

**PALM BEACH COUNTY**  
**BOARD OF ADJUSTMENT**

Thursday, April 19, 2001  
9:05 a.m. - 10:05 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. Jonathan Gerber

Mr. Wayne M. Richards

Mr. Joseph J. Jacobs

Ms. Nancy Cardone

Mr. Glenn Wichinsky

David Cuffe, Civil Engineer II, Land Development

Michael Jones, Asst. County Attorney

Jon P. MacGillis, Principal Planner, Zoning

Alan Seaman, Senior Planner, Zoning

Janet Quinn, Secretary

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P R O C E E D I N G S

CHAIRMAN BASEHART: I'd like to welcome everybody to the April 19, 2001 Board of Adjustment meeting. Let's start out with -- I'll do this under remarks of the Director.

I guess the first thing on the agenda is roll call.

MS. QUINN: Ms. Nancy Cardone.

MS. CARDONE: Here.

MS. QUINN: Mr. Joseph Jacobs.

MR. JACOBS: Here.

MS. QUINN: Ms. Chelle Konyk.

VICE CHAIRMAN KONYK: Here.

MS. QUINN: Mr. Glenn Wichinsky.

MR. WICHINSKY: Here.

MS. QUINN: Mr. Wayne Richards.

MR. RICHARDS: Here.

MS. QUINN: Mr. Jonathan Gerber.

MR. GERBER: Here.

MS. QUINN: Mr. Bob Basehart.

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

The second item is the proof of publication. I have the proof in front of me. I guess we're ready for a motion to accept the proof into the minutes.

MR. JACOBS: So moved.

VICE CHAIRMAN KONYK: Second.

CHAIRMAN BASEHART: Motion and a second. All those in favor indicate by saying aye?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no?

(No response.)

CHAIRMAN BASEHART: Okay. Under remarks of the Chairman, the only thing I'd like to do, for those of you that are not familiar with the proceedings of this Board and haven't been here before, we break the agenda down in basically two parts.

The first part is what we call the consent agenda and those are made up of items that staff has recommended approval of, that if there are recommended conditions of approval, the applicant agrees with those conditions and where there's been no indication of opposition from members of the surrounding community.

If no one is here to ask to speak on those items, they will -- and if all the Board members after having read the staff report recommendations are comfortable with those recommendations, those items will remain on the consent agenda, meaning that no presentation is

necessary by the applicant, simply an acknowledgement of agreement with conditions. And then they will be approved as approved. The minutes will include the staff report as the record of the hearing.

Other items, items that are not on the consent agenda, the regular agenda are items where either staff is recommending denial in part or in whole or there are conditions that are not acceptable to the applicant or where there would have been indication of opposition from the public. Those items will require a full hearing and a presentation by the applicant to justify the granting of the variances. That I think is about the only thing that I have to say under remarks of the Chairman.

The next item would be the approval of the minutes. We've all received copies of the minutes, both in hard copy and on disk. If everybody's read them and has no problems, they're ready for adoption. That would be the minutes of last month's meeting, the March meeting.

VICE-CHAIRMAN KONYK: I make a motion to approve the minutes.

MR. JACOBS: Second.

CHAIRMAN BASEHART: Okay. We have a motion and a second for approval of the March meeting minutes.

All those in favor indicate by saying aye?

BOARD: Aye

CHAIRMAN BASEHART: Opposed, no?

(No response.)

CHAIRMAN BASEHART: The minutes are adopted.

Next item is the remarks of the director. Jon?

MR. MacGILLIS: No. No comments this morning.

CHAIRMAN BASEHART: All right. That gets us to the agenda. And again, as I indicated, the first part of the agenda is the consent agenda and all I think but one item, unless anybody wants to pull their item or staff recommends pulling an item, those will all remain on consent.

CHAIRMAN BASEHART: The first item is BATE 2001-021. Is the applicant here?

MR. KELLEHAM: Good morning. My name is John Kelleham (phon.) on behalf of Marathon Ashland Petroleum.

CHAIRMAN BASEHART: Okay. The staff is recommending approval of the extension. These are not -- time extensions are not publicly advertised, so anybody have any reason to want to pull this item?

(No response.)

CHAIRMAN BASEHART: Okay. It remains on consent.

#### **STAFF RECOMMENDATION**

Staff recommends of a **maximum 24 month** time extension from **April 20, 2001 to April 20, 2003**, for the development order and from November 20, 2001 to November 20, 2003 for condition #1 consistent with Section 5.7.H.2 of the ULDC, to provide additional time for the petitioner to commence development and implement the approved variances. The property owner shall comply with all conditions of approval of BA2000-016.

The applicant shall comply with all previous conditions of BA2000-016, unless modified herein:

1. By November 20, 2000, the subject property owners shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the certified Site Plan by DRC, simultaneously with the building permit application. **(BLDG PERMIT:BLDG)**

#### **is hereby modified to read:**

By November 20, 2003, the subject property owners shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the certified Site Plan by DRC simultaneously with the building permit application.

2. Prior to issuance of final Certificate of Occupancy, the applicant shall upgrade the landscape material in the right-of-way

buffer along Lake Worth Road as follows:  
**(CO/LANDSCAPE)**

- 1) One 14' high native shade tree on both sides of the ingress/egress;
  - 2) One group of five Booted Sabal palms planted 30 feet measured from the center of the required shade tree;
  - 3) Continuous 36" high native hedge planted 24" on center;
  - 4) Earth berm to run the length of the buffer.
3. Prior to issuance of final Certificate of Occupancy, the applicant shall upgrade the landscape material in the right-of-way buffer along Kirk Road as follows:  
**(CO/LANDSCAPE)**
- 1) Booted Sabal palms planted every 10 feet center between the north end of the dumpster and the north edge of the driveway;
  - 2) 14' high native shade trees planted every 30 feet on center on the south of the driveway;
  - 3) Booted Sabal palms planted every 15 feet center on the south of the driveway;
  - 4) Continuous 36" high native hedge planted 24" on center.
4. Prior to issuance of final Certificate of Occupancy, the applicant shall upgrade the landscape material in the right-of-way buffer at the SW corner (where the chord of 40' radius occurs) as follows:  
**(CO/LANDSCAPE)**
- 1) Three Royal Palms planted every 15 feet center;
  - 2) Continuous 36" high native hedge planted 24" on center.
5. All landscape material shall be maintained in accordance with Article 7.3.H.  
**(ONGOING: CODE ENF/landscape)**
6. By August 18, 2000, the applicant shall apply to the Board of County Commissioners to request for Re-zoning and a Conditional

A Use to allow a convenience store with gas sales on the subject property. **(DATE: MONITORING-Zoning)**

7. Prior to DRC certification, the applicant shall ensure that the BofA conditions are shown on the Site Plan (Exhibit 23, BA2000016). **(DRC:ZONING)**
8. The applicant shall construct the site consistent with the Site Plan, Exhibit 23, in the BA2000-016 file. Any future modifications to the site layout shall ensure compliance with BCC conditions, code requirements and be consistent with the general intent of the Board of Adjustment approval. **(ZONING-ONGOING)**

#### **ENGINEERING COMMENT**

Please be advised that the base building lines for the subject property will be established at 54.5 ft. east from the right-of-way center line of Kirk Road, 76.0 ft. north from the right-of-way centerline of Lake Worth Road, and following the interior line of a 40 ft. corner clip (i.e., safe sight distance triangle) connecting the Base Building Lines at the intersection. Since the site plan submitted for the variance request and the requested variances themselves do not take these Base Building lines into account, it does not appear that the proposed project layout will be feasible even if all variances are granted as stated. It is recommended that the applicant contact Land Development Division regarding the Base Building Line waivers necessary to delineate the developable area of the property, in order that a revised site plan may be prepared and request for variances may be based upon the actual development limitations of the site. **(ENG)**

CHAIRMAN BASEHART: Next item is BATE 2001-022. Is the applicant here?

MS. ANDERSON: Yes, I am.

CHAIRMAN BASEHART: Okay. Staff is recommending approval. Any problems by any member of the Board?

MS. SPRINGER: Her name?

MS. ANDERSON: Oh, Candy Anderson with Kilday & Associates.

CHAIRMAN BASEHART: Okay. We'll leave this on consent as well.

MS. ANDERSON: Thank you.

**STAFF RECOMMENDATION:**

Staff recommends **approval** of a maximum six month time extension for Condition #4, BA2000-012, from March 16, 2001 to September 16, 2001, consistent with Section 5.7.H.2 of the ULDC, to provide additional time for the petitioner to commence development and implement the approved variances.

The property owner shall comply with all conditions of approval of BA2000-012, unless modified herein:

The above variance(s) was granted subject to the following conditions:

**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 for the 60 foot architectural free standing tower. **(BLDG PERMIT-BLDG)**
2. Prior to DRC certification of the revised Site Plan for Shoppes at New Albany, the applicant shall reflect the revised parking lot, setback for the proposed 60 foot high tower and additional landscaping required by Board of Adjustment conditions of approval. (DRC-Zoning)
3. Prior to DRC certification of the site plan for Shoppes at New Albany MUPD, the applicant shall reflect the upgraded landscape in the parking lot:
  - a. Landscape islands shall be constructed every 10 parking spaces or fraction thereof.
  - b. For the proposed addition 90 parking spaces and additional 40 sq/ft of landscaping shall be shown within the parking lot in proximity to buildings 2 and 3 shown on Site Plan Exhibit 9 in BA2000-12 File. This additional landscaping, 3,600 square feet, shall

support additional 5 shade trees over minimum code and 75 shrubs. This landscape is intended to compensate for the 90 additional parking spaces being granted with variance 2000-12. The plant material shall be maintained at all times to ensure the parking lot is adequately shaded and buffered from the street.  
**(DRC-Zoning-Landscape)**

4. By March 16, 2001, the applicant shall obtain a final inspection on the parking lot for this use in order to vest the parking variance for 90 additional parking spaces and obtain a building permit for the architectural 60 foot tower by this date. **(DATE: MONITORING-INSPECTION)**

**is hereby amended to read:**

By **September 16, 2001**, the applicant shall obtain a final inspection on the parking lot for this use in order to vest the parking variance for 90 additional parking spaces and obtain a building permit for the architectural 60 foot tower by this date. **(DATE: MONITORING-INSPECTION)**

5. If a final landscape plan has been issued for this site, the applicant shall amend it to reflect the additional 3,600 square feet of landscaping and plant material by July 16, 2001, or prior to issuance of the final certificate of occupancy for any of the three buildings on site. **(DATE: MONITORING-LANDSCAPE)**

6. The construction of the 60 foot high tower in the platted Conservation easement along the south property line is permitted only if the designated Open Space is not counted toward the required 6 acres open space for the LSMU project. **(DRC-ZONING) COMPLETED**-See note on Site Plan

7. LIGHTING:

A) All outdoor lighting used to illuminate the decorative architectural tower shall be of low intensity, minimum necessary to satisfy Palm Beach County Security Code,

shielded and directed down and away from adjacent properties and streets.  
(CO/ONGOING:BLDG/CODE ENF-Zoning)

B) The lighting condition above shall not apply to proposed security or low voltage landscape/accent type lights to emphasize plant material at the base of the decorative tower or the tower's clock face. (ONGOING: CODE ENF)

C) No beacon-style lighting shall be permitted on the decorative architectural tower. (CO/ONGOING/CODE ENF)

**ZONING COMMENT:**

The applicant has administratively amended the site plan to note that the Conservation/Open space tract of land area that the tower is to be constructed on shall not count toward the overall 6 acre LSMU (Ordinance 96-66) Conservation/Open Space Acreage. This note was placed on the Site Plan at staff request since the applicant chose not to amend the plat to delete the land area under the tower which is within the designated conservation/open space easement. The ULDC definition of Open Space specifically precludes any structure in an open space easement.  
(ZONING)

**ENGINEERING COMMENT:**

No Comment (ENG)

CHAIRMAN BASEHART: Next item is BOFA 2001-023.

