

PALM BEACH COUNTY
BOARD OF ADJUSTMENT

Thursday, January 18, 2001
9:10 a.m. - 11:00 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

Mr. Robert E. Basehart, Chairman

Ms. Chelle Konyk, Vice Chairman

Mr. Stanley Misroch

Ms. Nancy Cardone

Mr. Joseph J. Jacobs

Mr. Glenn Wichinsky

Mr. Jonathan Gerber

David Cuffe, Civil Engineer II, Land Development

Laura Beebe, Assistant County Attorney

Jon P. MacGillis, Principal Planner, Zoning

Joyce Cai, Planner II

Alan Seaman, Senior Site Planner

Fusun Mutgan, Principal Planner, Zoning

Mary Moody, Secretary

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CERTIFICATE OF REPORTER:

P R O C E E D I N G S

CHAIRMAN BASEHART: I'd like to call this January 18, 2001 Board of Adjustment meeting to order. I think we've got a quorum.

Why don't we start and just take roll call.

MS. MOODY: Ms. Nancy Cardone.

MS. CARDONE: Here.

MS. MOODY: Mr. Joseph Jacobs.

MR. JACOBS: Here.

MS. MOODY: Ms. Chelle Konyk.

VICE CHAIRMAN KONYK: Here.

MS. MOODY: Mr. Raymond Puzitiello.

(No response)

MS. MOODY: Mr. Glenn Wichinsky.

MR. WICHINSKY: Here.

MS. MOODY: Ms. Meril Stumberger.

(No response.)

MS. MOODY: Mr. Stanley Misroch.

MR. MISROCH: Here.

MS. MOODY: Mr. Jonathan Gerber.

MR. GERBER: Here.

MS. MOODY: And Mr. Bob Basehart.

CHAIRMAN BASEHART: Here. We have a quorum. In fact, we've got seven members.

The second item is the Proof of Publication. I've got the -- a copy of the proof of publication before me. Why don't we take a motion to accept this into the record?

MS. CARDONE: So moved.

MR. MISROCH: Second.

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

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Carried.

Okay. Next item on the Agenda is remarks of the Chairman. All I'd like to do is for those of you that aren't familiar with the way the Board conducts its business, just to give you a little indication.

The agenda is broken into two sections. The first section is the consent agenda. Those are the items where the staff is recommending approval with or without conditions. And if there are conditions where the applicant has indicated acceptance of the conditions and where there's been no indication of opposition from the members of the public.

Those items, if there is no opposition here at the meeting and if the members of the Board who've all read the staff report agree, those items will stay on the consent. It will not be necessary for the applicants in those cases to make a presentation. The staff report becomes the basis of the decision and is entered into the minutes. And they will be approved as a group after we go through each one.

The second area of the agenda is those items that

will require a full hearing. Those items are where the staff is recommending denial or denial in part or where conditions of approval have not been agreed to or where there's been an indication of opposition from the public; those items will require a presentation by the staff, full presentation by the applicant. The Board will ask questions and then eventually vote on those items individually.

Other than that, I don't have any other things to discuss.

Is there any other member of the Board that has anything they would like to say on the record prior to the start of the hearing?

(No response.)

CHAIRMAN BASEHART: Okay. Seeing none, we'll go to the next item on the agenda which is approval of the minutes. I didn't get the minutes. Nobody got them?

Do we all agree we should postpone the approval of the minutes till next month after we've had a chance to read them?

Okay. So that item is postponed.

Next is the remarks of the Director.

MR. MacGILLIS: Just one comment. At the end of the Agenda staff would -- the DRC staff would like to for ten minutes discuss some issue with this Board. So it's not on the agenda because it had already gone out. So we have something to just hand out to you.

CHAIRMAN BASEHART: Okay. We'll add that to the end of the agenda.

Okay. That takes us -- anything else, Jon?

MR. MacGILLIS: No. That's it.

CHAIRMAN BASEHART: Okay. That will take us to the agenda.

MS. BEEBE: I have a quick comment.

CHAIRMAN BASEHART: Yes?

MS. BEEBE: I just want to remind the Board that in the event that you had any ex parte communications, you need to disclose those including the subject of the communication and the identity of the speaker before you vote on any of the matters.

CHAIRMAN BASEHART: Okay. We do that before each --

MS. BEEBE: Yeah, you can do that.

CHAIRMAN BASEHART: Do we have to do that on consent items?

MS. BEEBE: Yeah, you should do that.

CHAIRMAN BASEHART: Okay. All right. I'll ask the members of the Board to disclose that information on an item by item basis.

MS. BEEBE: Okay.

CHAIRMAN BASEHART: Okay.

CHAIRMAN BASEHART: The first item on the Agenda is a request for withdrawal. That's a matter of right, isn't it?

MR. MacGILLIS: That's correct.

CHAIRMAN BASEHART: Okay. So I guess we don't need a vote on that. BOFA 2001-004 has been withdrawn by the applicant.

CHAIRMAN BASEHART: The second item is a request for a 30 day postponement. Petition 2000-069, Shannon Jones.

