requirement of a 100-foot setback and we amend the code, which we occasionally do and make the setback 75 feet, that property owner can come in and add an extra 25 feet onto that front of the house and comply with the current code --

MR. BUSHA: Okay. All I wanted to know is if that was in writing or is that something --

MR. MacGILLIS: It's in Article 1 of the ULDC --

MR. BUSHA: That's fine, that's fine. That's all I wanted to know if that was in writing.

MR. PUZZITIELLO: This lake was built in what year?

MR. BUSHA: 1988.

MR. SEAMAN: Twelve years ago --

MR. MacGILLIS: Well, we have an aerial photograph here that was in 1989, and it's showing there and it's not showing this gentleman's pond -- if you look on page 27 of the back-up material, you can see his pond right beside the diagram in the bottom, and on this aerial photograph in '89, the only lake that's shown on there is the back lake that's coming in for the variance.

MR. BUSHA: Well, let me ask you something. What

does my pond have to do with anything?

MR. PUZZITIELLO: Because your pond has the same setback as --

MR. BUSHA: But we're not here to talk about my pond. We're here to talk about their pond.

If somebody wants to bring up my pond, then we'll go discuss my pond at a later date, but we're not here to discuss my pond or my setback or anything.

MR. PUZZITIELLO: But you're discussing your pond in that his lake his pushing the berm between the two lakes into your yard.

MR. BUSHA: Correct.

MR. PUZZITIELLO: So we are talking about your pond because the problem is is the two ponds are so close together.

MRS. BUSHA: If I may, I think mainly what the problem is is that since his pond is basically up to the property line, when it does rain let's not consider our pond. Let's just consider that easement, that 15 foot area that we had there is gone.

So basically should there be a need to walk around in that area, you cannot tell where the water starts and where the land actually begins. So when it rains, you can't walk back there, because you run the tendency of falling into his lake or mine. You don't know where the pond is and where the land begins.

CHAIRMAN BASEHART: All right. The problem that

--

MR. BUSHA: I'll show you a picture of when I started to excavate, and also --

VICE-CHAIRMAN KONYK: Do you have any more pictures?

MR. BUSHA: -- the pictures --

CHAIRMAN BASEHART: If we look at these pictures, they're going to have to be part of the record; is that okay?

MRS. BUSHA: Fine. That's fine.

VICE-CHAIRMAN KONYK: I make a motion to accept the pictures into the record.

MS. STUMBERGER: Second.

CHAIRMAN BASEHART: Okay. We have a motion by Ms. Konyk, second by Ms. Stumberger, to accept these pictures into the record.

All those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Okay. They're a part of the record.

VICE-CHAIRMAN KONYK: Whose pond is this?

MR. BUSHA: That's mine.

MRS. BUSHA: That is our pond, and as you can --

MR. BUSHA: The stick is 20 feet from my property line, that stick that's shown right there, okay, because I went an extra five feet when I excavated the pond just to be sure.

VICE-CHAIRMAN KONYK: But this pond doesn't have any water in it.

MR. BUSHA: That was when I --

MRS. BUSHA: It does now.

VICE-CHAIRMAN KONYK: Do you have a picture of it with water?

MR. BUSHA: Well, the other one right there.

VICE-CHAIRMAN KONYK: Oh, this is your pond, too?

MR. BUSHA: Well, that's --

MRS. BUSHA: This is our pond, but see, their pond is right here, and you can't really -- there's some tall grass here, but that's basically all you can see. You cannot see the dirt or the land where there --

VICE-CHAIRMAN KONYK: So your ponds practically meet?

MRS. BUSHA: Yes, they do always. Well, when it rains, I should say. When it rains, our ponds meet and you cannot tell where either pond ends or begins.

MR. BUSHA: My pond is this big; their pond is that big (indicating). So the pressure from this pond onto this little pond, of course is going to cave my dirt in no matter -- I mean, if I was 15 and they were right to the property line, that's only 15 feet. If there was 30 foot in between, that probably wouldn't happen.

VICE-CHAIRMAN KONYK: Okay. You don't have the 15 feet, either?

MR. BUSHA: There's no telling at this time because the two waters meet and it depends on where you measure from. I mean, are you going to measure from the edge of the water? They both are --

VICE-CHAIRMAN KONYK: Well, you'd have to survey the land and see where the property line is.

MR. BUSHA: Exactly, but according to my survey at the time I excavated the pond, I was 15 feet away.

VICE-CHAIRMAN KONYK: How many years ago did you excavate the pond?

MR. BUSHA: Oh, no, this is just brand new. I haven't even finished my house. This is months ago.

VICE-CHAIRMAN KONYK: Months ago you excavated the pond?

MR. BUSHA: Yes, nine months ago.

VICE-CHAIRMAN KONYK: Have you had it surveyed since the pond is filled with water so that you still know where the property line is?

MR. BUSHA: No.

CHAIRMAN BASEHART: Well, I mean, we have to go by the evidence as submitted by, you know, professionals. The applicant has submitted a survey that was signed and sealed.

MR. SEAMAN: Two surveys.

CHAIRMAN BASEHART: Two surveys actually that show that his pond is from your property line nine feet off the line.

MR. BUSHA: I believe it's six.

VICE-CHAIRMAN KONYK: It's six. The variance is 9 feet.

CHAIRMAN BASEHART: Oh, I'm sorry, yes, you're right. Six feet with a nine foot variance. But you're saying that it goes to the property line?

MR. BUSHA: I'm saying that it goes to the property line, and I'm also saying that when I pulled my

permit for my pond that I was -- I had to redraw it because the man from the county told me that he felt that my pond was going to adversely affect my neighbor's property.

Now, whatever the pond is, the setbacks or whatever, the pond adversely affects me because it floods my property. When it rains their pond overflows and it floods my property.

I have a survey that shows the water, when it floods how it comes on my property, all right, and I also have when I called for my septic tank, the inspector says that I have to fill that area to alleviate any standing water, okay, which is my problem.

I don't think it's fair for me to have to pay to bring in fill to alleviate water that's coming from my neighbor's property. I have to take care of my own property. I don't think it's fair that I have to fix my property to take care of water that's coming from a lake that's dug too big, too close to the setbacks.

I mean, you're talking almost a half an acre of a body of water. That's a very big lake, which, like I said, I'm not here to be a bad neighbor. I don't care about the north/south setbacks. It doesn't affect me, I don't care.

All I want is the water from that pond not to come on my property. That's all I want. I'm not trying to be a bad guy here or anything else.

CHAIRMAN BASEHART: Okay. So basically you're saying you don't care about the north/south or east setbacks --

MR. BUSHA: No.

CHAIRMAN BASEHART: You care only about the west setback and you --

MR. BUSHA: Correct. The only --

CHAIRMAN BASEHART: Okay.

MR. BUSHA: I'm sorry. I don't mean to interrupt you. But the only thing that I care about is the west, where it affects me. I don't mind the size of the lake. It actually does look, you know, good, but I don't want it overflowing onto my property. That's all.

VICE-CHAIRMAN KONYK: Before the pond was there, your pond, did the water overflow onto your property?

MR. BUSHA: Yes.

VICE-CHAIRMAN KONYK: Okay.

CHAIRMAN BASEHART: The question is, and I'm not a hydrologist and I'm not an engineer, but it seems to me that if that lake overflows to that extent, whether the bank was reshaped to be 15 feet versus 6 feet from the property line, when it rained hard it's still going to overflow and it's still going to go on your property.

MR. BUSHA: Well, they should be required to bring it up so it doesn't affect me. I have to bring my property up. The man told me that I have to -- I'll show you on my survey.

It says "Area to be filled to alleviate standing water". The reason I have standing water is because that pond overflows.

CHAIRMAN BASEHART: Then would it follow -- again, this Board is not here to consider the engineering

of the lake. It's here to consider the setback.

Would it follow then that if it's the bank that's the problem, if they built up the elevation of the property in the 6 feet between the lake and the property line, that it would also solve the problem?

MR. BUSHA: No, because I think that at that point it's not wide enough due to the size of this lake, that the pressure of the water -- because I've already done it once -- and he even had his equipment do it for me once with my dirt which, like I said, I'm not here to be a bad neighbor or anything like that, all right? And it keeps just caving it in. That's what I'm saying, it needs to be wider.