MR. MacGILLIS: Mr. Chairman, the Agent has requested this morning that this item be pulled. He has a question, he's got the property owner here. It's one of the conditions staff has imposed on this. So staff recommends it be

pulled.

CHAIRMAN BASEHART: Okay. That item is pulled.

VICE-CHAIRMAN KONYK: Re-ordered to the first item on the agenda?

CHAIRMAN BASEHART: Yes.

VICE-CHAIRMAN KONYK: Okay.

CHAIRMAN BASEHART: It will be the first item on the regular agenda.

CHAIRMAN BASEHART: Next item is BOFA 2001-025. Mark Bradford.

MR. BRADFORD: Good morning. Mark Bradford with Cotleur & Hearing.

CHAIRMAN BASEHART: Okay. Staff has recommended approval of your application with four conditions. Are you familiar with them?

MR. BRADFORD: We are and we do agree with them.

CHAIRMAN BASEHART: You do agree with them. This is an advertised hearing. Is there anybody here that's here to speak either in favor or in opposition to this item?

(No response.)

CHAIRMAN BASEHART: Okay. Any members of the Board feel this item needs to be pulled?

(No response.)

CHAIRMAN BASEHART: Okay. It will remain on consent.

MR. BRADFORD: 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 5.7.3  
VARIANCE STANDARDS**

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

**YES.** The subject 1.76 acre lot has a depth of 330 feet and a width of 232 feet. It is a portion of the approximately 12.0 acre MUPD parcel located on the west side of Boca Rio Road approximately .25 miles south of Glades Road. The overall 12 acre tract of land has a land use designation of Industrial (IND) with a Special Exception Light Industrial Use (SE/IL) Zoning. The current controlling site plan for this development is Exhibit 37 for PDD84-030 (A), which was certified by the Development (DRC) on February 9, 2000. The site is approved for 177,607 square feet of self-storage warehouse and an 8,700 square feet AT&T facility. The 1.76 acre AT&T parcel which is the subject of this variance is currently vacant with no assigned address and is located in the Palm Beach Farms Company Plat 3. The 8,700 square feet AT&T unmanned switching facility to provide telephone service to the West Boca community. An easement along the north property line provides the required access to the proposed AT&T facility.

The ULDC requires parking to be calculated on the gross square footage and to be limited to the minimum number of spaces. This is to encourage the developer to pave less and to provide more landscaping on the site to make it more pedestrian friendly. However, because of the limited size of this site (1.76 acres) and its use (unmanned switching station), granting of a variance to provide 3 additional spaces (total of 7) would not circumvent the intent of this code provision. There will be adequate open space and parking on this site to satisfy the general intent of the code and limit the number of paved parking spaces.

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

**NO.** This **is not** a self-created variance. The applicant is requesting to provide 3 more parking spaces than permitted by code. Typically a developer requests a variance to provide less parking than permitted by code. However, in this particular situation the applicant is proposing more parking than permitted by code. The applicant is requesting a variance to provide an additional 3 off street parking (making a total of 7) in order to accommodate the proposed use on site. The applicant states in their justification that at times of critical maintenance or emergencies, the existing 4 parking spaces are inadequate for the various service trucks converging on the site.

If the variance is granted the general intent of the MUPD parking provision will be satisfied. Limiting the parking to the minimum required is to ensure a site is not maximized with parking. It is also to encourage more open space and landscaping rather than parking. MUPD's range in size from a minimum of 3 acres to hundreds of acres, and when interpreting the general intent of this code provision the size of the project must be considered. The smaller the lot size the less opportunity there is for excessive parking to be constructed. In this particular case the applicant has an issue of efficiency and not enough minimal parking for 7 service trucks to attend to the facility at times of emergency and general maintenance.

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, BUILDING OR  
STRUCTURES IN THE SAME DISTRICT:

**NO.** The MUPD parking provisions are general and cannot address each specific project that is proposed. The general intent of the parking provisions is to encourage only parking that will be

utilized based on established standards. These standards are based on the specific uses and square footage. In fact, the granting of the variance will ensure this site has adequate parking on-site to meet the users' needs and in this particular situation, the applicant is requesting a variance to provide an additional 3 off street parking in order to accommodate the proposed use on site. The applicant states in their justification that at times of critical maintenance or emergencies the existing 4 parking spaces are inadequate for the various service trucks converging on the site. There are adequate buffers (LWDD Canal to the north and the warehouse use to the east) that will mitigate any negative impact the additional spaces might have on the surrounding area.

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 general intent of the ULDC parking provisions, Article 7.2, is to ensure adequate parking is provided for the proposed uses. However, since this project is zoned MUPD, there are more restrictive parking provisions. A MUPD has to be a minimum of 3 acres, while there is no maximum size on the development. The MUPD general provision is to encourage a pedestrian-friendly environment for shopping. By limiting parking to the minimum number, it is anticipated the developer will be encouraged to provide for more pedestrian amenities (walkways, plaza, landscaping, open spaces, etc.). If there was no limit on the parking, as was the case until the adoption of the ULDC MUPD provisions in 1992, a developer could pave as much of the site as possible provided adequate on-site drainage and landscape requirements were satisfied. In this particular situation, the site is 1.76 acres and is an unmanned switching station and the above amenities are not needed. With the existing buffers of the LWDD easement to

the north and the self storage warehouse to the east, the site will meet the general intent of the code to limit parking to that necessary for the proposed use.

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

**YES.** The applicant is requesting to provide 3 off street parking spaces more than permitted by the MUPD parking provisions. This will ensure that at times of critical maintenance or emergencies that sufficient parking for the various service trucks converging on the site will be adequate. Therefore, the granting of this parking variance to provide 3 spaces (total of 7) more than permitted by code is a reasonable request when considered in the context of the general intent of the code and proposed use of the site.

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

**YES.** This is a unique project in that it is part of a larger self-storage warehouse use. It is limited in terms of square footage. The general intent of the MUPD parking will be met if this variance is approved. The site will not have any additional spaces that will not be utilized on a regular daily basis. The MUPD parking provision limits parking to the minimum necessary can be appreciated on projects greater than 10 acres. It allows for more open space, plazas and landscaping that would otherwise be paved. On large MUPD sites one could have several acres of parking that is not utilized on a regular basis, however, a tenant might have corporate standards requiring parking to be shown on the site plan and constructed. With the provision the County can limit the amount of pavement on

a site and encourage more user-friendly uses for that land area.

In this particular situation, the site is 1.76 acres and is an unmanned switching station and the above amenities are not needed. With the existing buffers of the LWDD easement to the north and the self storage warehouse to the east, the site will meet the general intent of the code to limit parking to that necessary for the proposed use. Only about 600 square feet of additional paving will result if the 3 space variance is approved. Considering the buffering of the LWDD to the north and self storage facility to the east, the general intent of the code will be met and negligible impact on the surrounding area.

7. THE GRANT OF THE VARIANCE WILL BE  
I N J U R I O U S  
TO THE AREA INVOLVED OR OTHERWISE  
DETRIMENTAL TO THE PUBLIC WELFARE:

**NO.** This portion of the MUPD and the subject of the variance request will support only an unmanned switching station. The applicant's client is concerned that the 4 parking spaces required by PBC zoning code is not adequate to meet the parking needs of emergency and maintenance personnel parking. The additional 3 parking spaces proposed will have negligible impact on the surrounding area.

#### **ENGINEERING COMMENT**

No Comment (**ENG**).

#### **ZONING CONDITIONS**

1. By December 19, 2001, the property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application.  
**(BLDG PERMIT: BLDG)**
2. This parking variance shall be limited to  
3 additional spaces. The final site plan

shall be revised to show a total of 187 off street parking spaces for this site.  
(ONGOING)

3. By April 19, 2002, the applicant shall obtain a final inspection on the off street parking for this AT&T site to vest this parking variance. (DATE:MONITORING-BLDG:CO)
4. By June 19, 2001, the applicant shall amend the Site Plan for Petition 84-030, The Boca Rio Center, to add the additional parking, revise the Site tabular data and ensure the BA conditions are on the final site plan, certified by DRC. (DATE:MONITORING-ZONING-DRC)

CHAIRMAN BASEHART: Next item is BOFA 2001-026, Julian Bryan.

MR. BRYAN: Chip Bryan of Julian Bryan & Associates.

CHAIRMAN BASEHART: Okay. The staff has recommended approval of this application with four conditions as well. Do you agree with the conditions?

MR. BRYAN: Yes, we do.

CHAIRMAN BASEHART: Okay. Any member of the public here to speak on this item?

(No response.)

CHAIRMAN BASEHART: Any letters?

MR. MacGILLIS: I just have a comment on this one. The applicant only requested the extension on the development order for another year on this. But staff noticed that one of the original conditions, number four, was going to expire as well.

That condition was put on the morning of the hearing. The neighbor adjacent to the property was concerned because the variance was to eliminate landscaping along their property line. The applicant came to the hearing. We imposed a condition on there regarding this.

Staff requested the applicant to send a letter to the property owner to notify her because this was a BATE and it wasn't advertised,

if she had any concerns.

So just for the record, you did send her a letter. It wasn't sent certified, I understand.

MR. BRYAN: That's correct. We did actually send a courtesy letter to the homeowner, the concerned homeowner that came to the hearing originally.

MR. MacGILLIS: Okay. And you received no--

MR. BRYAN: At this point we have not received a response.