MR. MacGILLIS: This is the second postponement for this item. Due to the Christmas holidays the applicant was unable to produce the necessary documents staff had requested for additional elevations of the proposed garage and stuff.

So they have apparently submitted that stuff and they'll be moving forward next month. We did receive a letter requesting the additional 30 days which would be time certain February 15, 2001.

CHAIRMAN BASEHART: Okay. And you have no objection to the postponement?

Is there any member of the public that came to discuss this application, BOFA 2000-069?

(No response.)

CHAIRMAN BASEHART: Seeing none, do we have a motion for a 30 day postponement?

VICE CHAIRMAN KONYK: Motion.

MR. WICHINSKY: Second.

CHAIRMAN BASEHART: Okay. We have a motion and a second, Ms. Konyk and Mr. Wichinsky. All those in favor indicate by saying aye?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no?

(No response.)

CHAIRMAN BASEHART: Okay. That item is postponed until the February meeting.

CHAIRMAN BASEHART: Next is the Consent Agenda. We have four items on the Consent Agenda. The first item is BOFA 2001-001. Is the applicant here?

MS. GENNARI: Yes. Good morning.

CHAIRMAN BASEHART: Good morning. Your name for the record, please?

MS. GENNARI: Jean Gennari.

CHAIRMAN BASEHART: Ms. Gennari, the staff has recommended approval of your application with four conditions. Do you understand the conditions?

MS. GENNARI: Yes, I do.

CHAIRMAN BASEHART: Do you agree with them?

MS. GENNARI: I agree with them.

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

(No response.)

CHAIRMAN BASEHART: Seeing none, were there any letters?

MR. MacGILLIS: Just one letter of support from Jim and Sarah Gilbert.

CHAIRMAN BASEHART: Has any member of the Board had any ex parte communications with the applicant or any member of the public on this item?

VICE CHAIRMAN KONYK: No.

CHAIRMAN BASEHART: Okay. Any member of the Board have any problem with this item?

(No response.)

CHAIRMAN BASEHART: We'll leave it on consent. Okay. You stay on consent.

MS. GENNARI: 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. This .18 lot is located within the

Cloisters PUD, Petition 84-152. This residential subdivision supports single family residences. Many of the lots support single family residence with pools and screen enclosures. This particular lot is located on Vista Lina Lane and abuts onto Via De Sonrisa Del Sur, an 80 foot collector road. The lot's location on the street curve affects the layout of the lot. The front of the lot is wider than the rear. When the house and pool were constructed in 1988-1989 by the developer, they were placed on the lot to meet the minimum setback requirements. The current owner purchased the property in June 2000 and soon became aware that the open pool area was a problem. The large trees along the street to the rear constantly drop leaves and branches in the pool. This results in the owner having to constantly clean the pool. Many residents in PBC install screen enclosures for the reason of sheltering the pool and reducing the level of required maintenance. The applicant is requesting to construct a pool along the existing pool patio slab. This would allow for a 5 foot wide walkway between the west side of the pool and screen enclosure. There is an existing mature ficus hedge along the property line that mitigates the minor 3.5 foot setback encroachment being proposed.

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

NO. The applicant purchased the property in June 2000. The single family dwelling and swimming pool were constructed in 1988-1989, respectively. The pool was located with the required 10.5 foot side interior setback along the west property line, consistent with code. However, the original owner (developer) did not anticipate a future screen enclosure. Since the pool would have to have been configured differently to allow room for the enclosure. The applicant has only resided at the property for several months, but is well aware of the pool maintenance problems without a screen enclosure. The large mature mahogany trees located along the right-of-way to the rear of the yard drop leaves and small branches constantly into the pool. This results in costly and time consuming maintenance. The applicant is proposing a screen enclosure to be located on the existing pool deck which is approximately 4 feet off the property line to the west. This would result in a 3.5 foot setback variance. Many other residences within this development have screen enclosures to protect their pools. The property owner to the east on lot 16 has a pool and screen enclosure, however

the pool and screen enclosure were designed at the same time to comply with the setbacks. There is no pool or screen enclosure on the lot to the west. There is a mature ficus hedge along the west property line that will mitigate the 3.5 foot setback encroachment if the variance is approved. Furthermore, the applicant has obtained a letter of support from the property owner on lot 14. The HOA has given preliminary approval of the screen enclosure provided the variance is granted by PBC.

Therefore, the granting of the variance **will allow** the applicant the best use of their limited back yard and pool area. The fact that it will be mitigated by the existing mature ficus hedge is also a unique mitigating circumstance for support of the request.

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

NO. Other residents in PBC and this residential PUD have screen enclosures to protect their outdoor living area and swimming pool. Typically, when a pool is constructed a property owner makes a decision on whether or not a screen enclosure is necessary based on surrounding conditions. However, in this particular situation the pool was constructed in 1989 by the developer with no consideration for a future screen enclosure. Since 1989, the trees to the rear of the lot within the right-of-way have matured and now tower over the rear yard. The trees shed leaves and branches that are constantly falling in the applicant's pool. The applicant purchased the property in June, 2000 and soon became aware of the maintenance problems. Due to the original siting of the pool there are limited options available to the applicant in terms of constructing a pool without the need for a setback variance. The 3.5 foot variance will occur along the west property line. There is an existing mature ficus hedge that buffers the existing pool and activity from the adjacent lot. The owner of lot 14 has provided the applicant with a letter of support for the setback encroachments.