CHAIRMAN BASEHART: Well, that's not because the lake is so close to the property line. It's because the lake is so close to your lake. Apparently both -- well, yeah.

MR. BUSHA: No, because my lake doesn't affect the setback because it's very small, my pond.

MR. PUZZITIELLO: According to this, your lake is encroaching into the side yard setbacks.

MR. BUSHA: Well, like I said, that survey is inaccurate.

MR. PUZZITIELLO: This is by a professional surveyor and we don't have one from your surveyor saying anything different.

MR. BUSHA: Want one of mine?

MR. MacGILLIS: Mr. Chairman, may I suggest. The gentleman called yesterday. Typically what staff -- you know, tries to work these problems out before they get to this stage.

Alan came to me late yesterday and indicated a neighbor was concerned. We never got a letter. He just called us. Alan went out to the site with one of our inspectors to actually inspect what was going on. I told him we did have a concern. I mean, if there's a neighbor concerned -- typically when we grant these variances, people don't want us touching the lakes, the neighbors. They just want everything left as is. They don't want fill hauled in. They don't want the noise.

In this case I believe Alan has spoken to the applicant and he can address that, but from staff's perspective, I indicated this to Alan yesterday, if the neighbor has a concern and there is water running across it, staff could -- I mean, that was new stuff that was presented to us.

We could eliminate that variance and he would have to comply with the 15 foot setback on that side. Because the rest of the requirements -- the neighbor on the other side was also given a notice. They have not come forward. And we're only talking -- if you turn to page 33, where the lot is, the contractor's only going to have to fill in it looks like 15 or 20 feet on that corner off of his lot because the other lot is on the other side, unless the Board also wants it filled in on the lot to the north which is not adjacent to this property owner.

If they do it, we can run it so it establishes the 15 foot setback along both lot 44 and lot 43.

MR. PUZZITIELLO: You said Alan has some pictures and a report?

MR. MacGILLIS: Yes.

MR. PUZZITIELLO: I'd like to hear from that before we decide about that.

MR. MacGILLIS: Alan, you can go up to the -- if you can let Alan address what he observed yesterday when he was there.

MR. PUZZITIELLO: I see that that's your building permit stuff that you have there?

MR. BUSHA: Mm-hmm.

MR. PUZZITIELLO: If you show us that survey, we can't give it back to you. I don't want you to give it to us and then have an incomplete building permit.

CHAIRMAN BASEHART: Unless the staff wants to make a Xerox of it, then we'll accept the Xerox into the record. Alan?

MR. SEAMAN: I'm Alan Seaman, senior site planner, and I did go to the site last evening to take some pictures from my perspective, which I'll give to you for the record to look at.

What appeared to me is that there's a very small dike there pretty much between the two ponds, and it looks as if -- and I know for a fact from talking to the applicant that the whole area has been de-mucked which has brought the finish grade down quite a bit. New fill has not been brought in to the site to bring it up to a grade where they can actually begin construction.

If you stand there, and I understand now that his pond was built at a different time, but it almost looks as if they are one pond. That's the small dike that bisects the two.

MR. BUSHA: That's what I'm saying. The surveyor can go out there and survey, but like he's saying, there's so much water --

CHAIRMAN BASEHART: You're going to have to speak

--

MR. BUSHA: -- you can't tell --

VICE-CHAIRMAN KONYK: Step up to the microphone.

MR. BUSHA: -- where the bank is on my pond.

VICE-CHAIRMAN KONYK: So Alan, so what are you telling us by saying it's one pond? They're both not meeting the setback?

MR. SEAMAN: They're both not meeting the setback. That's my observation.

And also research shows, and I don't know if this is the time to suggest or bring it up, but I was not able to find permits -- even though we're not discussing your issue, but I was not able to find permits for excavation of your particular pond.

MR. BUSHA: Okay. Let me state for the record I don't like these blackmail tactics because I spoke to this man yesterday on the phone and told him that I was opposing this, and he said that he can't find a permit for my pond, and that if I come, you know, I might end up in the same predicament as the gentleman behind me, and he doesn't want to see anything, you know, like that happen to me and that if I don't come, that maybe nothing

would ever come of me doing my pond without a permit.

VICE-CHAIRMAN KONYK: When you bring something to the County's attention --

MR. BUSHHA: I have a permit.

VICE-CHAIRMAN KONYK: -- you risk the --

MR. BUSHHA: I have a permit.

MR. SEAMAN: That was a request I made, please bring a copy of it because I was not able to find it on our mainframe.

VICE-CHAIRMAN KONYK: Your papers are here?

MR. BUSHHA: I have a permit right here.

MR. SEAMAN: Help me find your pond. I don't see it.

MS. CARDONE: John, I have a question for you. Is it --

VICE-CHAIRMAN KONYK: Wait a minute. Before you do that, we're passing out the survey, I think we should take a motion to accept this survey into the record. I don't even --

MS. CARDONE: Motion to accept the survey into the record.

CHAIRMAN BASEHART: Motion by Ms. Cardone.

MS. STUMBERGER: Second.

CHAIRMAN BASEHART: Second by Ms. Stumberger.

All those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Okay. It's in the record.

MS. CARDONE: John, would staff be able to work this out with the concerned parties with a little bit more time?

MR. MacGILLIS: I think that's -- I mean, I don't know how that's -- I'd have to ask the contractor if that's going to hold up something he's trying to do here.

VICE-CHAIRMAN KONYK: Postponing this until next month?

MR. MacGILLIS: Right. I mean, I --

MR. CASARIEGO: May I say something? I think I have a solution.

MR. PUZZITIELLO: This survey is showing it as a proposed pond, not as an existing pond, and he's also showing most of that area being underwater in the survey anyways.

VICE-CHAIRMAN KONYK: What he said was the survey is showing your pond as a proposed pond, not as a completed pond. So this really wouldn't be as current as the new survey.

MR. BUSHHA: Okay, but how can the new survey tell where my bank is if both ponds are covered in water?

VICE-CHAIRMAN KONYK: Because they have ways of surveying; that's why we have surveyors.

MR. BUSHHA: Whatever. I don't think you can survey underwater.

MR. PUZZITIELLO: Yes, they do.

VICE-CHAIRMAN KONYK: Yes, they do.

MR. PUZZITIELLO: They go in and they put --

MR. BUSHHA: Whatever.

MR. PUZZITIELLO: -- depths of the water and they

--

MR. BUSHHA: I have a permit for my pond. It's right here. My pond is not the issue here.

VICE-CHAIRMAN KONYK: You've made it the issue. You've made it the issue.

MR. BUSHHA: No.

VICE-CHAIRMAN KONYK: We haven't made it the issue.

MR. BUSHHA: No, I haven't made it the issue.

VICE-CHAIRMAN KONYK: We have to consider all the facts, and I think that Mr. --

MR. BUSHHA: Am I here to apply for a variance?

VICE-CHAIRMAN KONYK: No, you're here to object. We have to consider all the facts. You're here to object. We're not going to fine you or anything like that. That's not our position.

The position is is that we have to consider all the facts. Nobody's saying --

MR. BUSHHA: Consider that when I get my building final that I have an opportunity before then if my pond is not in compliance to bring in dirt and make it comply.

VICE-CHAIRMAN KONYK: Okay. He seems to have a solution. Let's see if he has a solution. If not, I recommend we postpone this item.

MR. CASARIEGO: His concern is the setback, on his side of it. He suggested a little while ago that the difference between the actual -- where my lake is 6 feet in the setback, which is 15 feet. It's really not that much. I really didn't want to disturb, but if that is the problem, then I am willing to go ahead and delete that part of the setback and fill that area in order to be able to make it the 15 feet.

CHAIRMAN BASEHART: So --

MR. CASARIEGO: So I think that should satisfy him, but I want to have something in that-- it's been my experience as a general contractor, and I've done a lot of excavations, it doesn't matter whether you have a small pond or a big pond. Once the level of the water is the same height, the pressure will equalize and it won't matter. It's just that the float criteria, the level of the water in that area is so high that sometimes there's nothing you can do.

There's a lot of areas in there that in order to get their land out of the water, they just have to keep putting fill in. It's a condition that people that live in that area have to learn to live with and it's not easy, but I will fill that area.