MR. MacGILLIS: What's happening as well on these conditions, the Department of ERM has requested the applicant to relocate a lot of native vegetation into this area. So with the extra one year I was concerned that that property owner may have some concern because there's construction going on on that site, and it was supposed to be landscaping put into that buffer, that she may have concerns with dust and stuff on her property.

I feel comfortable if he's provided her with a letter and we haven't got nothing back to extend this condition as well.

CHAIRMAN BASEHART: Okay. Does everybody agree?

MR. BRYAN: I think the homeowner is going to wind up with a significantly better situation in the end as a result of all the ERM permitting, so. I'm sure they'll be happy.

CHAIRMAN BASEHART: All right. Any members of the Board have a problem with it? Okay. We'll leave this on consent as well.

#### **STAFF RECOMMENDATIONS**

Staff recommends a maximum of 12 months time extension for the Development Order and Condition #4, from March 16, 2001 to March 16, 2002, consistent with Section 5.7.H.2 of the ULDC, to provide additional time for the Petitioner to commence development and implement the approved site plan and variances.

The property owner shall comply with all conditions of approval of BA2000-010, 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)**

2. Prior to DRC certification, the applicant shall ensure the BOFA conditions are shown on the site plan and reference to the location of the buffer variances and setback for the 1.8 acre lake. **(DRC Zoning)**
3. The variances are limited to the buffers and lake setback as shown on Exhibit 9 in the Board of Adjustment File, BA2000-10 in the Zoning Division. All other buffers must be installed in accordance with BCC conditions or code requirements. **(ONGOING)**
4. By March 16, 2001, the applicant shall install the following landscaping along the south side of the 50 foot easement road (942 feet in length).

Alternate between one native shade tree, then a cluster of 3 Sabal palms planted 40 feet on-center.

The native canopy trees shall be installed at 12 feet in height, the palm trees shall be planted with 8 feet of clear trunk or twelve feet in overall height.

**Is hereby amended to read:**

**By March 16, 2002**, the applicant shall install the following landscaping along the south side of 50 foot easement road (942 feet in length).

Alternate between one native shade tree, then a cluster of 3 sabal palms planted 40 feet on-center.

The native canopy trees shall be installed at 12 feet in height, the palm trees shall be planted with 8 feet of clear trunk or twelve feet in overall height.

**ENGINEERING COMMENT:**

The Engineering Department has no comment

regarding proposed elimination of landscape buffers. However, with regard to the project boundary adjacent to Lake #7, it should be noted that reconstruction of the existing lake for use as part of the storm water management system will require filling at the project boundary to create a separate lake entirely within the project limits, including construction of the required 20 foot wide maintenance berm. (ENG)

CHAIRMAN BASEHART: Next item is BOFA 2001-027. Ms. Lockhart?

MS. LOCKHART: Good morning. Sarah Lockhart, Design Tech International.

CHAIRMAN BASEHART: For the record, the staff has -- you got away easy, only two conditions on this one. Do you agree with them?

MS. LOCKHART: Yes.

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

(No response.)

CHAIRMAN BASEHART: Any letters?

MR. MacGILLIS: No letters.

CHAIRMAN BASEHART: Any problems from members of the Board?

(No response.)

CHAIRMAN BASEHART: Okay. We'll leave this on consent as well.

#### **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 5.7.3 VARIANCE STANDARDS**

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

**YES.** This 1.14 acre commercial property is located at the southwest corner of the intersection of Military Trail and Hypoluxo Road. The site received Board of County Commission approval in 1988, petition 88-072, to allow a rezoning from AR to CG (Resolution R-89-111) and a special exception for a PCN to include auto service station (no major repairs) and automatic car wash (Resolution R-89-912).

The site currently has a C/3 Commercial Land Use with CG-General Commercial Land Use. The current surrounding land uses are as follows, vacant AR-agricultural to the west and south, across Hypoluxo to the north by CG/SE, shopping center and to the east across Military Trail by CG/SE, shopping center. The site currently supports a 733 sq/ft Amoco Convenience store, gas pump with 5,031 sq/ft canopy and a 720 sq/ft car. The applicant is proposing to demolish the existing buildings and pumps and replace them with new ones. The new site plan will support 1.56 acre site, 4,500 sq/ft convenience store, 968 sq/ft car wash, 4,056 sq/ft canopy and 16 fuel pumps. With the redesign the applicant has agreed to comply with the Engineer's request to shift the Hypoluxo ingress/egress to the west and close off the ingress/egress onto Military Trail. This modification will improve the safety of vehicles slowing down at this intersection and those leaving and entering the site. The modifications to the ingress/egress place some limitation on the site layout. The applicant is proposing to shift the proposed buildings along the west and south property line to ensure adequate room on the eastern portion of the site to accommodate the vehicular circulation needs of this use. The proposed location of the buildings will result in the need

for setback variances. These two setback variances will not impact the proposed MUPD use being proposed to the west and south. Also, the applicant will still be required to install the code required plant material in the landscape buffers located to the rear of both buildings. The requested variance to allow the use to remain open 24 hours is also related to the location. This use is currently operating at this major intersection. However, when the applicant rezones the property to comply with the land use the proposed zoning restricts the hours of operation. The intent of restricting CC zoned properties to 6 a.m. to 11 p.m. is to protect the residential that typically surrounds this zoning district. However, in this particular situation the surrounding uses are general intense commercial. Therefore, to allow the applicant to remain open 24 hours a day will meet the intent of the code and not present a negative impact on the surrounding land uses.

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

**NO.** The applicant is proposing to redevelop this site and the larger parcel that surrounds it to the west and south. In doing so the applicant is adding acreage to this parcel to make it larger to accommodate the needed land area for this intense commercial use. Adding the additional land area requires the applicant to rezone the property from CB to CC to make it consistent with the 1989 land use. The changing of the zoning of this property and redeveloping it places several hardships on the applicant in terms of complying with all current property development regulations. The applicant is willing to modify the existing ingress/egress to this site to improve the traffic flow at this intersection. The modifications to the ingress/egress and the site layout requires the applicant to place the structures closer to the west and south property lines. This in turn allows more room along the eastern portion of the site

to accommodate the canopy and 16 pumps. The site circulation for queuing and parking works well and allows ample room for vehicular maneuvering on the site. The applicant's request to remain open 24 hours a day is not self created. The applicant currently can operate 24 hours a day at this location. However, after the proposed rezoning to CC the applicant will be restricted to 6 a.m. to 11 p.m. The CC zoning district has more stringent operating hours for outdoor activity than CG. The intent of this code provision is to protect adjacent residential properties that are typically adjacent to CC zoned parcels. The CC zoning district is intended to service the residents within 3 to 5 miles. However, as previously stated, the surrounding land uses support intense commercial uses to the north and east and with the future MUPD to the west and south this request to operate 24 hours is warranted.

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, BUILDING OR  
STRUCTURES IN THE SAME DISTRICT:

**NO.** This parcel of land exists at a major intersection that supports intense CG commercial uses on all corners. The property owner is rezoning the property from CG to CC in order to comply with the 1989 land use designation. The requested setback and hours of operation variances are unique to this parcel and proposed redesign. The modifications to existing ingress/egress will benefit the County in terms of improving the stacking for the signal at this major intersection. The proposed redesign of the site will allow the applicant to comply with industry standards for the redesign while also complying with current PBC requirements for the CC district. The variances requests are minimal and if granted will not confer a special privilege on the applicant.

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

**YES.** The approvals on this site and proposed redeveloped warrant special consideration when applying the literal intent of the CC setbacks and hours of limitation. The applicant is proposing to rezone the property in order to bring it into compliance with the 1989 Comp Plan land use designation. The redevelop of the site includes adding land area, shifting and closing access points and a tear-down and rebuild of the convenience store, car wash and gasoline pumps. The final design will require approval from the Board of County Commissioners. The three requested variances are partially the results of the rezoning to CC and the modifications to the ingress/egress. The rezoning to CC from the current CG zoning district results in a change to the hours of operation. The existing use, which currently can operate 24 hours a day, will not be able to once the rezoning to CC occurs. The CC zoning district limits hours of operation from 6 a.m. to 11 p.m. The CC is a less intense commercial zoning district and is generally in close proximity to residential. However, in this particular case, the property is surrounded by CG commercial property and therefore if the variance is granted will still comply with the general intent of the hours of operation provision. The two setbacks for the convenience store and car wash will provide additional land area on the site to accommodate the canopy, gasoline pump islands and need vehicular circulation. The two setback variances will not negatively impact the vacant parcel to the south or west, which is being rezoned to a MUPD to support commercial uses.

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 three requested variances, if approved, will allow the applicant to proceed to the BCC to obtain the rezoning and conditional use approval. The site supports a convenience store/gasoline sales and car wash and after the redevelopment of the site will have the same use and type of structures. The variances are limited to the rear and side setback for the convenience store and car wash and hours of operation. The site will comply with all other property development regulations for this use.

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

**YES.** The proposed rezoning of this property is required to bring the property into compliance with the 1989 Comp Plan land use designation. The property is being downgraded from the current CG-General Commercial to CC-Community Commercial zoning district. The surrounding land uses support intense CG zoned properties with shopping centers. This site will have access to the shopping center that surrounds this out parcel to the south and west. There will be cross access between the two properties. The intent of the ULDC setback and hours of operation criteria is to establish minimum consistent setbacks in zoning districts and limiting hours of outdoor activity for CC zoned properties. This site currently supports a convenience store, car wash and gas sales. The proposed redevelopment of the site will result in the applicant rezoning the property, changing current ingress/egress, and an overall modification to the site layout. The redevelopment will ensure the property complies with the existing land use, improve stacking at the intersection by the closing and shifting of access points and ensuring adequate on-site circulation for the intense vehicular use.

The setback variances occur along the

south and west property line adjacent to the proposed MUPD. The applicant is proposing to install the required landscape buffers on this site to mitigate any negative impacts associated with reducing the required building setbacks by 15 feet. The hours of operation variance, if granted, will be simply allowing the applicant to continue to operate the use, once redeveloped, as currently being done. The applicant is required to rezone the property as part of the redevelopment to comply with the underlying land use designation adopted in 1989.

7. THE GRANT OF THE VARIANCE WILL BE  
I N J U R I O U S  
TO THE AREA INVOLVED OR OTHERWISE  
DETRIMENTAL TO THE PUBLIC WELFARE:

**NO.** The surrounding properties to the north and east across Hypoluxo Road and Military Trail support large scale shopping centers, while to the south and west is a proposed MUPD to support Albertsons shopping center. This use has existed since the late 1980's at this location. The applicant's client would like to redevelop the site and in doing so is acquiring land area from the site to the west. This requires the rezoning of the property to CC from CG. The applicant is also willing to modify the access points to this site to improve the traffic situation at this location at Engineering's request. The requested variances are minimal and will not create a negative impact on the existing and proposed shopping centers that surround this property.