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. As previously stated, the applicant has explored other screen enclosure design options that would avoid the need for a variance. However, having to deal with the existing location of the house and patio deck have left little if any options other than a variance. The applicant is proposing to construct the enclosure on the existing deck approximately 5 feet from the pool edge. This will ensure safe circulation around the pool and a design layout that maximizes the usable patio area. The existing mature ficus hedge will mitigate the minor 3.5 foot setback encroachment. If the variance is denied the applicant would not be able to construct a screen enclosure over the pool. The pool currently requires constant maintenance as a result of leaves and branches falling off the mature mahogany trees located along the rear of the property line within the right-of-way. The applicant cannot cut these trees or maintain them in such a manner so they do not shed in the pool. The trees are within the right-of-way. The screen enclosure will provide the applicant with the best use of their limited outdoor living space.

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

YES. The granting of this setback variance **will allow** the applicant a reasonable use of their property. The applicant only recently purchased the property and was unaware at the time of the pool maintenance problems as a result of their not being an enclosure over it. Typically, when someone constructs a pool they evaluate the surrounding landscape and environment to determine if an enclosure is warranted or desired. Since the developer constructed the pool in 1989 no enclosure was constructed or planned for the future. The current owner is requesting a 3.5 foot side interior setback that will be mitigated by the existing mature ficus hedge that straddles the common property line.

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

YES. The intent of the ULDC setback provision is to ensure minimum setbacks are maintained to protect property values, ensure air/light is allowed to move freely and a minimum distance is maintained between structures. If this variance is granted, the applicant can comply with all the above criteria. The existing mature ficus hedge is well maintained and will mitigate any negative

impacts associated with the enclosure. The property owner on lot 14 to the west has provided a letter of support of the variance request.

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

NO. The granting of the variance would only affect the property owner to the west. This property owner has provided the applicant with a letter of support of the variance. The ficus hedge will mitigate the 3.5 foot setback encroachment. There are other lots within this development that have pools and enclosures. The applicant will have to obtain the HOA architectural review approval for the proposed enclosure to ensure it is consistent with established guidelines.

ENGINEERING COMMENT

No comments. **(ENG)**

ZONING CONDITIONS

1. The property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan, Exhibit 9, presented to the Board, simultaneously with the building permit application (**BLDG PERMIT: BLDG**)
2. By June 19, 2001, the applicant shall apply for a building permit for the proposed screen roof screen enclosure. (**DATE: MONITORING: BLDG PERMIT**)
3. By October 19, 2001, the applicant obtain a building permit for the screen roof screen enclosure on lot 15 (PCN:00424734050020150). (**DATE MONITORING: BLDG PERMIT**)
4. The structure shall not be enclosed with solid walls or be converted into an enclosed space. (**ONGOING**)

CHAIRMAN BASEHART: Next is the Board of Adjustment Time Extension 2001-002.

Your name for the record?

MS. ANDERSON: Candy Anderson, Kilday & Associates.

CHAIRMAN BASEHART: Okay. Staff is recommending approval of the extension. I assume you have no problem with that?

MS. ANDERSON: No.

CHAIRMAN BASEHART: Do you still agree with the three conditions of approval?

MS. ANDERSON: Yes, we do.

CHAIRMAN BASEHART: Any member of the public -- of course, these aren't advertised, but okay. Board members?

(No response.)

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

MS. ANDERSON: Thank you.

STAFF RECOMMENDATIONS

Staff recommends a maximum six month Time Extension from February 17, 2001 to August 17, 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 BA99000092, 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. By February 17, 2001, the property owner shall obtain a building permit for the first single family dwelling in order to vest this variance approval and avoid the need to apply for a time extension for the Development Order. **(DATE: MONITORING-BLDG. PERMIT)**

is hereby amended to read:

By August 17, 2001, the property owner shall obtain a building permit for the first single family dwelling in order to vest this variance approval and avoid the need to apply for a time extension of the Development Order. **(DATE:**

MONITORING-BLDG. PERMIT)

3. The applicant shall notify the Zoning Division, BA staff, when the Building Permit for the first single family dwelling is obtained, in order to vest the variance.
(MONITORING: BA)

ENGINEERING COMMENT

The Engineering Department has no comment regarding the subject variance requests regarding lot size, setbacks, building coverage and FAR as stated in the applicant's summary.

CHAIRMAN BASEHART: Next item is BOFA 2001-003, Anne Hctor.

MR. MacGILLIS: Staff has two modifications to the conditions which were discussed with the applicant.