VICE-CHAIRMAN KONYK: Right. Let me ask you this. You're willing to withdraw that portion of the variance on his property and fill the property in to have a 15 foot setback?

MR. CASARIEGO: That side, that portion of the west side.

VICE-CHAIRMAN KONYK: Can you adjust all this?

MR. SEAMAN: I have verbiage for that.

MR. PUZZITIELLO: For both lots or just for the 44?

MR. MacGILLIS: I'd recommend it for both.

VICE-CHAIRMAN KONYK: If you're going to do it for one, you'd better do it for both of them.

CHAIRMAN BASEHART: All right. You want to offer the verbiage?

MR. SEAMAN: So what we're doing is amending the variance request.

MR. CASARIEGO: But can it be only for the west, in other words, where his problem is with his property?

VICE-CHAIRMAN KONYK: It's going to be for both lots on the west side, though.

MR. BUSHHA: Me and him have been speaking and he told me that he was going to bring in fill and this and that, which is fine. I just didn't want to forfeit my rights. When we got a letter saying they were applying for a variance, I did not want to come and not show up and forfeit anything I have.

Like I said, I'm not here to try and be a bad neighbor. We haven't even moved in yet. He's building a house. I don't want to have problems, you know what I'm saying? I just don't want the water from the lake to overflow and flood my property. That's all I want. I'm not here trying to be bad. I know, you know, maybe I came off that way or something, but it's all I want.

VICE-CHAIRMAN KONYK: I think that it's always better when the two parties involved are able to come up with a solution so that we don't have to.

MR. BUSHHA: Right.

VICE-CHAIRMAN KONYK: But I just want you to know that we value our staff very much here and we value their integrity. So I took offense to the fact that you said you were being blackmailed by our staff. So I think you owe Mr. Seaman an apology.

MR. BUSHHA: No, I don't, but personally I took offense to the way it was --

VICE-CHAIRMAN KONYK: Okay. Thanks. That's okay.

MR. BUSHHA: -- said to me --

VICE-CHAIRMAN KONYK: That's enough. Thanks.

MR. BUSHHA: -- yesterday that --

VICE-CHAIRMAN KONYK: Thanks. Alan, you have verbiage?

MR. SEAMAN: Yes, for BOFA 2000-058 we would like to amend lot 43 to delete the side interior setback from the east property line and to delete the --

MR. MacGILLIS: It's the west property line, Alan.

MR. LEE: Can I speak for a second?

VICE-CHAIRMAN KONYK: Yes.

MR. LEE: I'm the property owner of the next property.

CHAIRMAN BASEHART: Okay. Come on up. You were sworn in, weren't you?

MR. LEE: Yes, I was.

CHAIRMAN BASEHART: You want to give us your name?

MR. LEE: Yes, my name is Chad Lee. When my wife bought that lot back in '88, that entire area was basically a swamp.

VICE-CHAIRMAN KONYK: I can't hear.

MR. LEE: That entire area was basically a swamp. We used to take swamp buggies and full tracks and stick them in there all the time. It was known as one of the wettest places in the acreage. When we bought it, my wife thought she was buying another lot with pine trees, and she didn't it. She bought this one by mistake.

Well, it had about four foot of water on it in a drought. So we brought in fill and brought in fill and brought in fill. The actual pond was there when it was dug. It wasn't even dug much. It was actually a pond already there between the properties. There was four pieces of properties and the land falls like this (indicating), you know, it's a big funnel in the middle.

I brought in fill over the years, God knows how many loads of fill, and built up around the edge of the pond that actually made it a pond. If I wouldn't have built up the edges of the pond, the pond floods everybody just because the land, that's the way it sits.

My neighbor to the west of me, he's not here, he's selling his house, he had the same problem when he moved in there. He said, my god, this thing floods everything. I said, I know, it's just the low area. He goes, yeah, 'cause all the water from everywhere runs to it because it's the lowest place on the whole street. He brought in a ton of fill and he built his property up.

The setback on the west that he's talking about, if we take the pond and we fill in to the property line, it used to be more than six feet. It used to be probably 12, 15 feet there, but when everybody's water runs in there, it slowly erodes it and erodes it.

If we fill in the 15 feet there, and you make it level with grade and you don't build a berm up around it, it's still going to flood everybody's piece by making the pond smaller.

You know, now it affects me because when you say you need to fill in the west side, now I'm going to have to bring in fill to fill in --

VICE-CHAIRMAN KONYK: We didn't say it. He suggested it. The contractor suggested it, okay?

MR. LEE: Okay. My neighbor on my west side, he built up his property and I built up mine where his doesn't flood and mine still floods some but not as bad.

But if you're going to make the west side have 15 foot of fill put back in there because the pond is a fairly deep pond, and you want my lot to fill it in, who's going to be responsible for that?

VICE-CHAIRMAN KONYK: I'm sorry. Responsible for what?

MR. LEE: On the west property line, if you have the pond filled in 15 feet of fill put in there. You're saying for both lots, the south lot and the north lot.

VICE-CHAIRMAN KONYK: Okay.

MR. LEE: On the north lot --

VICE-CHAIRMAN KONYK: Oh, you don't own that?

MR. LEE: Yeah, I own the north lot. I just sold the south lot.

MR. MacGILLIS: He owns the north lot. The

contractor is building a house on lot 44. The contractor has agreed to --

MR. PUZZITIELLO: In other words that decision just cost him money.

MR. MacGILLIS: Right. He's agreed to do lot 44, which there's a house under construction and he's out there. He's going to do that, but he didn't clarify it that he's not going to do the lot 43 --

VICE CHAIRMAN KONYK: Good point.

MR. MacGILLIS: -- because that's owned and occupied by this other gentleman who's just speaking.

MR. CASARIEGO: I don't own it. And also even in order to fill my side of it, which I'm willing to do, I need some sort of authorization from him because you can't do a stem wall there. Some of the fill is going to fall into his property. So I don't know how to --

MR. MacGILLIS: I'd recommend we take a 30 day postponement on this. This has gone on too long.

MR. CASARIEGO: Whatever you suggest, I want everybody to be happy, so whatever fill I need to bring in, I'll bring it in.

VICE-CHAIRMAN KONYK: Whose lot does he abut?

MR. MacGILLIS: He abuts the contractor's lot, lot 44, to the south.

VICE CHAIRMAN KONYK: I got you.

MS. STUMBERGER: He's recommended a 30 day postponement and I think that's what we should do.

CHAIRMAN BASEHART: Maybe somebody ought to make a motion.

MS. STUMBERGER: I'd like to make a motion to have a 30 day postponement on this item 2000-058.

MR. PUZZITIELLO: Second.

CHAIRMAN BASEHART: Is the applicant willing to accept a postponement to try to work this all out?

MR. BUSHHA: Excuse me --

CHAIRMAN BASEHART: Wait a minute.

VICE-CHAIRMAN KONYK: You're not the applicant. Wait a minute.

MR. BUSHHA: All right.

MR. CASARIEGO: Sir, the problem with that is that this lot is the house where I have to move in, and I've got to move from the place where I'm at because my rental time is running out there. So it could be a little bit more patient --

VICE-CHAIRMAN KONYK: That would affect you detrimentally?

MR. CASARIEGO: -- if we could come up with a solution that will make sure that he's okay, that he's happy with it. If he's happy with it, if it costs me a little bit more money, it's okay, but if not, it's going to cost me a lot more --

VICE-CHAIRMAN KONYK: Is there any possibility you guys could work this out in a time frame while we hear the next hearing, and then come back and finish this one? Would that be okay with everybody?

MR. CASARIEGO: Yeah, I don't have any problem with that.

MS. STUMBERGER: I'll withdraw the motion and let us go on with the next case. We've got one more to hear

and if at that time you have come to an agreement, fine; if not --

VICE CHAIRMAN KONYK: Or a solution.

CHAIRMAN BASEHART: So what we're doing is we're recessing this hearing until after we complete the hearing on the next item, then we'll come back to this hearing. And if you all have worked out a solution, you know, then we can listen to that.

If you haven't worked out a solution, it's up to you. We can vote or we can postpone to give you more time to come to a solution. The vote may or may not go in your favor.

VICE-CHAIRMAN KONYK: Okay. Do you have somewhere they can talk about this and operate outside the door?