#### **ENGINEERING COMMENT**

No Comment (**ENG**).

#### **ZONING CONDITIONS**

1. The property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan certified by the DRC. The

final site plan shall be consistent with the site plan, Exhibit 20, shown to the Board of Adjustment at the April 19, 2001, hearing. **(BLDG PERMIT: BLDG-ONGOING)**

2. The setback and hours of operation variances are limited to the use and structures shown on the Site Plan, Exhibit 20, presented to the Board of Adjustment at the April 19, 2001, Public Hearing. Any new use or redesign of the site shall require BA approval. **(ONGOING)**

CHAIRMAN BASEHART: Next item is BOFA 2001-028.

MR. MacGILLIS: This item is actually going to be postponed 30 days time certain, May 17, 2001.

After staff was working this up, we got a comment from the Engineering Division that their survey division that there was actually two accessory structures they never applied for variances for, and they were in the canal easement.

We've notified the property owner to either request variances for or move them because they're currently in violation for the variance that they've applied for. So we're giving them an extra 30 days.

They didn't give us the letter, so staff is actually requesting this be postponed, 30 days to May 17th. The applicant is aware of it and does agree to postponement.

CHAIRMAN BASEHART: And the applicant is not here?

MR. MacGILLIS: No.

CHAIRMAN BASEHART: Okay. Then this will be on the May agenda.

MR. MacGILLIS: May 17th, 2001.

CHAIRMAN BASEHART: Okay. So this is the first postponement. So shall we call this a postponement by right?

MR. MacGILLIS: Yes.

CHAIRMAN BASEHART: Okay. It's postponed till the May 17th agenda.

CHAIRMAN BASEHART: Next item is BOFA 2001-030. Mr. Kolins?

MR. KOLINS: Good morning, ladies and gentlemen, Ron Kolins of Greenberg Traurig.

CHAIRMAN BASEHART: Mr. Kolins, staff is recommending approval of your application with two conditions.

MR. KOLINS: The conditions are acceptable.

CHAIRMAN BASEHART: They're acceptable. Any member of the public here to speak on this item?

(No response.)

CHAIRMAN BASEHART: Seeing none, any letters?

MR. MacGILLIS: No, there are no letters.

CHAIRMAN BASEHART: Does anyone on the Board have any reason to want to pull this?

(No response.)

CHAIRMAN BASEHART: Seeing none, you're staying on consent.

MR. KOLINS: 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.** The subject property is located at 7730 Hanahan Place, .25 mi. W. of Hagen Ranch Road, within the Lake Charleston PUD. The .25 acre site is a conforming

irregular lot with 121 feet of frontage on Hanahan Place cul-de-sac and an average depth of 139 feet. The subject property abuts Charleston Shores Road to the rear with a 30-foot landscape buffer between. The surrounding areas include a 30-foot landscape buffer and the 80-foot right-of-way of Charleston Shores Road, both of which mitigate any negative effects the setback encroachments may have. The fact that the need for the variance is due to an error by the applicant and building staff measuring the wrong setback because the rear setback encroachment affects only an adjacent landscape buffer and Charleston Shores Road, and not another property owner, staff recommends approval of the variances requested by the applicant.

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

**NO.** This **is not** a self-created situation. The error in the rear setback was the result of the applicant and by Building Staff measuring the rear setback from the property line instead of the inside edge of the (30) thirty foot landscape buffer easement at the time of review and approval. Since the buffer cannot be encroached, the pool was ultimately positioned 7.65 feet near the edge of the 30 foot buffer easement. The circumstances which caused the error as well as the fact that the rear setback encroachment affects only an adjacent landscape buffer and Charleston Shores Road, would justify staff to recommend approval of the variances requested by the applicant.

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, BUILDING OR  
STRUCTURES IN THE SAME DISTRICT:

**NO.** The granting of the variance **will not** grant a special privilege on the property owner. Similar properties in the area are

already benefiting from pools and screen enclosures. If the screen enclosure is modified to meet the rear setbacks, the frame structure would fall too close to the pool edge. A 2 foot distance from the pool edge to the screen enclosure is necessary for safety reasons should a person need help exiting the pool. The request is consistent with the intent of the ULDC and the Comprehensive Plan and promotes residential ambiance and welfare.

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 intent of the code provision to provide minimum separation between structures is to discourage the creation of a visual wall that can detract from neighborhood ambiance. Structures too close to one another have a tendency to reduce privacy and create potential safety hazards for emergency medical service maneuverability as well as small unusable yard areas. The ULDC provisions establish minimum regulations for residential setbacks to encourage a sense of aesthetics, continuity and resident safety. The circumstances which caused the error as well as the fact that the rear setback encroachment affects only an adjacent landscape buffer and Charleston Shores Road, both of which are open visual open spaces, **will** allow the applicant to meet the literal or the general intent of the ULDC regarding rear setbacks.

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

**YES.** Granting the variance is the **minimum** required to make reasonable use of the parcel of land, building or structure. The site layout does not allow for alternative design options that may eliminate or further reduce the variance

requested. Similar properties in the area are already benefiting from pools and screen enclosures. If the screen enclosure is modified to meet the rear setbacks, the frame structure would fall too close to the pool edge. A 2 foot distance from the pool edge to the screen enclosure is necessary for safety reasons should a person need help exiting the pool.

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

**YES.** Granting the variance request is consistent with the purposes, goals and objectives of the Comprehensive Plan. The variance requests are compatible with the surrounding area, which consists of other similar homes, many with pools and screen enclosures. Any potential visual barriers that might be created by the setback encroachment are mitigated by the adjacent 30 foot landscape buffer and 80 foot right of way.

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

**NO.** Granting the variance **will not be** injurious or detrimental to the surrounding areas. To the rear of the lot is a landscape buffer and the 80-foot right-of-way of Charleston Shores Road, both of which mitigate any negative effects the setback encroachments may have.

#### ENGINEERING COMMENT

No Comment (**ENG**).

#### ZONING CONDITIONS

1. By October 19, 2001, the property owner shall provide the Building Division with a copy of the Site Plan Exhibit presented to the Board simultaneously with the building permit application for the screen

roof enclosure. (DATE:MONITORING BLDG PERMIT-ZONING)

2. By June 19, 2001, the applicant shall provide the Building Inspection Section with a copy of the BA result letter to allow for the pool (B00023857) to be scheduled for a final inspection. (DATE:MONITORING-BLDG-CO)

CHAIRMAN BASEHART: That will complete the consent agenda. It remains intact with the exception of application 023.

VICE-CHAIRMAN KONYK: And 028 being postponed.

CHAIRMAN BASEHART: And 028 being postponed.

VICE-CHAIRMAN KONYK: I'd like to make a motion to approve the consent agenda, item BATE 2001-021, BATE 2001-022, BOFA 2001-025, BATE 2001-026, BOFA 2001-027 and BOFA 2001-030 with the staff report becoming part of the record. Motion to approve.

CHAIRMAN BASEHART: Motion made by Ms. Konyk. Do we have a second?

MR. GERBER: Second.

CHAIRMAN BASEHART: I think that was Mr. Gerber. A second by Mr. Gerber.

All those in favor indicate by saying aye?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no?

(No response.)

CHAIRMAN BASEHART: Show the motion carries unanimously.

CHAIRMAN BASEHART: For the record, I hope you have the form available, I'd just like to point out that on the first item being heard today, Mr. Schmidt's application, I'm involved in that application as the zoning agent, which is -- I had nothing to do with the preparation or processing of the variance application, but I am involved in a zoning application for this property. So I'm going to have to recuse myself.

If you have -- I think you have the conflict form that I have to fill out. Would you prefer that I leave the room for this item?

MR. JONES: No, I don't think you have to leave the room.

CHAIRMAN BASEHART: Okay. I won't participate.

VICE-CHAIRMAN KONYK: Okay. Then I guess I have to be the -- okay, passing the gavel to me, BOFA 2001-023. We'll start off with the introduction by the staff.

MR. MacGILLIS: This is the petition of Jon E. Schmidt & Associates, agent for Vincenzo Lograsso, if it's pronounced properly, to allow the following variances: an existing building to encroach into the required front and side setbacks, to reduce the right-of-way buffer along Urquhart Street, to reduce the landscape buffer width along Lake Worth Road and along the south property line, to eliminate the foundation planting around the existing building, to reduce the width of the terminal landscape islands, reduce the required off-street parking and reduce the required setback for the proposed dumpster. Actually, that variance has been eliminated after the -- so there is no variance for the dumpster.

The property is located at 4364 Lake Worth Road at the southwest corner of Lake Worth Road and Urquhart Street in the Lake Worth Corridor overlay district in the CN Zoning District. The back up materials are on page 51 to 64 of your packet.

On page 51 you can see the list of what the variances are required. There would appear to be a lot of variances on this site, but this is probably one of our first real infill redevelopment projects that we have in the County.

As you know, our ULDC currently does not

have infill redevelopment provisions. Therefore, people are required to come here for variances. The site supports two existing abandoned, non-conforming buildings. They're both in the setbacks. They've been abandoned for several years.

The property is located in the Lake Worth Corridor district which is a corridor identified by the Board of County Commissioners as an area for infill redevelopment. Staff supports the redevelopment of this project. The use that's going into here is a laundry facility, which the applicant has indicated is a good use for this area, especially for the residential uses that are located to the south of this property.

The applicant apparently agrees with the staff's recommendation for approval and our facts of findings. They have a problem with condition number -- page 59 of your back-up material, condition number six.

The condition is imposed by staff because we're concerned. They're asking for a parking variance on this site for -- they're required 18 parking spaces and they're proposing 11 for a variance of seven spaces. This is a typical condition staff puts on projects that get a variance from the parking because we base the parking on the use that's in the building. They justify their hardship and uniqueness based on that use.

I've spoken to the agent and indicated we've given some flexibility in this condition after speaking with the Zoning Director. Typically, we stick them to the use that they've actually come to the Board of Adjustment with, whether it's a gas station. That's what you requested, that was your hardship; that's what you get the limitation on.

In this case, we've actually gone a little bit further and allowed some flexibility and the condition states that the variances associated with this petition are valid for the specific laundry use or any other similar use that the Zoning Director concludes generates the same parking demands.

And the way to catch this is any changes to the occupational license shall be presented by the property owner to the Zoning Division staff for review and approval prior to the change in the occupational license. So that would give us a chance if somebody comes in and changes to a Blockbuster, we're saying no, that parking variance was not -- now we've got people parking

out on the street and it's not going to meet the intent of what this Board approved.

I did speak to the property owner to the south who owns the mobile home park and he also owns some parcels to the west, and he had some concerns with possibly the parking on the site and the landscaping to the south property line.