On page 31 of your backup material, condition number two shall read: "By June 18, 2001," insert the language, "or prior to the issuance of the building permit, whichever shall occur first, the property owner shall obtain approval from the homeowner's association for the proposed swimming pool screen enclosure."

On page 32 of your back up material, condition No. 4, insert clarifying language: "The Building Division technician shall ensure the proposed screen-roofed screen enclosure is similar in height (12' mean roof height) to the existing screen enclosure on the adjacent property to the northeast." Those are the only changes.

CHAIRMAN BASEHART: Okay. Ms. LaValley --

MS. LaVALLEY: Thank you. Helen LaValley with Hctor Associates, and yes, we agree with the conditions as amended.

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

(No response.)

CHAIRMAN BASEHART: Seeing none, any letters?

MR. MacGILLIS: No letters.

CHAIRMAN BASEHART: Any member of the Board had an ex parte communication on this item?

(No response.)

CHAIRMAN BASEHART: Any Board member feel this item should be pulled?

(No response.)

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

MS. LaVALLEY: 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. 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. The subject property is located at 7534 Cedar Hurst Ct., approximately .4 miles E of Turnpike and .5 miles S of Hypoluxo Rd., within the Lake Charleston PUD in the RTS/SE Zoning District (Pet. 86-096). The underlying land use designation is Low Residential 3 (LR-3), compatible with the zoning designation.

The subject property is 0.16 acre and is located along the NE perimeter property line of the Lake Charleston PUD. It is bounded by streets and easements on three sides. More specifically, along the rear property line is a 20' landscape buffer easement (with a 12' overlapped utility easement) and beyond the rear property line is an existing 80' R/W, Charleston Shores Blvd. Beyond the SE side property line is a 10' utility easement and a 50' R/W, Hollinton Place. Along the front property line is a 10' utility easement and 50' R/W, Cedar Hurst Ct. There are mature native trees, shrubs and hedges surrounding the property, which create a substantial buffer to mitigate the impact associated with the requested setback encroachments for the proposed pool and screen enclosure. In addition, no residential property is directly adjacent to the rear of the subject property where the encroachments occur.

As indicated by the applicant in the

justification, the current property owners purchased the subject lot under the impression that since they had a large rear yard, they could accommodate a pool and a screen enclosure. However, after researching the code requirements for the proposed pool and screen-roofed screen enclosure, they discovered the rear yard's limitation as a result of the easements and setbacks. The developable depth of the rear yard is only 22 ft. instead of the 42 ft. of the total depth.

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

NO. Special circumstances and conditions **are not** the result of actions of the applicant. This **is not** a self-created hardship. As previously indicated, the applicant was not aware of the rear yard's constraints due to the existence of the 20' landscape buffer easements and 12' overlapped utility easement along the rear property line. They were under the impression that the rear yard could accommodate a screen enclosure and a swimming pool. After determining the lot limitation, the applicant explored design options but was left with applying to the Board of Adjustment for rear setback variances for the proposed pool and screen enclosure.

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

NO. Granting the variance **shall not** confer upon the applicant special privilege(s) denied by the comprehensive plan and this code to other parcels of land, buildings or structures in the same district. The applicant is proposing to construct a swimming pool and a screen-roofed screen enclosure in the rear yard, which are allowed in the zoning district in which this property is located. Due to the lot's constraints resulting from the easements along the rear property line, the buildable area in the rear yard is 22 ft. instead of 42 ft, as originally anticipated by the property owners. As previously indicated, no residential lot is adjacent to the rear property line. Along the rear property line are a 20' buffer easement (with 12' overlapped utility easement) and an existing 80' R/W, Charleston Shores Blvd. Mature trees and shrubs exist along all the street sides creating an adequate buffer to mitigate the impact of the proposed structures. Therefore, if

the requested variances are granted, it will allow the applicant to add typical amenities found in S. Florida. The amenities will also enhance the quality of life for the property owners.

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

YES. A literal interpretation and enforcement of the terms and provisions of 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. As previously indicated, the subject property is a unique in that it is a corner lot bounded by easements and streets on 3 sides. Beyond the proposed structures to the rear property line is a 20' landscape buffer easement (with a 12' overlapped utility easement) with mature trees and shrubs. This serves as an adequate separation and buffer to mitigate the requested rear setback encroachment from the proposed pool and screen enclosure. Therefore, if the requested variances are granted, it will allow the applicant to construct the accessory structures.

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 approval of variance **is** the minimum variance that will allow a reasonable use of the parcel of land, building or structure.

The applicant is proposing a 14'x30' swimming pool and a 22'x47' screen-roofed screen enclosure consistent to the one located on the adjacent lot to the N.E. side of the subject property. The proposed pool will be setback 3 feet from the interior side of the 20' buffer easement while the screen enclosure sits on the interior side line of the 20' buffer easement. The variances of 7.5' for both the pool and screen enclosure are considered minimal due to the fact that there is a 20' buffer easement between the proposed structures and the subject rear property line. In addition, mature trees and shrubs exist along the rear and sides of the yard, which serve as an adequate separation and buffer to mitigate the impact of the variances as well as blocking view of the screen enclosure from the street.