MR. SEAMAN: Yes, in my office.

VICE-CHAIRMAN KONYK: We're just going to move forward to the next item. I'm trying to get it straight.

CHAIRMAN BASEHART: So what we've done is recessed BOFA2000-058 until after we hear the next item.

CHAIRMAN BASEHART: Next item is BOFA2000-056, Joe or Sylvia Neubauer. Is the applicant here?

MS. NEUBAUER: Yes, sir.

CHAIRMAN BASEHART: If you could step forward, please.

MR. MacGILLIS: This is Item 2000-056, the petition of Joe and Sylvia Neubauer, agents for Matthew and Susan Miller. The request is to allow an addition to an existing single family dwelling to encroach into the required side interior setback.

The property is located at 12781 52nd Road North, approximately 2 miles north of Okeechobee Boulevard, 5 miles east of Seminole Pratt Whitney in the AR Zoning District.

Some backup information on this before the agent presents their material.

CHAIRMAN BASEHART: Okay. Before we move forward, anybody that wants to speak on this item, please rise and raise your right hand and be sworn in.

(Whereupon, the speakers were sworn in by Ms. Springer.)

CHAIRMAN BASEHART: Okay.

MR. MacGILLIS: This is a 1.3 acre legal, non-conforming lot located at 12781 52nd Road North in the Royal Palm Colony, an unrecorded subdivision, which is

located 2 miles north of Okeechobee and 5 miles east of Seminole Pratt Whitney in the AR Zoning District. The lot currently supports an existing 3 bedroom, 2 car garage that was constructed in 1983.

The existing square footage is approximately 2,176. Of that square footage, 1,591 is living area with an attached 684 square foot garage/storage room. There is also a 3,528 square foot shade house on the lot.

The lot is legal, non-conforming in terms of the lot size, depth and width. The ULDC requires a ten acre lot in the AR zoning district. This lot is 1.3 acres. The lot depth and width are required to be 300 feet respectively. In this case, the depth is 200 feet and the width is 237 feet.

The property has legal access from 157th Road North. The applicant's client purchased the property in 1988. When the property was purchased, the owner was a single man at the time. The applicant has since married and has a family. He is proposing the addition to the kitchen to create a family room that he feels is necessary for his expanded family.

The applicant has a building permit currently in the Building Department for a 240 sq. foot room addition that cannot be finalized until either the variance is granted or revised building plans are prepared that meets the required setbacks.

Staff's analysis of the requested findings presented by the applicant finds that they have not complied with all the seven criteria necessary to grant this side interior setback. Staff feels that the applicant needs to explore converting the shop room in the garage to extend the kitchen into the family room that he desires which will still allow the 2-car garage to remain.

An addition can be added to the northeast side of the house. Although this is not the desired location of the applicant, it would eliminate the need for a variance.

With that, staff did meet with the agent, Sylvia, yesterday and went over our concerns with the variance and the seven criteria and felt that it didn't -- there was nothing unique about this lot that wasn't to the other lots.

What staff does when these variances come in the AR Zoning District, we look at the three setbacks that are in the code that address that you either -- if you have a conforming lot you have to meet 100 foot setbacks or 50 on the rear. And if you don't meet the lot dimensions, you go to a percentage setback, which was what was applied to this lot.

The worst scenario is if you can't meet the regular 100 foot setbacks, you cannot meet the percentage, there is a provision in the code that allows staff to apply a 25 foot setback on all sides if you would be denied any use of that property if we had to apply the regular or the percentages without coming here for a variance.

Staff would not apply the 25 to this property because we feel they can meet the percentage setbacks.

There's ample room on the drawing as you can see in the yellow area that we feel that needs to be explored to add onto the property.

The floor plan of the existing house is on the bottom. As you can see, the kitchen area on that plan -- right to the left of that is where they're proposing to add the 240 square foot addition to create a kitchen/family room-type situation. That's where staff's recommending that the possibility be explored of removing the wall between that storage room as a possible extension of that kitchen/family room, and you still have t h e g a r a g e .

As I said to the agent, it's a difficult one for staff because it doesn't seem to be a great amount of a variance and there's a lot of trees on the side. It doesn't seem to be a big deal to the applicant and we haven't gotten any calls from neighbors, but still after going through the seven criteria, we didn't feel that -- it was a self-created situation, there's nothing unique about the lot. It's not meeting the intent of the code which is to give the minimum necessary variance, and it could be injurious to the neighborhood in the sense that we have enough problems in the agricultural zoned areas with people coming in and asking for variances when they're warranted, and people get upset because of they change the rural character of the area.

And in this case we just felt that unless they could come up and explain to us, and that's what I discussed with Ms. Neubauer when she was in here yesterday, to come in here and I believe the property owner is here to explain why that garage, their storage area can't be utilized for their expansion without the need for a variance.

And if they still need extra room, they could add on to the north or to the front of the house in some manner that would still keep the integrity of the house and the rural character of this community.

With that, I turn it over to Ms. Newbury (sic).

MS. NEUBAUER: And it's Neubauer.

MR. MacGILLIS: Neubauer, I'm sorry.

MS. NEUBAUER: That's okay, that's not a problem.

CHAIRMAN BASEHART: And you've been sworn in?

MS. NEUBAUER: Yes, I have. Thank you.

Basically, what I've been able to determine is that we are being denied because the staff feels that number one, there is an option to putting the addition somewhere else, and in reality there is not, and that it's going to change or that someone is going to in fact have a negative reaction to where we want to put the addition. No one has.

In fact, the gentleman to the west of the property -- his name is Francis Young -- was going to issue us a letter, but we have not been able to contact him. He didn't return the letter to staff because he didn't have an objection. So therefore we -- the addition will not be seen from the street. It's not

going to in effect affect anyone except the gentleman to the west, and there is in reality nowhere to put the addition because of the layout of the home.

This area here where they say the addition can go is a workshop for Mr. Miller. He has heavy equipment in there that pertains to whatever he does. And I'm sorry, I have no idea what that is. The garage is full to capacity. Here are the bedrooms. This is 52nd Street North. So in order for this house -- the front of the house faces the east. So it doesn't -- it isn't the normal home which faces a street. This faces the east which has a ditch alongside and the bedrooms face the street. This is the garage; back here it's all vegetation.

Our point is there is no other place to put the addition except to the west. Mr. Young has no objection. It's still 74 feet from one point, from Mr. Miller's house to Mr. Young's house, 74 feet distance between those two.

And at this point again the only objections that I see that staff has had is due to the fact that it might affect the person on the west, and because there might possibly be another alternative to the addition. There is not.

VICE-CHAIRMAN KONYK: Those are big objections.

MS. NEUBAUER: Well, they are big objections. But the thing is when you look at the layout of the home --

VICE-CHAIRMAN KONYK: We have to look at the seven criteria. That's what we base our decision on.

MS. NEUBAUER: I understand that. And Mr. MacGillis was very good, you know, he was very nice to go over that with me, but they seem to be again basing number one, the position of the house on the property.

The position of the house is, to use their words in the seven criteria, "peculiar to the property" because it faces -- it does not face the street like most homes do. This particular house faces the east. The bedrooms face the street.

VICE-CHAIRMAN KONYK: We have to base our decision on the application meeting the seven criteria.

Can you demonstrate to us by going over the seven criteria how you've met the seven criteria?

MS. NEUBAUER: Well, I guess maybe I wasn't as prepared because I thought that would answer number one.

VICE-CHAIRMAN KONYK: Well, what about number two, "Special circumstances and conditions are the result of the actions of the applicant". Are they the result of the actions of the applicant?

MS. NEUBAUER: No. When in fact there's no alternative, there's no alternative to the placement of this addition.

And again, if I'm understanding number two correctly, because as I say, this is a self-created situation. How is it self-created when in fact the home is in one particular area facing the -- the front of the house is facing the east.

CHAIRMAN BASEHART: Who built the house?

MS. NEUBAUER: The house was built in 1982.

CHAIRMAN BASEHART: By?

MS. NEUBAUER: That's a good question. Mr. Miller bought it in 1988 as a single man. He has since married and has two children, and there's very limited living space under air other than the garage, which is totally utilized, and the work area.

Mr. Miller, maybe you'll stand up here and help me.