We've addressed the south property line landscaping. They're not contesting any of the other conditions. It's just this one.

The client and the property owner is concerned that this may limit him for possible resale to the property, and I guess he can address it here what his specific concerns are. So with that I'll turn --

VICE-CHAIRMAN KONYK: Was this your introduction?

MR. MacGILLIS: Well, it's actually the staff report; that's all.

VICE-CHAIRMAN KONYK: Okay. Mr. Schmidt, obviously from what Jon just told us, you were on the consent agenda and you have a problem with item number 6?

MR. SCHMIDT: That's correct.

VICE-CHAIRMAN KONYK: Do you want to just cut to the chase and tell us what your problem is with item number 6?

MR. SCHMIDT: Sure. For the record --

MS. SPRINGER: Do you want me to swear him in first?

VICE-CHAIRMAN KONYK: Yeah, we need to swear anybody in that's going to speak on this item and any item. Why don't we swear everybody in at once?

Anybody going to speak on this or any other item, please stand and raise your right hand so you can be sworn in for the record.

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

MR. SCHMIDT: Good morning. For the record, John Schmidt, agent for the owner.

We are in agreement with all of the conditions --

VICE-CHAIRMAN KONYK: You'll need to leave with the cell phone or turn it off. Thanks.

MR. SCHMIDT: We are in agreement with all the conditions except number 6. Just to cut to the chase, under the Lake Worth Corridor standards, you can take a 25% reduction in the parking requirements.

The parking requirements for this petition are actually 14 spaces. We're providing seven along here, four along here and an additional two

spaces (indicating). That provides 13 spaces, so it's really only one under what's required.

The two spaces located in this area could be removed in the future to provide cross access to the parcel to the west.

So we feel that our problem with number six is the purpose and the intent for the Lake Worth Overlay is to provide incentives and encourage redevelopment and improve the quality of the area. We feel that this number 6 discourages potential future users to come in and have to go in front of the Zoning Director to plead their case.

As a compromise, we'd be willing to add with the laundry facility a professional office, medical office and general retail. Those uses all generate less traffic trips than actually the laundry facility.

VICE-CHAIRMAN KONYK: You want to add three more items to the possible uses so that --

MR. SCHMIDT: Yes.

VICE CHAIRMAN KONYK: -- you don't have to come back?

MR. SCHMIDT: We would not have to go in front of the Zoning Director.

VICE-CHAIRMAN KONYK: Do you have intention to bring those uses in?

MR. SCHMIDT: Well, those could be potential future users that the client's been getting calls on, for instance, if the laundry facility may not make it. Those additional uses we would request be added so they don't have to come in front of them. Again, they're lower traffic generators than the laundry facility.

VICE-CHAIRMAN KONYK: Jon, do you want to answer that?

MR. MacGILLIS: I've spoken to Jon on the phone twice on this issue and I've spoken to Bill Whiteford, the Director.

We're still concerned -- I mean, offices can go in here, but we're not sure what type of office that would go in here that could be generating and causing problems.

VICE-CHAIRMAN KONYK: What did you just say? What type of office?

MR. SCHMIDT: Professional office, medical office or general retail.

MR. MacGILLIS: Staff prefers the condition -- I mean, they came in here, we worked with them on this particular use. It works and it provides a needed service to this area.

We do not see a problem with the thing,

when they come in here to get an occupational license when they're going to change it out and someone's going to look at it and say, yes, you're fine, you don't have to go back to the Board of Adjustment.

We've had a lot of uses that get parking variances that are not triggered down in the Building Division. They come in and renovate the project, go in with a new use. It's never flagged here and all of a sudden they're having parking problems.

And someone said, well, they got a variance several years ago. And we said the variance was not for that use. It was for what they came in and pleaded their case. We would never have granted the parking variance if we had known that was the use that was going to go in there.

VICE-CHAIRMAN KONYK: Okay. Mr. Richards, you had something you want to add?

MR. RICHARDS: Yes. Mr. MacGillis, is there indeed an overlay for this parcel that provides for a different parking standard?

MR. MacGILLIS: Yes.

MR. RICHARDS: And what is that?

VICE-CHAIRMAN KONYK: Twenty-five percent reduction.

MR. MacGILLIS: Twenty-five percent reduction from the overall --

MR. RICHARDS: Which means, how many spaces would be required?

MR. MacGILLIS: Fourteen?

MR. SCHMIDT: Correct.

MR. RICHARDS: So they're not asking for a variance of seven then?

VICE-CHAIRMAN KONYK: Well, technically they are because the 25% is still being considered.

MR. RICHARDS: Oh, it's being considered.

VICE-CHAIRMAN KONYK: Well, I mean, the actual parking required by code --

MR. SCHMIDT: Is 18.

VICE-CHAIRMAN KONYK: -- is 18 spots. They automatically get a reduction of however many --

MR. SCHMIDT: Twenty-five percent.

VICE-CHAIRMAN KONYK: -- 25% because of the -- but it's still a variance. Once he had to come in here and ask for a variance. It's part of the variance.

MR. SCHMIDT: We've submitted numerous -- different schemes to the parcel. It doesn't meet the depth and standards for new code.

This is in the redevelopment corridor and this is all the parking that the site is ever going to be able to potentially have. Just these uses, we think, discourages somebody that may come in and want to lease from the owner in the future. It's another hoop that they would have to go through to get the approval required to go into the space. We just feel that those additional uses are less trip generators than a laundry facility.

If staff feels that the laundry facility is, you know, something that could be put on the site and these are less trip generators, we think that that should be approved.

VICE-CHAIRMAN KONYK: The parking requirement would still be the same regardless of the use though, correct, the original parking requirement?

MR. SCHMIDT: In those particular ones, yes.

VICE CHAIRMAN KONYK: Correct.

MR. JACOBS: How many people would work in the laundry facility?

MR. SCHMIDT: Well, it's manned all the time and you have additional staff in there because people are dropping off things to do. Typically, I think he's got two to three, two to three staff members.

MR. JACOBS: Plus whatever people come in from time to time?

MR. SCHMIDT: That's correct.

MR. JACOBS: So the proposed parking facilities would be plenty to accommodate the staff, as contemplated?

MR. SCHMIDT: Yes.

VICE-CHAIRMAN KONYK: Can't we all get along? Is there some way we can resolve this?

MR. MacGILLIS: It's up to the Board. You can add that to it or you can leave the condition the way it is and he has to come back in to -- he's got to get an occupational license if he changes the thing out.

All we're saying, if he comes in to get the occupational license, the Zoning staff are going to be notified and they're going to check the condition on here and they're going to say, yeah, that's a similar use; you're fine.

VICE-CHAIRMAN KONYK: But I can understand his concern by the fact that he has to come back and ask again and again and again.

MR. MacGILLIS: Well, he's asked for an occupational license which you have to do, anyway.

VICE-CHAIRMAN KONYK: Right.

MR. MacGILLIS: So we're saying --

VICE-CHAIRMAN KONYK: I understand.

MR. MacGILLIS: So if he comes to the front desk and --

VICE-CHAIRMAN KONYK: What if you say no?

MR. MacGILLIS: Well, we're just trying to protect what you've approved here. If you don't feel that's a warranted condition, then delete it.

MR. RICHARDS: I'm prepared to make a motion.

VICE-CHAIRMAN KONYK: Okay.

MR. RICHARDS: Is that --

VICE-CHAIRMAN KONYK: That's fine.

MR. MacGILLIS: Just there's one change, just note on number 4 where it says "Exhibit ?". That should be Exhibit 23.

VICE-CHAIRMAN KONYK: Okay.

MR. SCHMIDT: Is there a little cheat sheet here that I should be looking at with specific wording?

VICE-CHAIRMAN KONYK: Do you want to say something like --

MR. RICHARDS: I move approval of the applicant's request with the conditions outlined, with the deletion of condition number six.

VICE-CHAIRMAN KONYK: No, I don't think you want the deletion; I think you want the modification. You want to modify --

MR. SCHMIDT: I'd like to delete it.

VICE-CHAIRMAN KONYK: Yeah, I know you'd like that.

If you modify the condition to add the other uses that he's suggesting, so that if he chooses those specific uses, then he doesn't have to come back for a variance.

MR. RICHARDS: That is my intent. Thank you.

VICE-CHAIRMAN KONYK: Okay. And would you like to make the staff report part of the record?

MR. RICHARDS: Yes.

VICE-CHAIRMAN KONYK: We have a motion to approve -- I don't even know what the number is -- BOFA 2001-023 with the condition 6 modified as suggested by the applicant --

MR. SCHMIDT: To include general retail, medical office and professional office, as well as laundry facility.

VICE-CHAIRMAN KONYK: Okay. And the staff report becoming part of the record.

Do we have a second?

MR. WICHINSKY: I'll second it.

VICE-CHAIRMAN KONYK: Second by Mr. Wichinsky.

All those in favor -- any discussion?

(No response.)

VICE-CHAIRMAN KONYK: All those in favor?

BOARD: Aye.

VICE-CHAIRMAN KONYK: Motion carries unanimously.

MR. SCHMIDT: Thank you.

MS. CARDONE: Madam Chairman, that wasn't unanimous. I wasn't going to vote for it.

VICE-CHAIRMAN KONYK: Oh, okay, she votes with one no. Nancy Cardone. I thought I heard her say yes.

Okay. Now I'll pass the gavel back to Mr. Basehart.

#### STAFF RECOMMENDATION

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

#### ANALYSIS OF ARTICLE 5, SECTION 5.7.E VARIANCE STANDARDS

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

**YES.** There are **unique circumstances** surrounding this .42 acre legal non-conforming lot that must be considered when applying the literal application of the code requirements. The property currently supports two abandoned buildings that were constructed prior to 1958. Staff could find no records of the building permits. The property was developed prior to the 1958 Zoning Code and therefore has many existing non-conformities in terms of setbacks, landscaping, parking, loading, dumpster, etc. The applicant's client purchased the property in April 2000 and is proposing to develop it to support a laundry business.

The property is located in the LW Corridor Overlay District which has been designated by the BCC as an area requiring considerable attention in terms of infrastructure, redevelopment and addressing crime. The area has a CCRT that is made up of staff from various county agencies as well as members of both the business and residential community. The intent of the CCRT is to assist the property owners with the redevelopment of this area to meet the needs of the community. The particular lot supports two buildings that are boarded up and to provide no service or tax base to the community. The proposed use will greatly improve this property and help foster the community redevelopment efforts.

Many of the requested variances in this application are the result of the non-conforming size of the lot and the fact that the property owner is proposing to keep one of the existing buildings. Both factors limit the possible design solutions necessary to avoid any type of variances. However, many of the variances being requested are minor in nature and if granted will not circumvent the general intent of the code. The applicant has explored many design layouts in order to meet the code to the greatest possible extent. With the recent modifications to the site plan requested by staff, the variances are the minimum to make a reasonable use of this abandoned site. With the conditions recommended by staff the requested variance can be mitigated to meet the general intent of the code.