6. GRANT OF THE VARIANCE WILL BE CONSISTENT WITH THE

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

YES. Grant of the variance **will be** consistent with the purposes, goals, objectives and policies of the comprehensive plan and this code.

The general intent of the setbacks for accessory structures is to ensure minimum distance between property lines and the principal structures on the lots. Granting the requested variances **will be** consistent with the general intent of the setback requirements. The code establishes specific setbacks for residential accessory structures such as pool and screen enclosures. The setbacks are typically less than the principal structure because they typically have a lesser impact on the adjacent property. In this case, the uniqueness in lot location and 3-side easements as well as the existing mature trees and shrubs warrant an approval of this application.

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

NO. Granting this variance **will not** be injurious to the surrounding neighborhood. The subject property is bounded by streets on 3 sides. There is only one residential property adjacent to, which is on the N.E. side of the subject property. There is no residential property directly adjacent to the affected rear property line. Instead, there is a 20' buffer easement along the rear property line that can mitigate the impacts associated with the rear setback encroachments of the proposed screen enclosure and the pool. In addition, there are mature trees and shrubs along the rear and SW street sides, which can buffer most of the view of the proposed structures from the streets.

ENGINEERING COMMENT(S)

None. (ENG)

ZONING CONDITION(S)

1. By March 18, 2001, the BA Zoning staff shall ensure the certified site plan has a notation on lot 69, Plat One of Lake Charleston PUD indicating the approved variance and conditions. **(DATE: MONITORING-ZONING-BA)**
2. By June 18, 2001, the property owner shall obtain an approval from the Home Owners Association for

the proposed swimming pool and screen-roofed enclosure **(DATE: MONITORING:BLDG-HOA)**

3. By September 18, 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 (Exh. 9, File BA20001003) presented to the Board, simultaneously with the building permit application for the proposed swimming pool and screen-roofed screen enclosure. **(DATE: MONITORING:BLDG.PERMIT-BLDG)**
4. The Building Division technician shall ensure that the proposed screen-roofed screen enclosure is similar in height (10') to the existing screen enclosure (B98010742) on the adjacent property to the North East **(BLDG PERMIT)**
5. By November 18, 2001, the applicant shall obtain a building permit for the proposed swimming pool and screen-roofed screen enclosure in order to be vested with the setback variances. **(DATE:MONITORING-BLDG PERMIT)**

CHAIRMAN BASEHART: Next item. Last item on consent agenda is BOFA 2001-005, Brian Sosnow, agent.

MR. MacGILLIS: The agent contacted staff, he's running late, he's caught in traffic, so I don't know if you want to order it at the end of the agenda.

Staff is recommending approval and he has agreed to the conditions.

CHAIRMAN BASEHART: All right. Well, knowing that he's agreed to the conditions if there's no problem we might as well just get it over with.

MR. MacGILLIS: There were no letters on this item, either.

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

(No response.)

CHAIRMAN BASEHART: Seeing none, any member of the Board have a problem with this?

(No response.)

CHAIRMAN BASEHART: Any member of the Board talk to the applicant?

(No response.)

CHAIRMAN BASEHART: Okay. Seeing none, we'll

leave this on consent.

STAFF RECOMMENDATIONS

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

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. 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.

The subject property is located at 10532 El Paraiso Place, approximately .5 miles W of State Road 7 and 300' S. of 157th Pl. S. within the Palm Beach Farms Co., Plat 3 (Tierra Del Rey Estates unrecorded subdivision) in the AGR Zoning District. The underlying land use designation is AGR compatible with the Zoning District. As previously indicated, special conditions or circumstances **do exist** that are peculiar to this property.

The development is unique in that it supports large upscaled 5-acre lots and estate homes. The entrance walls/gates are a typical amenity to the residential lots. The subject lot is bounded by a lake on four sides with exceptions of drylands on northeast corner of the property. It is a last lot situated at the end of a local street. There are only two other properties who share the portion of the road, 105th Avenue So., which is south of 157th Place S. The adjacent property line to the east is oriented vertically with its driveway approximately 250 ft. north of the subject north property line. The adjacent property to the north is currently vacant.

The proposed fence and entrance gate runs along the 40' wide access to the local road. It will be made of a series of rod irons that can be seen through. Therefore, the impact will be minimal as compared with solid or opaque types of

entrance features. In addition, due to its unique location, the additional 3 feet height from the proposed fence and entrance gate features will not be visually detected since approximately half of the road (105th Ave. S.) which is south of the 157th Ave. S. is utilized only by the subject property owners.

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

NO. Special circumstances and conditions **are not** the result of actions of the applicant. But rather, as above mentioned, are a result of the unique character of this community and its lot location and existence of a lake surrounding the property on four sides. The proposed fence and entrance gate are located at the end of a dead-end street while the nearest driveway from the adjacent property is 250' north of them, the requested fence/gate height variance will not be visually detected nor impose any adverse impact on the surrounding residents. This upscaled community supports large lots with estate homes. The entrance walls/gates are an extension of the house and character of the community.