VICE-CHAIRMAN KONYK: The storage room that you're referring to, why couldn't that become this study area and then a storage room be built?

MR. MILLER: I have a lot of power tools and equipment and stuff in there that if I did convert that into a dining area, then I have no place to put that stuff.

VICE-CHAIRMAN KONYK: Well, then you build your storage shed on that side and then you're not going to worry about the setback. Is that correct?

MR. MILLER: I have to go and build another addition onto the house when --

VICE-CHAIRMAN KONYK: But you're not going to be building it in the same area that is going to create the need for the variance. You're going to be building it in an area where you're allowed to build it. Am I correct or am I incorrect?

MR. MILLER: At that point then I have to remove trees.

MR. MacGILLIS: That's what staff --

VICE-CHAIRMAN KONYK: See, that's unfortunate, but if there is an alternative solution, there is, then we can't grant a variance.

MR. MILLER: I'm just looking at it, you know, now I've got to take out my storage area where my workshop is, remove all that kind of stuff when I have a spot that's right adjacent to the kitchen where we could have a dining area, be able to sit out there, and have a window from the kitchen that's over the sink that's going to be used as a pass-through. It just makes logical sense where it should be.

VICE-CHAIRMAN KONYK: And unfortunately, you don't meet the setback, though, and that's the problem.

CHAIRMAN BASEHART: That's why he's here.

VICE-CHAIRMAN KONYK: Right.

CHAIRMAN BASEHART: State your name for the record.

MR. MILLER: My name is Matthew Miller.

CHAIRMAN BASEHART: And you've been sworn in?

MR. MILLER: Yes.

MS. NEUBAUER: Again, because of the way -- when I was doing this variance, it seems to me that all the seven criteria is very repetitious in the sense that basically what we're saying is because of the position of the house on the property facing the east and the fact that there is sufficient land between the homeowner on the west side and he is the only person that would ever have an objection to this, and he has none.

MR. MILLER: And I talked to him last week. He actually stopped to read the signs to see what those were about and came to me and wanted to know what was going on and why we had these out there. And I explained the situation to him and he has no objection whatsoever.

I've been talking to a few of my other neighbors. They can't figure out why there's a problem with me putting in an addition. They really could care less whether I put this small addition onto that side of the house or what. It doesn't affect them in the least. And the neighbor right to the west of me, he doesn't care. It doesn't bother him in the least.

CHAIRMAN BASEHART: Okay. Anybody else?

MS. NEUBAUER: I don't know if there's anything you can add, Matt.

CHAIRMAN BASEHART: Okay. Any other member of the public have anything they'd like to say about this item?

(No response.)

CHAIRMAN BASEHART: Seeing none, any board members have any questions of the applicant or the staff?

MS. STUMBERGER: I just have one question. At the very end you made a statement that you recommend denial. However, should this Board consider approval that you do have conditions. Could I just hear what they are?

MR. MacGILLIS: Really the only condition we recommend is that prior to the issuance of a building permit for PR 00 027100 which is in the system now for a 240 square foot room addition is that the applicant shall receive approval of a conceptual landscape plan that provides a supplementary screen between the addition and the property to the west and actually to the street. You wouldn't be able to see the structure.

MR. MILLER: So basically all you're looking for on that is just to have landscape around there to help hide the building.

At this point there are several trees towards the south side that would block it from there. I am in the landscape -- I don't do landscaping, I deal with landscapers, and whoever originally designed the property, it is heavily planted and I have no objections to --

MR. MacGILLIS: Would you mind turning that board around because there are pictures on the back of that of your property?

MR. MILLER: Well, this actually between -- this is looking from my house back to the neighbor's house. I've got a large citrus tree there that blocks most of it, anyway. So actually there is a lot of this whole thing there's a whole line of citrus trees, and you know, I don't have a problem with putting any more shrubs or trees or anything else in around it.

CHAIRMAN BASEHART: Okay.

MS. NEUBAUER: I don't know if this will make a difference, but I'll try. This is the property right here. This is the neighbor to the west. This is Mr. Miller. There is 74.6 feet between, and as you can see, there's vegetation, trees and so forth. This is the

proposed site of the addition. And again this is from the northwest addition.

And this is the front of the home, this is the garage. Excuse me. This faces the east. This faces the street which is the bedroom. And if I was going to put an addition on, I certainly wouldn't want to come out here by the bedrooms, so.

MR. PUZZITIELLO: That one picture on the bottom left is from the street?

MS. NEUBAUER: This one here?

MR. PUZZITIELLO: Bottom left.

MS. NEUBAUER: I'm sorry.

MR. MILLER: Yes.

MS. NEUBAUER: Yes, it is. Taken from the southwest --

MR. PUZZITIELLO: You're standing in the street when you --

MR. MILLER: And where the addition is going to be is behind this tree.

CHAIRMAN BASEHART: Any other comments or questions? Okay. We're ready for a motion.

VICE-CHAIRMAN KONYK: I'm not ready.

CHAIRMAN BASEHART: You're not ready for a motion?

VICE-CHAIRMAN KONYK: No, because I think --

CHAIRMAN BASEHART: Then you must have a question.

VICE-CHAIRMAN KONYK: Well, it's not a question. I can understand your position and I understand you want this addition. I think that you could probably go through the seven criteria and give us justification why you should be granted the variance. We can't do that for you.

The first item is: "Special conditions and circumstances exist that are peculiar to the parcel of land, buildings or structure that are not applicable to other parcels of land, structures or buildings."

MS. NEUBAUER: Again, when I was speaking to Mr. MacGillis -- this was yesterday, I believe -- I asked basically, the house position, is that not making it peculiar to this --

VICE-CHAIRMAN KONYK: Why don't you say that?

MS. NEUBAUER: I thought I did.

MR. MILLER: Yes. It's the way the house is situated on the lot. I mean, you know, if it was-- if the front door looked at the street, then I could go out the back there for the kitchen and I'd have no problem.

VICE-CHAIRMAN KONYK: Okay. So the configuration of the house on the lot has created this problem?

MS. NEUBAUER: Exactly. And number two, it's a self-created situation. Well, self --

VICE-CHAIRMAN KONYK: Well, "Special circumstances and conditions are the result of the actions of the applicant."

MS. NEUBAUER: Okay.

CHAIRMAN BASEHART: You indicated that when you bought the house or the property, the house was already there. You didn't create the situation?

MR. MILLER: No. The house was four, four-and-a-

half years old when I bought it.

VICE-CHAIRMAN KONYK: Okay. "Granting the variance shall confer upon the applicant special privileges denied by the comprehensive plan and this code to other parcels of land." Well, I mean, you do get variances, right?

MR. MacGILLIS: I mean, if you feel that we can put conditions on it that would mitigate and supplement that stuff that you're concerned with with their not meeting the exact intent of each one of those criteria. I mean, you can go back in. I mean, the intent of the code is for setbacks to protect adjacent property owners, land values and leave area to keep the feeling of openness in these rural areas.

Each community, as I explained to the applicant has setbacks to reflect that area. If you go in there and start carving away at the setbacks, but I mean, if they've got the native vegetation and they're willing to supplement it, the room is only 12 feet wide. It's the length. I mean --

MS. NEUBAUER: We would be more than happy if we can get the Board to satisfy this. But we would be more than happy to put in whatever vegetation you want. You agree with that?

VICE-CHAIRMAN KONYK: Number five is, "The approval of variance is the minimum variance that will allow a reasonable use of the parcel, land, building or --" How come?

MS. NEUBAUER: Again, I go back to the same thing. There's no alternative but where to put the addition. Again, they're so repetitive, and I'm sorry, but that's what they seem to be to me. And if I'm misunderstanding --

VICE-CHAIRMAN KONYK: No, your answers are repetitive. The requirements aren't repetitive. Nobody says your answers have to be different.

MS. NEUBAUER: Okay.

MR. PUZZITIELLO: Before you go -- in the beginning you were saying there's three different ways to interpret the setbacks, and one of them was a 25 foot setback. Could you go over that again and why you didn't apply that?

MR. MacGILLIS: If you have a conforming lot, you comply with the regular AR setbacks.

MR. PUZZITIELLO: Right.

VICE-CHAIRMAN KONYK: Which is?

MR. MacGILLIS: Which is 100 on the front, 50 on the side, 80 on the side corner.