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

**NO.** The requested variances are not a self-created hardship. The applicant has explored many design options for this legal non-conforming .42 acre lot. However, in order to meet the LW Corridor Overlay District requirements in addition to the general ULDC provisions the applicant has developed a site plan that functions well and will greatly improve this property. The property owner and applicant have met with staff prior to

purchasing the lot and developing the site plan to seek guidance as to whether or not this site could accommodate the proposed use and layout. The applicant has complied with code to the greatest extent possible and the proposed design will be consistent with the BCC goal to encourage redevelopment along the corridor. This proposed use will provide the many residents in the area with a laundry facility that is currently lacking in the area.

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, BUILDING OR STRUCTURES IN THE SAME DISTRICT:

**NO.** The granting of the requested v a r i a n c e s **are unique** to this particular lot and existing building configuration. The applicant is redeveloping a legal non-conforming lot that has two existing structures on it. The site currently has many non-conformities, which will be eliminated if this variance is requested. The applicant is proposing to demolish one of the existing non-conforming buildings and renovate the other. The two setback variances are for the existing building. If the variances are granted the structure will be considered legal conforming and the renovations being proposed can be accommodated. The site currently is void of any landscaping, the proposed design will result in buffers along all property lines. The requested variances related to landscaping are minor in nature and overall the landscaping will meet the current regulations. The parking variances for three spaces is minor. The applicant is required to show cross access to the property to the west per the LW District overlay requirements. This vehicular access takes up the area where the applicant could have put the two spaces that are the subject of this variance. This cross access may not be used for years, however, it must be shown, because in the event the properties to the west are redeveloped there will eventually

be a connection between all these properties. Staff recommends that this access aisle be used to accommodate the two parking spaces until such time as the cross access is needed.

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 ULDC establishes minimum code provisions for the development of the site. The ULDC currently does not address infill or redevelopment of sites. This site has existing limitations that result in the need for variances. The lot size is half the size required for a commercial lot, it has existing ingress/egress points and a building that will be renovated. These factors limit the design options available to the applicant and make it difficult to comply with the literal intent of the current code provisions. The applicant is complying to the current regulations for this zoning district as well as the LW Overlay District to the greatest extent possible. The major components of the site layout function adequately and will greatly improve the appearance and use of this property. The variances are minor deviations in most cases from the literal intent of the code. With the conditions recommended by staff the general intent of the code will be met if the requested variances are granted by the Board.

If the literal intent of these code provisions are applied to this site, the applicant would not be able to implement the proposed site plan. The fact that this site was originally developed prior to 1958 which was prior to the nonconformity adoption of the first zoning code. Also the fact the applicant proposes to maintain one of the existing buildings places a unique hardship on the applicant. The requested variances are limited to those necessary to make a reasonable use of this site.

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

**YES.** This site currently supports two vacant structures that were constructed prior to 1958. The applicant is proposing to redevelop the site and utilize one of the existing buildings to support a laundry business. In order to implement the proposed site design, the applicant must obtain several variances from the Board of Adjustment. The variances, if granted, will allow the applicant then to proceed through the public hearing process to the Board of County Commission for a Rezoning of the property to CG-General Commercial from CN-Neighborhood Commercial. As previously stated, the site is currently in disrepair and has been cited by Code Enforcement in the past for violations on site. This property is located along the Lake Worth Corridor which is within the Lake Worth Corridor Overlay District. This overlay district was established by the BCC to encourage regulations that would foster redevelopment and address many deficiencies in terms of infrastructures (water/sewer, parks, streets, etc.). There is a current trend in the area for property owners to remodel their business or establish new business on vacant properties. This particular property will be greatly improved if the new business is established at this location. The surrounding community will benefit from the proposed use while the County will benefit from the positive message the redevelopment will send to the business and residential community.

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

**YES.** The granting of the requested variances will be consistent with the Comp Plan and ULDC provisions. It is the intent of the Comp Plan that this property be used for commercial. The Land Use

designation is CH/8 while the current zoning is CN. In order for the applicant to construct this use the property must be rezoned to CC or CG. If the variances are approved the applicant's rezoning application will proceed to the BCC for approval or the rezoning to CG. The use is permitted in CG provided it is less than 15,000 square feet. Therefore, once the variances and rezoning are approved, the applicant will be permitted to apply for a building permit to renovate the building for this use. This type of use is a needed use for the surrounding residential communities.

7. THE GRANT OF THE VARIANCE WILL BE  
 I N J U R I O U S  
 TO THE AREA INVOLVED OR OTHERWISE  
 DETRIMENTAL TO THE PUBLIC WELFARE:

**NO.** Granting of the requested variances will not be injurious to the surrounding area. In fact, the proposed redevelopment of this site will greatly improve this property in terms of reducing crime and vandalism, increase tax base for the area, encourage other property owners to invest in the area, provide service for a needed neighborhood community use and help implement the BCC policy to encourage redevelopment along the LW Corridor. The variances being requested are minor in nature and will not create a safety, health, welfare issue if granted. Staff is recommending conditions of approval that will mitigate the deviations.

#### **ENGINEERING COMMENT**

1. The requirement that the Base Building Line for the subject property be forty feet beyond the existing ROW line of Lake Worth Road is hereby waived. Said Base Building Line is hereby established at the north property line of the subject property, being the existing south right-of-way line as conveyed per O.R.B., Pg. 749. The requirement that the Base Building Line for the subject property be thirty (30) feet from the centerline of Urquhart Street is hereby waived. Said Base Building Line is established at the

existing west right-of-way line, being the east property line of the subject property. **(ENG)**

#### ZONING CONDITION

1. The property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application. **(BLDG PERMIT: BLDG)**
2. By December 19, 2001, the applicant shall apply for a building permit to renovate the existing 3,500 sq/ft building. **(DATE:MONITORING-BLDG PERMIT-BA)**
3. By March 19, 2002, the applicant shall obtain the building permit for the renovations to the existing 3,500 sq/ft building. **(DATE:MONITORING-BLDG PERMIT-BA)**
4. The final site layout of this laundry facility shall be consistent with the BA Site Plan, Exhibit ??, and all BA conditions. Any modifications to the site layout shall be reviewed with the Zoning BA Section prior to the changes being submitted for a building permit. **(ONGOING)**
5. The landscaping along the south property line shall be upgraded as follows:
  - a) Native 14 foot tall shade trees planted 20 feet on center.
  - b) Native 36" hedge planted 24" on center
6. The variances associated with BA2001-023, are valid for this specific laundry use or any other similar use that the Zoning Director concludes generates the same parking demands. Any changes to the Occupational License shall be presented by the property owner to the Zoning Division staff for review and approval prior to change to Occupational License. **(ON-GOING-BA)**
7. The final site design and architectural facades of the renovated 3,500 sq/ft

building shall be consistent with the Lake Worth Corridor Overlay District standards.  
**(ONGOING)**

CHAIRMAN BASEHART: Okay. Thank you. That leaves us with one item on the agenda, that being the item that was on the regular agenda, Subdivision variance number 99.

MR. CUFFE: This is subdivision variance SD-99. It's the petition of International Trade Center Ltd. Liability Company requesting a variance from the requirement that sidewalks be constructed on both sides of the street in the subdivision to allow instead elimination of a requirement for sidewalks.

The requirements are set forth in the Unified Land Development Code Sections 8.21.A.1 and 8.22.B.1. The property is located east of Pratt Whitney Road north of Park of Commerce Boulevard in the PIPD Zoning District.

MR. SPILLIAS: Good morning. My name is Ken Spillias with the firm of Lewis, Longman & Walker for the applicant, the International Trade Center, LCC. That's otherwise known as the Palm Beach Park of Commerce.

CHAIRMAN BASEHART: Mr. Spillias, have you been sworn in?

MR. SPILLIAS: Yes, I have.

CHAIRMAN BASEHART: Everybody's been sworn in? Okay.

MR. SPILLIAS: Yes. With me today are the project engineer, Michael Scora, and the president of International Trade Center, Steven Feldman, to also make presentation and answer questions.

The portion of the Park of Commerce where we're asking for this variance is basically from here up to this area here (indicating). What's being built is a major Walgreen's Distribution Center. It's under construction right now.

And the main access to Walgreen's is going to be from Corporate Road North and Walgreen's

Drive. Corporate Road North is completed to this point; it goes from here to Walgreen's Drive and then up to the property (indicating). It is an end destination road. It is not a road for circulation of any type.

And as you can see, this stretch here in particular is covered on both sides by wetlands. There's an 80 foot right-of-way that goes through the wetlands and then cuts up to the Walgreen's.

The reason that we're asking for the deletion of sidewalks for this particular stretch of road is that FP&L has indicated that they want to serve -- they need to serve Walgreen's with primary cable dedicated directly to Walgreen's. It's going to be a major, major facility and they do need to lay primary cable on both sides of the right-of-way going up to Walgreen's.

There are two difficulties that we're facing with FP&L in that regard. One is that since the lines are going to be underground cable -- and let me back up just a minute.

The Palm Beach Park of Commerce is a PIPD that was approved around 20 years ago. The codes, of course, have changed since then. Conditions have changed. There was no requirement at that time that utilities be underground as there is today in the Land Development Code. However, given the nature of the lines that are going to be laid in this instance, FP&L is determined that they do need to be underground lines for safety and maintenance purposes.

The difficulty is those lines cannot be under sidewalks. If they're under sidewalks, FP&L cannot access them and cannot maintain the lines and the right-of-way that's available they will take up more of that right-of-way than will allow for both the laying of the lines and the s i d e w a l k s .

The other difficulty that we run into is with a dispute that's arisen or a stand off that's arisen between FP&L and the Northern Palm Beach Improvement District. The original concept, of course, is once we complete the road and the utilities and everything, the road is to be conveyed over or dedicated over to the Improvement District for maintenance and ownership.

The District will not permit or accept a dedication of that portion of that right-of-way where FP&L has laid its lines without going through the District's permitting process. FP&L

because of its tariff, and if you ask me to describe and explain all the laws and rules and tariffs that govern utilities like FP&L, I think I'll have difficulty doing that, but they've made it very, very clear to us orally and in writing, and we've submitted a letter as part of our packet that they will not submit to the District's permitting process for their lines.

So the way we've tried to get around that and work within those constraints is that the Park of Commerce would be providing FP&L an easement on the ten feet on either side of the 80 foot right-of-way for FP&L to lay their lines. If we can avoid the sidewalk situation, then what will be conveyed to the District will be 60 feet of right-of-way that includes the road itself, all of the utilities that are under that portion of the right-of-way, and the 10 feet on either side would be conveyed to the property owners association.