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

NO. Granting the variance **shall not** confer upon the applicant special privilege(s) denied by the comprehensive plan and this code to other parcels of land, buildings or structures in the same district. Fences and entrance gates are allowed in the AGR zoning district where this property is located. As indicated previously, the subject property has a unique physical location being situated at the end of a dead-end street as well as being surrounded by a lake on 4 sides. Therefore, if the variance is granted, it will allow the applicant to construct the proposed fence and gate features for security of the property, including the swimming pool, as well as being consistent with the upscaled residential community's architectural characteristics.

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

YES. A literal interpretation and enforcement of

the terms and provisions of 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.

The ULDC does not differentiate between estate homes and typical residential lots. Estate lots/homes in Palm Beach County typically support walls/controlled entrance gates.

The intent of the code provision to provide minimum height for fence, gate, gate posts and light fixtures in the front yard is to 1) allow for safe sight distance for a motorist to ingress or egress from a property; 2) allow for air and light to pass through properties is an important consideration of limiting fences; 3) to discourage the creation of "visual walls" that can detract from neighborhood ambiance.

As previously indicated, due to the special conditions and circumstances to the subject property, granting of the requested variances for the proposed entrance gate **will** meet the general intent of the code. The proposed entrance including fence, gate, gate posts and light fixtures is made of a series of rod irons, which can be seen through, will not obstruct views, air nor cast shadows onto the adjoining property. It will be consistent with the established character in this upscaled estate community. Therefore, if the requested variances are granted, it will allow the applicant a reasonable use of the property while meeting the general intent of the code.

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

YES. The requested variance **is** a minimum variance that will allow a reasonable use of the parcel of land. The proposed front gate feature is a series of vertical rod irons with curved lines and patterns on the top. The outline of the gate is circular in shape with its height ranging from 7 ft. to 9 ft. The proposed fence will be made of aluminum rails with 7 feet in height (Req. 4ft). The all can be seen through with minimal impacts as compared with the solid/opaque types of entrance features. In addition, due to the unique location, the property is "remote" from the other neighboring properties, therefore, the additional 3 ft height will not be visually detected.

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

YES. Grant of the variance **will be** consistent with the purposes, goals, objectives and policies of the comprehensive plan and this code. The principle goal of the Comprehensive Plan and ULDC is to maintain consistency and harmony of urban character. The proposed fence, gate with gate posts and light fixtures are tastefully designed and consistent with gate/wall features that exist in the community. The gate will provide security to the newly-constructed residence and the swimming pool. Therefore, the granting of the requested variance in this residential community will contribute to established community guidelines for the gates/walls.

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

NO. Grant of the variance **will not** be consistent with the purposes, goals, objectives and policies of the comprehensive plan and this code. As previously indicated, there are only 2 adjacent properties that share the same portion of the road (105th Ave. S.) north of 157th Ave. S. One is currently vacant and the other's driveway is approximately 250' north of the proposed structures. The proposed gate/fences are consistent with those already permitted and constructed within this estate community. The gate portrays an image consistent with the estate homes while at the same time provide required security for the property from intruders.

ENGINEERING COMMENT(S)

None. (ENG)

ZONING CONDITION(S)

1. By August 18, 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 for the proposed gate, gateposts, with light fixtures and attached fence in the front yard for lot 463. **(DATE: MONITORING-BLDG PERMIT)**.
2. By November 18, 2001, the applicant shall obtain a building permit for the proposed gate, gateposts with light fixtures and attached fence in the front yard in order to be vested with the variances. **(DATE: MONITORING-BLDG PERMIT)**
3. The proposed entry feature shall be

substantially consistent with the style shown in the sample picture submitted by the applicant (Exh. 21, found in the BOFA File 2001-005). **(BLDG PERMIT: ZONING/BA)**

CHAIRMAN BASEHART: So we're ready for a motion for approval of the consent agenda.

VICE CHAIRMAN KONYK: I make the motion to approve the consent agenda, items BOFA 2001-001, Board of Adjustment Time Extension 2001-002, BOFA 2001-003, BOFA 2001-005 with the staff report becoming part of the record.

CHAIRMAN BASEHART: We have a motion by Ms. Konyk. Do we have a second?

MS. CARDONE: Second.

CHAIRMAN BASEHART: Second by Ms. Cardone. All those in favor of the motion indicate by saying aye?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no?
(No response.)

CHAIRMAN BASEHART: Motion carries. The consent agenda is approved. And anybody with anything on it is free to leave.

CHAIRMAN BASEHART: That will get us to the regular agenda which consists of two items. The first item actually is BOFA2000-061. It was an item that was on the agenda last month and is back by virtue of a tie vote.

MR. MacGILLIS: That's correct. The staff is going to hand out to you the verbatim minutes from that meeting.

MR. WICHINSKY: Mr. Chairman, I have a question for our county attorney.

Laura, to consider and vote on this matter and

if, for instance, I wasn't here at the last meeting, is there a restriction on my participation to vote on it at this time?