VICE-CHAIRMAN KONYK: Okay.

MR. MacGILLIS: They're not a conforming lot. They're a legal non-conforming lot.

VICE-CHAIRMAN KONYK: Okay.

MR. MacGILLIS: So then you go to percentage setbacks. You take a percentage of the depth of the lot or the width of the lot. If they're not meeting the 300 foot depth, you take either a 30% or a 20% of that property dimension, and the intent of that is as you go down to the street if you apply a percentage consistently, the lots are usually all the same depth,

you're going to have consistency in the setbacks, similar to what you would have if you applied the regular 100 foot setback.

That's what was applied to this original house. I don't know why the guy who built it stuck it over in that corner, but the original guy put it over there in that corner and left all that big field out front. Maybe he intended to have a horse or something, I don't know.

VICE-CHAIRMAN KONYK: Okay.

MR. MacGILLIS: The 25 is if somebody already had a house built at some weird setback and they couldn't meet the percentage or they couldn't meet the regular setbacks or they couldn't build a house period on that lot without having to come here for a variance, the Zoning Division came up with the 25 to recognize the AR has the most cumbersome setbacks than any other zoning district. And we didn't want to put the burden on every property owner in Palm Beach County to have to come in here for a variance if we could look at a lot and say, you know what, you can't meet percentage and you'll have to come in for a variance; you'd be hearing five to ten variances every month.

Now when somebody comes in here with a weird situation, they come up to us, they show us that, look, I can't meet the percentage; I can't meet the regular. Then staff looks at it and says, you know what, you've got a pond in the back yard or easements; you're absolutely right. You can't meet any of them.

And short of going for a variance, we can then grant internally to say that you can move forward. And that's what -- I believe that's what they originally thought for some reason because when the applicant came in, they brought in the 25 foot setback thinking that's what they could apply, and staff told them no because your house, you do have all that yellow area that's shown on the back of that exhibit to build on.

MR. PUZZITIELLO: I just wanted to clarify that. Thank you.

MS. CARDONE: Mr. Chairman, may I make a comment?

CHAIRMAN BASEHART: Yes, ma'am.

MS. CARDONE: When we have applicants come before us, I'm a little bit concerned about the procedure we're taking right now because we generally don't go through step by step by step to encourage them in how to address us. And I would not want any other applicant saying, you know, I made my presentation to you, you based your decision on it, you didn't try to draw something out of me to make a decision upon it.

When it comes to this situation I'm sorry it doesn't fit their family needs right now, but there are zoning criteria that we have. And I'm also very concerned that somebody else would come in and give as the special conditions the fact that we gave someone else a special condition, and I don't want to get into that situation.

So, you know, as we proceed I'd like you to keep that in mind. I'm very sorry for this particular situation, but I do agree with staff; when they give us their conditions and they cannot be met because of the

special circumstances of a family.

CHAIRMAN BASEHART: Well, I think -- first of all I don't think we need to worry about precedents here. You know, each variance has to be considered individually and on its own merit.

I think the situation here, I think Ms. Konyk is trying to help clarify the issue because it's obvious that the applicant hasn't been through this process before and is not familiar with it, and I think Chelle's trying to isolate the statutory criteria that are necessary to be met in order to grant a variance as just a way to precipitate some discussion of the various criteria. But, Chelle, do you --

VICE-CHAIRMAN KONYK: Well, we often go over the seven criteria point by point with the applicants that are not familiar with the process. This isn't something new and I think it's in the applicant's best interest to have the opportunity to understand how our process works.

If they're not familiar with it, I think it's my obligation to familiarize them with our process.

CHAIRMAN BASEHART: Okay. So where were we?

VICE-CHAIRMAN KONYK: So we're on number six. "Grant of the variance will be consistent with the purposes, goals, objectives and policies of the Comprehensive Plan and this Code."

Jon, does your explanation of the differences between the setback, does that come into play there at all, the 25 foot or the 35 foot?

MR. MacGILLIS: This provision, what it's asking you, I mean, it really doesn't apply to the Comp Plan because the land use zoning out here is RR10 which allows for single family residentials on 10 acre lots.

Somebody came in here and subdivided these lots into smaller lots, which is partly, I guess the Board could look at that fact because AR Zoning, you're supposed to have 10 acres. However, when we had 5 acres five years ago until we went and amended the Comp Plan again and put it back up to 10.

But these lots were subdivided at one point, and it's only 1.3. So I mean when you compare it to the 10 acres, it does have effect on --

CHAIRMAN BASEHART: I think there's some specific language in the Comp Plan recognizing the Acreage phenomenon and in Jupiter Farms. It recognizes them as legitimate non-conforming areas.

I think that you could conclude that what would be inconsistent with the Comprehensive Plan is if there was an effort, a variance being requested, that wanted to create additional lots that were below the 10 acre standard. And that's not what we have here.

I think the Code and the Comprehensive Plan both recognize this as an established, vested single family area in each and every freestanding acre and a quarter-plus lot is eligible for a single family home. There isn't any attempt here to create more than a single family home on this property. I mean, that's my take on it.

MR. MacGILLIS: And the goal of the Code, what

they're asking in the second part of number six is what -- the goal of the Code is you have minimum setbacks in every zoning district.

The AR, as I've just explained numerous times, has three different setbacks so we don't have everybody in here applying for variances. The code has already addressed the fact that some people can't meet the 100 or the percentage that's even allowed, the 25.

I mean, the only thing in this case if that's the Board's -- going in that direction is the fact that they have a lot of buffering and landscaping here and with the condition to even put further landscaping in, you know, they can maintain if not enhance that landscaping that's between those two things to maintain that rural openness feeling or character between the things that the neighbor to the west who would be the one most impacted by this because he's living there, we have not received anything from him.

He has not written us back. He has not telephoned us. And they did not bring us a letter. So I want it clear on the record that it's just their testimony that he said that, that he doesn't have a problem with it. So staff has not received any --

VICE-CHAIRMAN KONYK: But this has been advertised and signed and he would have --

MR. MacGILLIS: Yes, he would --

MR. MILLER: He did see the signs. Like I said, he came up to the house one day because he had read the signs.

VICE-CHAIRMAN KONYK: I'm sure he did.

MR. MacGILLIS: A letter went out, because we did check yesterday for the certified --

MS. NEUBAUER: Well, getting a letter from him -- excuse me -- whether it be notarized or whatever, if that would be part of it, because he has no objection. And it was just because we were not able to meet with him we're not able to bring it in to you today.

MR. MacGILLIS: Yeah, I'm just saying on the record staff has not received anything, so I don't want the Board to base their --

CHAIRMAN BASEHART: I think the only thing we can conclude, we can conclude that he has no objection because he was noticed and he didn't come to object. We can't conclude that he supports the request because he didn't come to physically support it. So I guess all we can really conclude from what's happened is that he's neutral.

Okay. Anybody?

VICE-CHAIRMAN KONYK: I'm done.

CHAIRMAN BASEHART: All right.

MS. NEUBAUER: As far as the last one goes, it just goes back to what we've been talking about, is that he's the only person that would have any objections. It doesn't affect anyone else, whether it be east, north or south.

The only person that would be affected would be the west, and if he ever decided to sell the property and the addition was there, the person buying the home if they didn't like the addition wouldn't have to buy the

home from the person selling the property on the west. Thank you.

CHAIRMAN BASEHART: Anybody?

VICE-CHAIRMAN KONYK: Any questions?

MR. GERBER: I do. I guess I do have a concern because it raises in number 7 about, you know, what's going to happen over time.

I mean, I recognize what you're saying that perhaps the person to the west has no objection at the present time. But I do look at it long term in thinking, you know, people in this area may come down the road and say, well, how did this person do it? Well, staff said no, but no one else objected, so it got through. Well, I have a concern about that. How would you address that?

MS. NEUBAUER: You mean long term?

MR. GERBER: Yeah, long term. If the rules are here and it doesn't conform with the rules, but no one objects to it at the moment --

VICE-CHAIRMAN KONYK: Well, she did really kind of address it by saying that person who lives to the west right now if they were going to sell their house, it would be obvious to the person buying it. So they would have the option of not buying the home to the west if they objected to this addition to the east.