So it will be the POA's responsibility to maintain that 10 feet. The easement will still continue to run in favor of FP&L.

In the absence of the variance, we would have a situation where first of all FP&L has told us they will not lay the lines under the sidewalk, but even if there was sidewalk, we'd have sidewalk in the ownership of the POA and maintenance responsibilities there, the street and the road under the ownership of the District, and maintenance responsibilities there, which I'm not even sure that's permitted under the ULDC, but certainly it's not the manner in which the right-of-way should be owned and maintained.

So for those reasons we've come and asked for this variance. It would be to delete the requirement for sidewalks, just for the extension of Corporate Road North and for Walgreen's Drive.

VICE-CHAIRMAN KONYK: Okay. This is an industrial area?

MR. SPILLIAS: This is an industrial area. It's -- and perhaps what would be best to do at this point, I mean staff has indicated in most of the conditions for requirement of a variance, they recognize that we meet the conditions including hardship criteria.

There are a couple of issues where staff has indicated that they either feel we've met the conditions or only met them in part. One of them is with regard to it not being a self-created condition. Staff has recognized that a portion in staff's view of what's going on is not self-created.

They suggested, however, that the prior developer -- and ITC was not the original developer; ITC purchased the property a few years ago. The original developer according to staff should have reasonably expected the review of the subdivision regulations that somehow there should have been additional right-of-way purchased.

However, under the uniqueness standards, staff recognizes that particularly in the wetland area it would have been difficult to get additional right-of-way as it is where we've taken 80 feet going right through the wetlands, to have expected 20 years ago, 15 years ago, the developer then to have the prescience to understand that this would become a problem in 2001, I think is expecting a bit much, and I don't think that that vitiates the non-self-created condition.

Another issue is, of course, the intent of the code. The intent of the code, sidewalks are for safety purposes. Walgreen's is two miles from the Beeline Highway entrance to the Park of Commerce.

While I cannot say that there's no likelihood that anybody will walk along this portion of the road, the likelihood based on the buildout and development of this project is very slim. Walgreen's is fully aware of what we're asking for. They don't feel for the purposes of either their customers or their employees that there's a need for sidewalks.

VICE-CHAIRMAN KONYK: Their customers aren't going to be going there?

MR. SPILLIAS: Their customers are going to be driving -- it's not their customers actually. I mean, it's the trucks that --

VICE-CHAIRMAN KONYK: Right, but I mean it's not the general public?

MR. SPILLIAS: That's correct. No, no, no, this is a distribution center. The traffic is going to be all vehicular traffic. There's no walk-in traffic of any sort.

As I was saying, any employees who might be taking public transit, which was the explanation given by staff as to why we may need to be concerned about pedestrians, at this point, again given that we're two miles from the Beeline, it's very unlikely we're going to have much in the way of pedestrian traffic from employees going to work.

VICE-CHAIRMAN KONYK: Is there a bus line that runs through there?

MR. SPILLIAS: At the present time I don't

believe there is, no. At the present time there isn't. Obviously, if there's ever a need for it there would be, but at this point there's been no indication of a need for that.

I would remind you as well that the code now requires wherever possible underground utilities. If we were here under the requirement of underground utilities and we had this conflict, we'd be seeking a waiver either from the sidewalk issue or from the underground utility issue, we'd be in one position or the other. The only reason the underground utilities is not an issue again is because of the approval of this project prior to that requirement under the code.

The only other item that staff has indicated that we've not met is that the granting of the variance would allow us special privileges other developers are not entitled to. I would suggest that we're not being given a special privilege when viewed in light of the context of the situation.

I mean, the fact that we've got a unique situation here and we're granted a variance does not establish a precedent for doing away with sidewalks for all other developers. I think that that condition needs to be viewed in the context of others similarly situated, and I think this is somewhat of a unique situation.

And for that reason we believe that we've met all the criteria. Mr. Scora is available to answer questions about particular configuration of the lines and the sidewalk and those needs and Mr. Feldman with regard to any questions you may have regarding the project itself. And I'm open for questions.

CHAIRMAN BASEHART: Before staff gives their input, where is the nearest residential area? In other words, if somebody were going to walk or ride their bicycle to this site to go to work, it would undoubtedly be from a nearby residential area. Where is the nearest residential area?

MR. SPILLIAS: The nearest residential areas are Caloosa Farms -- Caloosa and Jupiter Farms. Caloosa is here; Jupiter Farms is up here and it's separated by canals (indicating). So the entrance to the park is Beeline Highway.

CHAIRMAN BASEHART: So it would be like a couple of miles, a bicycle ride?

MR. SPILLIAS: Two miles. Yes.

CHAIRMAN BASEHART: And then a couple of miles through the park?

MR. SPILLIAS: Right. I mean, it's two miles from Beeline to the Walgreen's and to that portion of the park. So however far it would take someone to get to the Beeline entrance and then another couple of miles to the Walgreen's.

MR. JACOBS: How many people would this distribution center employ?

MR. SPILLIAS: I'll let Steven answer that question.

MR. FELDMAN: Steve Feldman. I'm president of the International Trade Center. Walgreen's has committed to the State I believe 600 employees over some protracted period of time that I'm not aware of.

MR. JACOBS: So there would be 600 jobs that would hinge on this facility being built?

MR. FELDMAN: Well, actually they committed to 600. My understanding is ultimately 800. This is 1,200,000 square feet of a 10 story high -- major --

MR. JACOBS: This is a major facility?

MR. FELDMAN: Yes, sir, it is.

MR. JACOBS: What would happen if you didn't get the variance? Would the facility would not be built?

MR. FELDMAN: We have a real problem. It's almost, I guess in legalese it's called impossible performance. We're in the middle of a standoff between two bureaucratic entities, and we haven't been able to find a solution other than the one that we're presenting today.

I'm not certain of what would happen. This has been debated between the two entities and we came into this situation in the last 30 days or so.

MR. SPILLIAS: And Mr. Jacobs, the facility is under construction. Actually you will note, you might note that we got here pretty fast. We only filled out our application a few weeks ago. Staff was very helpful in helping us get here.

There has been a controversy between the Caloosa Homeowners and the District and Walgreen's over the use of the District's easement running along the banks of the canal. They have allowed the use of that easement for construction and that construction has caused quite a bit of heartache for residents. And one of the ultimate solutions to that problem is completing Corporate Road North and Walgreen's Drive so that whatever truck traffic -- we are working on other solutions. It's not that if this weren't granted that it would not solve the

lawsuit.

I think the lawsuit is going to go away through other solutions, but the quicker that we can get that road completed, the quicker we take traffic completely away from the neighborhoods and any concerns they have. That's why I got here so fast.

They've been under construction for at least eight or nine months?

MR. FELDMAN: At least, yes.

MR. SPILLIAS: At least eight or nine months. I mean, the facility is going up. And the FPL issue came to us, our first meeting with FP&L about it, at least that I attended, was about a little over a month ago where they just said they will not.

Now in the past they have worked with the District and have submitted themselves on at least one other occasion to the District's permitting process, but they let the District and us know that was the last time; they will not do it again.

CHAIRMAN BASEHART: Okay. Before we go to the public, why don't we hear from Mr. Cuffe.

MR. CUFFE: Essentially, Mr. Spillias has given the thrust of the staff report.

There are two issues in here that I think require clarification as far as the pedestrian access or the lack of the pedestrian access and the potential for the need in this area.

For one thing, the Corporate Road North extension leads to the cul-de-sac road which is Walgreen's Drive leading to the Walgreen's Distribution Center, but there is also future development planned to be served by several additional industrial lots along that cul-de-sac road.

Part of the DRI, one of the conditions of their DRI resolution is -- and it's condition number seven of the DRI resolution is that the developer shall create and fully fund the position of transportation coordinator under the authority of the parks protective covenants, whose duty it shall be to minimize traffic generated by site development, particularly during peak traffic hours by the implementation of traffic control strategies. These strategies shall be implemented at the outset of the project and shall be coordinated with the County Engineer and shall include but not be limited to:

A) Establishment of a car pool, van pool program for employees within the park;

B) Facilities for mass transit usage

through construction of bus shelters, provision of bus stops, distribution of bus schedules, surveys of employees' transit needs, coordination with CoTran and other mass transit services with the businesses in the park.

CHAIRMAN BASEHART: What's that got to do with a sidewalk?

MR. CUFFE: This was because of the mass transit issue, there is a potential in the future for build out within the park, that there will be mass transit service, car pooling, and some amount if not a great amount of pedestrian traffic during commuting hours. So there is the potential for it and it's sparked basically by the requirement of the DRI.

In this particular area, there is -- and I will be the first to agree that there is -- that because of the relative remoteness of it, there is probably very little chance of that particular area being used or having any significant pedestrian traffic.

The issue, too, the uniqueness issue of this that the 80-foot right-of-way or the 80-foot strip of land available for the right-of-way for the extension of Corporate Road North is a real constraint.

But it was created at the time by the park developer and remember that the park developers are jointly and severally responsible for any portions of the park that have not yet been platted and developed, regardless of how many times the property is sold or how many different owners are involved.

The creation of that constraint by only allowing an 80 foot corridor for an 80 foot right-of-way without any provision through the wetlands or to offset the wetlands to allow for utility easements adjacent to the right-of-way or the lack of coordination of provisions for electric service was the responsibility of the developer. And the current developer that happens to own this particular strip of land is a joint developer and jointly responsible under the PIPD.

So the coordination itself, just because one owner has sold off some property doesn't mean that the responsibility for coordinating the development infrastructure only lies with the original owner.

VICE-CHAIRMAN KONYK: Dave, is there somewhere that those sidewalks can be located?

MR. CUFFE: The problem here and it was something that we have looked at was the

potential of moving the sidewalks further into the right-of-way, further into the right-of-way and the issue frankly of the actual solution regarding the splitting of the right-of-way was something that was never presented as part of the back-up or the application. Some of this is information that I'm actually hearing for the first time on an official basis of any kind.

The problem with moving the sidewalks into the right-of-way which would sound like a simpler solution, the simplest solution, is that because of the drainage constraints, moving the sidewalks would really interfere with the drainage for the street.

VICE-CHAIRMAN KONYK: So then the option is just not to build anything on the land?

MR. CUFFE: The option would be to work out an arrangement to get the necessary electrical service by some other route.

VICE-CHAIRMAN KONYK: You mean like overhead wires or something?

MR. CUFFE: However it's been done in the past.

VICE-CHAIRMAN KONYK: I don't think FP&L does that after they put them underground, do they?

MR. CUFFE: They've developed up to this point.