MS. BEEBE: No. And because you didn't receive a transcript, however, they need to make another presentation.

MR. WICHINSKY: Just for me?

VICE CHAIRMAN KONYK: Me, too. I wasn't here.

MS. BEEBE: Anyone that wasn't here.

CHAIRMAN BASEHART: And neither was Mr. Jacobs. So, I mean, the bottom line is --

MS. BEEBE: Unless your comfortable with having the back up, but they should have the opportunity to make a presentation.

CHAIRMAN BASEHART: Thank you. If only those who were here last month could vote we'd have another tie.

VICE CHAIRMAN KONYK: Maybe.

CHAIRMAN BASEHART: Okay. This item is BOFA 2000-061, Petition of Robert Bentz. Is the applicant here? He is. This one is Joyce.

Joyce, can you introduce the item for us?

MS. BEEBE: Do you want to put everybody under oath first?

CHAIRMAN BASEHART: Yeah. All those who intend to speak on this item, please raise your right hand to be sworn in.

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

CHAIRMAN BASEHART: Okay. Joyce?

MS. CAI: This variance is for the parking location to be reduced from the required ten percent to the requested four percent with a variance of six percent. And then staff has provided you with a summary of the outline of this variance.

As you can see from the findings, the tables, in April of this year -- no, I'm sorry, in August of this year, DRC approved the site plan. At that time the required parking to the rear and the side was 20% and the applicant provided 22%. And two months later after that approval, the applicant requested a variance to reduce the parking to the rear and the side of the original structure from one to three to be reduced from ten to four percent for a six percent variance.

And staff has evaluated this application and found out that the seven criteria has not been justified based on some major findings, such as it is a self-created situation. There's no uniqueness or hardship that can warrant this variance. And also the reduction of the parking spaces for resolving the landscape area will reduce the landscape area which can be planted or created along the road. And also, it would not be consistent with the general or more literal intent of the code, so staff recommended denial.

So that's basically how it is and I can answer any question a board member can ask.

CHAIRMAN BASEHART: Okay. Why don't we save all our questions until we hear from the applicant? Then you

may ask questions of both the applicant and staff. Your name for the record?

MR. BENTZ: Good morning. For the record, Bob Bentz with Land Design South. I'm happy to be here this morning.

CHAIRMAN BASEHART: You've been sworn in?

MR. BENTZ: I have been sworn in as has Joe Lelonek also from Land Design South.

Together we're here today to talk about the variance request for the Spalding MUPD. And if you'll give me a second here to change exhibits --

CHAIRMAN BASEHART: While you're moving things around has any member of the Board had any ex parte communication with respect to this item?

VICE CHAIRMAN KONYK: No.

CHAIRMAN BASEHART: Okay.

MR. BENTZ: I'd like to take just a second or two and talk about the history of the Spalding MUPD because we do believe that there are two really good reasons to grant the variance today for this property.

And really the first one is the uniqueness of the area, the demographics of the area. People that shop in this part of Palm Beach County as well as the previous history of the approvals for the site. And the second reason that we're asking for the variance which we also think is justified for this site is the site constraints that are on the property.

So the uniqueness and the site constraints, we believe, are two excellent reasons why the variance should be granted for the overall property.

Let me begin very briefly with a history of the site. Joe and I have been working on this property now for two-and-a-half -- actually about six or seven years, to tell you the truth. For the last two-and-a-half years on the commercial requests for the petition.

And very, very briefly I want to just kind of go over really the last five years on the site that began residential, rolled into the commercial request, and ultimately have led us to this variance today that we're asking for.

The site itself is 26 acres in size. This is roughly 18 acres of the 26 acres. The remaining 8 acres of the land extends out to the north. It's a small southern strip of land which is not shown on this graphic because we're not asking for a variance for that portion of the property. It's only the southern portion of the overall site.

Originally about five years ago a stream of residential developers from Pulte Homes to Engel Homes to Ansca Homes tried to develop the property as residential housing, but due to a couple of major site constraints on the property were unable to do so.

What were those site constraints that were on the property? Well, they were twofold as they related to the residential development of the site. The first one was the very large amount of frontage the property has on Jog Road. There is about a half-a-mile of frontage along Jog

Road which begins at the south end of Lake Ida and runs to the north where Via Delray will ultimately extend through.

The second major site constraint for the overall property which is also relevant to the variance request that we have today are the utility easements that do run through the middle of the site. There are two utility -- actually one utility easement with two large pipes in it that do run right through the middle of the overall property dividing this portion of the property really into two halves.

Within that utility easement there is a very large force main and a very large water main. These lines for all practical purposes are unmovable. The cost to move both lines are close to a million dollars. So that for all practical purposes means the lines cannot be moved. They basically provide sewer and water service to the entire area around this property. They are the main trunk lines, the main feeder lines for sewer and water.

What can we do and what can we not do on top of those utility lines? We can't build a building, we cannot dig a lake. All we really can do on top of those lines is park vehicles or put a drive aisle. The building cannot be moved further down on the site plan. The ponds cannot be put on top of that property because of those easements on that site.