MR. GERBER: I understand, but I'm looking at the neighborhood as a whole, not just the immediate residents. I'm looking to the neighborhood that's going to say, well, you know, I live five houses down and I would like to do this, too.

MS. NEUBAUER: Okay. Well, most of these homes in that area face the street and I doubt very seriously that if they had to put an addition on their home would come up against the same type of problems that we have under this particular case because they do face the street.

This is the only home in the neighborhood that is set on this property in that particular direction. The other homes don't have the problem.

MR. MILLER: Most of the homes around where I'm at are pretty much centered right in the middle of the lot. So it would be almost any direction they wanted to --

VICE-CHAIRMAN KONYK: And you do have something unique in that your house doesn't face the street?

MR. MILLER: Right.

VICE CHAIRMAN KONYK: The side of your home faces the street.

MR. MILLER: I mean, the property sits back to one side.

VICE-CHAIRMAN KONYK: Okay. Also, just for clarification for you so you know, the granting of a variance doesn't mean that somebody can automatically come in here and get the same variance just because they were granted it.

MR. GERBER: I understand, but certainly it's an argument someone would attempt to make.

CHAIRMAN BASEHART: Any other discussion? Do we have a motion?

MS. STUMBERGER: I could try this one. This is

one I've never done before. Remember, I'm almost as new as Mr. Gerber.

I'd like to make a motion to approve this variance number 2000-056, BOFA. Now I'm going to ask this young lady to help me a little bit with this. I think that they have sufficiently explained and met the seven criteria and when this gentleman originally bought the house, he did not create this situation. It was already existing. And if they meet the landscape conditions put on by staff, that would be a requirement to go along.

MS. RAINEY: You're saying it would be a condition to grant the variance?

MS. STUMBERGER: That's correct.

CHAIRMAN BASEHART: Jon, do you have the language drafted?

MR. MacGILLIS: Yeah, just writing it now. Prior to the issuance of a building permit, the applicant shall receive approval of a conceptual landscape plan that demonstrates supplementing the existing native vegetation to buffer the addition from the lot to the west and from 52nd Road North.

MR. PUZZITIELLO: With approvals by the zoning staff?

VICE-CHAIRMAN KONYK: Right.

MS. STUMBERGER: And the gentleman has agreed to meet the landscape conditions.

MR. MILLER: Yes, I have.

MR. PUZZITIELLO: Second.

CHAIRMAN BASEHART: We have a motion by Ms. Stumberger; we have a second by Mr. Puzzitiello. Why don't we do this by roll call?

MS. MOODY: Ms. Nancy Cardone?

MS. CARDONE: No.

MS. MOODY: Ms. Chelle Konyk?

VICE-CHAIRMAN KONYK: Yes.

MS. MOODY: Mr. Raymond Puzzitiello?

MR. PUZZITIELLO: Yes.

MS. MOODY: Ms. Meril Stumberger?

MS. STUMBERGER: Yes.

MS. MOODY: Mr. Stanley Misroch?

MR. MISROCH: Yes.

MS. MOODY: Mr. Jonathan Gerber?

MR. GERBER: Yes.

MS. MOODY: Mr. Bob Basehart?

CHAIRMAN BASEHART: Yes, and I'd like to just add one more thing for what Ms. Stumberger's motion was.

I think that the key issue for me is the fact that there is that third option that the Code allows that would allow a setback of 25 feet. I think there is a hardship here that was not self-created and because of the layout of the property, the location of the house, and the design of the unit, there's no reasonable alternative for an addition other than where they want to put it.

Given the fact that there are ample examples of 25 foot setbacks in the Acreage area, we're not creating a setback that doesn't exist in the area; it's allowed to be done administratively if the staff concludes that

there isn't another reasonable alternative.

So I don't think we're creating a situation that doesn't exist all over the place out there, that and given the fact that looking at the aerials in the photographs it's clear to me that there would be no negative impact on surrounding properties or property owners. I think that the variance is warranted. That's the reason for my vote.

VICE-CHAIRMAN KONYK: Thanks, Bob.

CHAIRMAN BASEHART: You're welcome. Okay. Why don't we take a five minute break for the court reporter? (Whereupon, a short recess was had.)

CHAIRMAN BASEHART: We will reconvene. Before we get to that, the next item has been postponed or withdrawn?

MR. MacGILLIS: Staff has withdrawn this request. The applicant's appeal was actually resolved. The Zoning Director reevaluated the new information that was submitted by Cliff Hertz and was in agreement with his argument. Therefore, there's nothing to appeal.

CHAIRMAN BASEHART: Very good. Let's just let the record show that BOFA2000-063 --

MR. PUZZITIELLO: BAA.

CHAIRMAN BASEHART: BAA, I'm sorry, BAAA has been withdrawn.

CHAIRMAN BASEHART: Okay. That brings us back to the BOFA2000-058. If the applicant can come to the podium, you were out discussing issues. Has there been any resolution that possibly you've reached amongst you?

MR. SEAMAN: Yes.

CHAIRMAN BASEHART: Okay, Alan.

MR. SEAMAN: The consensus has come between staff, Mr. Casariego and Mr. Busha, and Mr. Lee, and the consensus is to backfill on the west side 15 feet to meet the required setback. Along with that, we will modify the variance request, and there's a couple of things that we need to change on the conditions of approval.

CHAIRMAN BASEHART: Okay. Which are?

MR. SEAMAN: Okay. The staff will support the variance with the following amendment. If you'll turn to page 26, you can notice that at the bottom of the page it says "Code Section". And in lot 43 what we want to do is delete item number 3 which says, "1.5.B Existing Excavation: Side Interior Setback (West Property Line)." That we would want to delete.

Under Lot 44, item number 4 says -- we would like to delete: "1.5.B Existing Excavation: Side Interior Setback (West Property Line)", but the remainder of the variance request will remain.

And we have conditions that we'd like to modify. Page 29, condition number 1, near the last sentence. I suppose I should read the entire thing.

"Prior to February 2, 2001, the property owners for tract 44 and tract 43, shall submit to the Zoning Division a hold harmless and indemnification agreement to be forwarded to the County Attorney's Office for review and approval. The agreement shall specifically include indemnification against any negligence on the part of Palm Beach County in approving the indemnifier's request for a...", and here's where you need to insert "... (east) side interior and rear setback variance relief from the literal intent of the Unified Land Development Code, Excavation standards."

I would like to also add a fourth condition, which will read: "By May 16, 2001, and prior to the issuance of a Certificate of Occupancy for lot number 44, both applicants of lot 44 and lot 43 shall backfill the west end of the existing pond to provide the minimum 15 foot setback required between water's edge and the west property line for both lots 44 and 43."

CHAIRMAN BASEHART: By -- when was that?

MR. SEAMAN: May 16, 2001.

CHAIRMAN BASEHART: Okay.

MR. MacGILLIS: Did you say "or prior to"?

MR. SEAMAN: "...and prior to the issuance of the Certificate of Occupancy."

MR. MacGILLIS: Whichever occurs first?

CHAIRMAN BASEHART: Okay. The gentleman from next door, Mr. Busha, you're comfortable with those modifications?

MR. BUSHA: Yes, sir.

CHAIRMAN BASEHART: Okay. Thank you.

MR. BUSHA: Thank you.

CHAIRMAN BASEHART: Any board member feel any additional discussion is necessary?

(No response.)

CHAIRMAN BASEHART: Then I guess we're ready for a motion.

VICE-CHAIRMAN KONYK: I make a motion to approve BOFA2000-058 as modified with the conditions as modified and the staff report as modified becoming part of the record.

CHAIRMAN BASEHART: And that will withdraw or the elimination of the west side variances. Okay.

MS. STUMBERGER: I'll second that.

CHAIRMAN BASEHART: We have a motion by Ms.

Konyk, second by Ms. Stumberger. Any discussion?

(No response.)

CHAIRMAN BASEHART: All those in favor indicate by saying aye.

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no?

(No response.)

CHAIRMAN BASEHART: Motion carries.

VICE-CHAIRMAN KONYK: The applicant did say they agree and understood all the conditions, didn't he?

CHAIRMAN BASEHART: Yes, the applicant has indicated an agreement with the conditions? Yes.

VICE-CHAIRMAN KONYK: As modified.

COURT REPORTER: He needs to come up for the record.