VICE-CHAIRMAN KONYK: I know situations where FPL has agreed to put wires underground and then accepted money for that and then changed their mind and put them overground. I've never had the situation where they have them underground where they're going to put them overground. I mean, it's -- I think an advantage to the community to have the wires underground for many reasons. I think aesthetically it looks a lot better.

MR. CUFFE: And in fact the Code has always since 1973 has required that they be installed underground unless there was specific authorization to provide or to install them above ground.

MR. JACOBS: Why couldn't FPL file a special tariff covering this item?

MR. SPILLIAS: Mr. Jacobs, they just said they won't do it.

MR. JACOBS: I mean, it's a pain in the neck, but why couldn't they do it? I mean, this is a big user.

VICE-CHAIRMAN KONYK: That's not for us -- let's concern ourselves with the variance. I mean, we can't decide what FPL should or

shouldn't do. The variance is whether or not he's entitled to build this piece of property without the sidewalk.

MR. SPILLIAS: I mean, I can tell you FP&L and the District went head to head on this for a long time, including in at least two meetings with us, and they just basically said we don't have to under the law and we're not going to.

CHAIRMAN BASEHART: Nancy?

MS. CARDONE: Mr. Basehart, have you been given back the chair?

CHAIRMAN BASEHART: Yes.

MS. CARDONE: Okay. Mr. Chairman?

CHAIRMAN BASEHART: Yes?

VICE-CHAIRMAN KONYK: What was that all about?

MS. CARDONE: I just want to make sure who I'm addressing so that I can make a motion.

VICE-CHAIRMAN KONYK: And what was your inference there, Nancy?

MS. CARDONE: I just want to make sure I --

CHAIRMAN BASEHART: Let's have --

VICE-CHAIRMAN KONYK: Let's have a cat fight later.

CHAIRMAN BASEHART: We can have a fight in the parking lot.

VICE CHAIRMAN KONYK: We'll do that. Thank you.

MS. CARDONE: Mr. Chairman, I'd like to make a motion for the approval of the petition of International Trade Center number SD-99.

CHAIRMAN BASEHART: Okay. We have a motion by Ms. Cardone. We have a second?

VICE-CHAIRMAN KONYK: I'll second it.

CHAIRMAN BASEHART: Second by Ms. Konyk. Any discussion?

MR. GERBER: I have a few more questions. The other industrial lots that are going to have sidewalks, that are required to have sidewalks, is there going to be a gap when you come to the Walgreen's Distribution Center, the sidewalk is going to stop?

I mean, right now since you're building first, if the sidewalk was built, there would just be a sidewalk by Walgreen's.

MR. SPILLIAS: There are other areas of the park where there are not sidewalks yet, but that there are requirements as the lots themselves develop for sidewalks.

Right now all we're asking is that any sidewalks that be built would stop here, and from this point up to this point there would be no

sidewalks. So it would be continuous. There would not be a sidewalk, then no sidewalk, then sidewalk. It's the end of the road that we're asking that the sidewalk variance be granted for.

MR. CUFFE: And if I may, the variance itself is being requested only for and that would be a condition that we would like to see if the variance is approved that it be clarified that the variance itself applies only to that portion of Corporate Road North extension and Walgreen's Drive that are currently under consideration.

CHAIRMAN BASEHART: I think that's automatic. You can only get a variance for what you apply for a variance for.

MR. SPILLIAS: That's all we're asking.

MR. CUFFE: I just want to make that clear because there may very well be -- because of the development, because of the type of development that's occurring in the rest of the park, there may very well be a significant need for pedestrian access, and at this point because of the lack of commitment for development, there is no reason in the rest of the park why the FP&L/northern Palm Beach County issues cannot be settled before they come in for development approval.

CHAIRMAN BASEHART: Okay. I don't think we need a condition to that effect, but let's let the record reflect that it's been acknowledged on the record that everybody understands that the only thing being considered for a variance today is that road from the beginning of the wetland area to the Walgreen's site.

MR. SPILLIAS: Correct.

CHAIRMAN BASEHART: Okay.

MR. GERBER: David, do you agree with Mr. Spillias that there's not going to be any -- when the other industrial lots are developed with sidewalks that there's not going to be a gap in front of this particular use?

MR. CUFFE: I'm not quite sure. The gap itself in sidewalks would be from the existing end of Corporate Road North to the intersection or -- right, that's where there would be no sidewalk. For that portion of Corporate Road North and for Walgreen's Drive there would be no sidewalk along those two segments of road.

There will ultimately be sidewalk through the rest of the park approaching from the -- from the -- approaching that area from the south and east.

MR. GERBER: But when you get to

Walgreen's, it's going to stop?

MR. CUFFE: When it gets to Walgreen's it's going to stop because Walgreen's -- the road itself actually dead ends into the Walgreen's property and there's nothing west -- there's nothing beyond that.

MR. GERBER: All right. With 800 people just working at this facility and other uses, there's probably going to be over 1,000 people at some point, I mean you've got to foresee that at some point someone whether they want to just take a walk during lunch on a nice day is going to be walking along that road, either in the road itself or on the grass right next to it.

If we grant this variance today and someone inadvertently gets clipped by a truck going by, what's going to happen? Is the County going to be liable because we granted a variance on this?

MR. SPILLIAS: I don't believe that every time the County grants a variance from its land development regulations that if something happens afterwards that it creates legal liability. I'll let your attorney talk to that.

But I mean, there is going to be swale area. The drainage system here has a requirement for swales. So there is going to be room off of the pavement, off of the road for what we might call the occasional pedestrian use, but it will not be established as pedestrian use; for that reason it will be discouraged as pedestrian use.

When people walk anywhere near a road, if they get too close to the road and something happens to them, I don't think government is automatically liable and responsible for that if there's not a sidewalk there.

MR. GERBER: My concern is we'd be taking affirmative action today to assist the creation of that possibility. That's my concern.

MR. SPILLIAS: It should be noted as well, and Mr. Feldman reminds me, the pavement itself is only going to be 24 feet wide. So you have an 80 foot wide right-of-way. Even if you take the 10 feet from either side and the property owners' association will maintain that, the District is still going to be responsible for 60 feet of right-of-way.

So again on either side of the road there's going to be 18 feet from the edge of the pavement to the edge of the property owners' association portion of the easement and then another 10 feet. So there's going to be plenty of room for people to avoid the pavement.

MR. JONES: Yeah, I agree with his take on the situation. Issues of sovereign immunity usually -- usually government entities are considered immune from issues when discretionary type decisions we're talking now, comes up sometimes in building inspections, approval of building plans and things like that.

VICE-CHAIRMAN KONYK: She can't hear you.

MR. JONES: But you can never say never on something like that. That's pretty much how the law has been up to this point.

MR. GERBER: My last question is in terms of resolving this dispute without seeking variance approval, have you sought or considered a declaratory judgment action and force FPL and the District to basically fight it out as to who's supposed to take care of this problem before you have to come before us?

MR. SPILLIAS: There are a couple of problems with that. One is in my review of it at least, the District has its permitting requirements and is entitled to have permitting requirements. FPL is governed at times by other laws and they're entitled to rely on those laws to the extent that they choose to do that.

But the other problem is the time it would take to get the declaratory judgment. We've let contracts for the road. We are under contractual obligation, Walgreen's, to complete the road by the end of June or sometime in July. Walgreen's is nearing the end of its construction process.

And once they're ready to go and they've made contractual obligations in terms of their distribution operations and their employment. They've been out already looking at hiring people. The delay that a declaratory judgment would entail with no assurance of success in getting a court to say to either the District or FP&L you've got to give in would ultimately be prohibitive for all of us.

MR. GERBER: Thank you.

CHAIRMAN BASEHART: Anybody else? Okay. This is a distribution center, right?

MR. SPILLIAS: Yes.

CHAIRMAN BASEHART: So there would be a lot of trucks?

MR. SPILLIAS: Yes.

CHAIRMAN BASEHART: Okay. Have you considered doing anything to mitigate the impact of the trucks on the residential areas that you might be driving by?

MR. SPILLIAS: Well --

CHAIRMAN BASEHART: I'm just kidding, just

kidding.

MR. SPILLIAS: If you'd like us to put some little trees or something, we could certainly look at that.

CHAIRMAN BASEHART: Yes, something like that. Okay. That being the end of discussion then, we're ready for a vote.

All those in favor of the motion indicate by saying aye?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Motion carries unanimously.

MR. SPILLIAS: Thank you.

CHAIRMAN BASEHART: Thank you.

MR. GERBER: Mr. Chairman, motion to adjourn.

CHAIRMAN BASEHART: I'm sorry. I was filling out my form.

Actually we've got one more item before we adjourn and that's the approval of the attendance report for last month. And actually last month there were two absences.

Ms. Cardone was not here because of business reasons and Mr. Wichinsky was ill.

VICE CHAIRMAN KONYK: It's Wichinsky.

CHAIRMAN BASEHART: I'll pronounce it the way I want to pronounce it.

That was a vacant position. Mr. Jacobs was not here but that's excused automatically because he hadn't been reappointed yet. So do we have a motion to approve the two absences as approved?

VICE-CHAIRMAN KONYK: I make a motion to approve.

CHAIRMAN BASEHART: Motion?

VICE CHAIRMAN KONYK: Second?

MR. WICHINSKY: I can't second it.

CHAIRMAN BASEHART: He can't second it.

MR. GERBER: Second.

CHAIRMAN BASEHART: Okay. We have a motion by Ms. Konyk, a second by Mr. Gerber to make those two absences excused.

All those in favor indicate by saying aye?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no?

(No response.)

CHAIRMAN BASEHART: The motion carries unanimously.

That leaves one item and that's the motion for adjournment.

MR. WICHINSKY: Discussion.

VICE CHAIRMAN KONYK: No.

CHAIRMAN BASEHART: Does anybody have anything else they'd like to discuss before we adjourn?

VICE-CHAIRMAN KONYK: No.

CHAIRMAN BASEHART: Okay. Motion?

MR. RICHARDS: So moved.

VICE-CHAIRMAN KONYK: Mr. Gerber already made the motion, didn't he?

MR. MacGILLIS: The motion was pulled, it didn't get a second.

VICE CHAIRMAN KONYK: I don't think we need a motion to adjourn.

CHAIRMAN BASEHART: Let's call it a unanimous motion and we're adjourned.

(Whereupon, the meeting was adjourned at 10:05 a.m.)

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C E R T I F I C A T E

THE STATE OF FLORIDA )

COUNTY OF PALM BEACH )

I, Sophie M. 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 hearing and that the foregoing and annexed pages, numbered 4 through 52, inclusive, comprise a true and correct transcription of the Board of Adjustment hearing.

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

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 7th day of May, 2001.

\_\_\_\_\_  
Sophie M. Springer