VICE-CHAIRMAN KONYK: You need to come forward and say that you agree with the conditions as modified.

MR. CASARIEGO: Yes, I do agree with the conditions.

CHAIRMAN BASEHART: Thank you. Chelle, anything else?

VICE-CHAIRMAN KONYK: On this one?

CHAIRMAN BASEHART: Yes.

VICE-CHAIRMAN KONYK: No.

CHAIRMAN BASEHART: That concludes the regular business.

VICE-CHAIRMAN KONYK: Did we take a vote?

CHAIRMAN BASEHART: Yeah, we did. We took a vote.

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. The subject properties (tract 43 and 44) were initially one lot of record equaling two and a half acres. The subdivision does fall within the Royal Palm Beach Acreage. The two parcels, identified as tract 43 (1.15 acre, approx. 239' x 209') and tract 44 (1.3 acre, approx. 271.94' x 208.81') are located on 40th Lane and 40th Street North, respectively. Both sites are approximately .5 miles E of Avocado Blvd. in the AR Zoning District, within Royal Palm Beach Acreage. The 0.33-acre pond which traverses the rear property line shared by both tracts has

existed since 1988 (prior to August 31, 1991, the date current ULDC excavation regulations were adopted). The pond was excavated when the setback requirements for residential ponds were 25 feet from all property lines. When the current standards were adopted in 1991, the code established several types of excavations each with their own standards in terms of setback, size of the pond, depth, slopes and littoral planting. This pond is exempt from all these requirements because it is a legal non-conforming pond. The setback requirement is the only requirement the applicant must meet. This is a rural residential subdivision that supports single family residents, accessory structures and ponds. The rural natural character of the area is enhanced by the preservation of the native vegetation and the 12 year old pond does support thriving wetland.

The subject property is surrounded by single family residential properties of similar size (1.25 acres) and layout. The property to the east is vacant while to the west exists a residence and accessory pond.

Recently, the applicant and owner of tract 44 submitted a building permit application for a proposed single family residence. The Building Department informed the applicant that the existing pond was encroaching into the required setbacks. Therefore, the pond has to be either filled to reestablish the 25 foot setback in effect at the time when this pond was excavated or apply for a variance to allow the pond to remain in the existing setbacks. Since both tracts 44 and 43 were affected by the pond, both owners have applied with CIAO Construction Investment Management, Inc. acting as representative applicant for both.

There are many ponds on lots within the Royal Palm Beach Acreage subdivision. Many of the ponds were excavated prior to the adoption of the current 1991 excavation standards going into effect. Prior to 1991 a property owner could excavate on a single family lot provided the 25-foot setback from all property lines were maintained and no fill was removed from the site. There was no permitting or inspection process to monitor whether or not these requirements were enforced uniformly in the field.

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

NO. The current owners purchased tract 44 in 1995 and were not aware of the existing pond that was encroaching into the required 25' or the

current 15' setbacks. The owners of tract 43 were also unaware of the setback requirements but wish to rectify the violation with the variance request. Both property owners desire to maintain the pond in the existing configuration. They are co-applicants of the variances. The variance process has delayed one of the property owners from being issued a building permit until the pond encroachment is addressed.

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

NO. Other property owners have submitted similar variance requests and have been approved by the Board of Adjustment (i.e. BA98800081). The applicant has demonstrated that the granting of this variance will only allow an existing situation to remain. Staff has no record of complaints from surrounding residents related to the pond encroaching into the setbacks. The general intent of the setbacks will be satisfied, if the variances are 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 requested variances **are** the minimum that will allow the pond to remain in the same configuration without costly modifications. The current owners purchased tract 44 lot in April 2000 and were not aware of the existing pond that was encroaching into the required 25' or the current 15' setbacks. The owners of tract 43 purchased their property in September of 1995 were also unaware of the setback requirements but wish to rectify the violation with their duplicate variance request. The property owners did not excavate the pond and were unaware of the encroachment when they purchased their lots. If the variance is denied, the applicant would have to fill the pond at considerable expense to the owners and inconvenience to neighbors (noise and traffic on roads resulting from fill be brought in to fill the pond & heavy machine to re-establish slopes).

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

YES. The requested setback variances **are** the minimum necessary to allow the subject pond to

remain in its present configuration. Many lots in this rural and other Palm Beach County subdivision support ponds that was excavated many years ago. Staff has found no formal complaints on file with code enforcement against this pond from the surrounding neighbors including the property owners adjacent to the subject tracts. As previously indicated, the County will require the property owners to file a Hold Harmless Indemnification Agreement with the Palm Beach County.

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 minimum setback, as previously stated, is to ensure there is a land area between property lines to allow for access to the lake for maintenance vehicles and pedestrians. Six foot and ten foot areas exist at the east and west property lines providing some access at the interior setbacks of the pond as well as substantial access at the north and south perimeters. There were no formal complaints against this pond from the surrounding neighbors. In addition, the County will require the property owners to file a Hold Harmless Indemnification Agreement with the Palm Beach County. Therefore, granting of the requested variances will be consistent with Comprehensive Plan as well as the general intent of the excavation setback requirements.

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

NO. This rural subdivision has many lots that are similar in size and layout supporting existing ponds. Many of the ponds were excavated prior to 1991 when the County did not permit or inspect the ponds. Therefore, in certain cases the contractor excavated the pond too close to the property line. This pond has existed for at least 12 years without any formal complaints from surrounding neighbors. Staff is recommending a condition of approval that the subject property owners file a Hold Harmless Indemnification Agreement with the Palm Beach County.

ENGINEERING COMMENT(S)

No comments. (**ENG**)

ZONING CONDITION(S)

1. Prior to February 2, 2001, the property owners

for tract 44 and tract 43, shall submit to the Zoning Division a Hold Harmless and Indemnification Agreement to be forwarded to the County Attorney's office for review and approval. The agreement shall specifically include indemnification against any negligence on the part of Palm Beach County in approving the indemnifier's request for a side interior and rear setback variance relief from the literal intent of the Unified Land Development Code, Excavation standards. **(DATE: MONITORING-ZONING-Ctty Att)**

2. Prior to the issuance of the final Certificate of Occupancy for the proposed single family dwelling on tract 44, the property owner shall provide the Building Inspection Section with a copy of the Board of Adjustment Result Letter and a copy of the Plot Plan, (Exhibit 18), submitted to the Board of Adjustment. **(CO-INSPEC)**
3. By July 2, 2001, or before issuance of a building permit for Lot 44, a recorded copy of the Hold Harmless and Indemnification Agreement shall be submitted to the Zoning Department from both Lots 43 and 44. **(DATE:MONITORING-ZONING-BA)**

CHAIRMAN BASEHART: That concludes our regular business. The only other item that we have is the review and acceptance of our attendance record.

The record indicates that Mr. Wichinsky was absent at our October meeting for business reasons. And, of course, Mr. Gerber was not required to be here because he wasn't a member yet.

So do we --

VICE-CHAIRMAN KONYK: I make a motion to excuse Glen's absence for business.

CHAIRMAN BASEHART: All those in favor?

MS. STUMBERGER: Second.

CHAIRMAN BASEHART: Second by Ms. Stumberger. All those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Motion carries.

I guess the next and only other item on the agenda is --

MR. MISROCH: Motion for adjournment.

CHAIRMAN BASEHART: We have a motion for adjournment by Mr. Misroch.

VICE-CHAIRMAN KONYK: I'll second that.

MS. STUMBERGER: Second.

CHAIRMAN BASEHART: Sounds like a unanimous second. We're adjourned.

* * * * *

(Whereupon, the meeting was concluded at 10:50 a.m.)

C E R T I F I C A T E

THE STATE OF FLORIDA)
COUNTY OF PALM BEACH)

I, Sophie M. (Bunny) Springer, Notary Public,
State of Florida at Large,

DO HEREBY CERTIFY that the above-entitled and
numbered cause was heard as hereinabove set out; that I
was authorized to and did report the proceedings and
evidence adduced and offered in said meeting and that the
foregoing and annexed pages, 1 through 57, comprise a
true and correct transcription of the Palm Beach County
Board of Adjustment Meeting.

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

IN WITNESS WHEREOF, I have hereunto set my hand
and seal this 11th day of December, 2000.

Sophie M. Springer, Notary Public.