And that really divides the property into two halves on this portion of the site. Again, the eastern portion of the property where the buildings are and the western portion of the property where the parking is. And the buildings cannot be pushed really further to the west because of that utility easement that's on the site.

The other issue is that because of the residential development on the property the possibilities were not real great. This item went to the County Commission about a year-and-a-half ago and was unanimously approved by the Board of County Commissioners for a comprehensive plan change to commercial and for the MUPD approval that you have before you today.

And again, the reasons for that change were not only the difficulty in developing the property as residential, but also the fact that the property -- there's a need in this area for commercial development because of the large number of basically retiree population base in this portion of Palm Beach County.

Today, of course, we have the approval for this Spalding MUPD, but we do have some of the constraints that were saddled on this property by the Comprehensive Plan Amendment approval as well as the easement on the overall property. The easement constraint I've already talked about.

The other constraints that were imposed on this site by the County Commission and us negotiating with the surrounding neighbors around the property were two other constraints. The first one was a 50-foot wide landscape buffer that runs along the eastern boundary of the

property separating it from the residential community.

The code requires a 15 foot buffer. This development has a 50 foot wide buffer which includes a total screen of 12 feet in height. That is the condition of the Comprehensive Plan approval for this site.

The other condition that was placed on the property or requirement by the Comp Plan was the location of the overall lakes on the site. A lake was located here and a lake was located there (indicating) along the site as a further buffer to the residential area, again located to the east of the overall property.

So the constraints that we had from a site constraint on this property really are three: the required buffer, the location of the lake areas and the existing utility easement that runs through the middle of the property.

During the land development approvals for the overall property, it was discovered that the lakes that were originally shown were not large enough. The revised plan has been submitted to the Board of Adjustment reflecting an increase in the overall lakes by 70%. They were an acre in size of overall water body; now they're 1.7 acres in size.

These lake area increases in size is not a request of the developer. In fact, it's at the disadvantage of the developer because he is losing about 20,000 buildable square footage on the property for buildings and in turn replacing that with lake area.

So it is another additional constraint that is really relevant to the area, not really relevant to the developer's request. In fact, it does effectively hurt the development of the property from the developer's perspective.

So what we end up with are three problems once again. We have larger lake areas on the site than what was originally anticipated for the overall property which are, again, fixed in their location, the buffer area, as well as again those utility easements.

This combined with one other factor which is not really relevant to the approvals for the site, but is, I guess, a practical matter for this portion of Palm Beach County, and that is the demographics of this area. The median age within two miles of this site is 77 years old. That's the median age. Every community around this site, and I mean every single one of them, are adult-only senior communities over 55 years old and older. Many of the communities have been there for 20, 25 years. So again, that's why you have a median age in this part of the county of 77.

What comes with that median age? Well, at a certain level of insecurity comes with that age. And part of the insecurity, I think, is referenced in the fact that we have a big buffer, we have the water retention ponds in that area. And the other big issue is that when these people shop, they don't shop to get the groceries for the entire week. It's a recreational activity for these people in many cases. They'll often go to what is going

to be a grocery store and now maybe go there every day or every couple of days. It's a much more frequent shopping event for these people than it is for a younger population base that's more family oriented and has to work.

And the result of that is a more crowded parking condition on the overall property. In other words, they come to the center more often; they eat up more of the parking area, especially in the season in the winter time, this time of the year. That would have a, again, a major impact on the overall center.

And the other -- an additional factor to the median age group is that we, I'm sure, as a shopping community, as consumers, as well as these people, like to shop in front of the retail center. Do not like to park in the rear of a center. They're very security conscious about where they park. They're very concerned.

This site cannot have a gas station on it, a convenience store, for one primary reason. These folks are concerned that a convenience store is going to bring in outsiders that could potentially harm their livelihood in this part of the county. They're very security conscious. They themselves will not park in the rear of the building. In addition to that, they don't want anybody else parking behind the building.

So all these factors combined have brought us to the Board of Adjustment today asking for a variance to relocate some of the parking, not a lot of the parking, from the rear of the overall center to the front of the parking area. And it's really a practical matter for the overall site in that due to the site constraints, due to the buffer, due to the increased size and location of the water retention pond, due to that utility easement there that prevents the building from being moved to the west, there is really no ability to increase the size of the area around the overall perimeter of the building.

That combined with the fact that these people shop more often, do consume more parking spaces than what is typical of a retail center in Palm Beach County have brought us again to the request of asking the Board of Adjustment to allow us to have these parking spaces moved to the front of the overall center and thus again requesting this variance from you today.

We believe the variance is well justified again in all of these issues. We believe that they are real constraints to the site. We didn't create the easement, we didn't create the size of the water retention pond. The buffer was applied to our project by the Board of County Commissioners with the community in support of the development.

And again, we think this is a fair request for this particular site which we again, I believe is a unique population base and a uniquely configured piece of property.

In conclusion, again the variance we are asking for today again we think is a fair variance, this proposal. Again, we do believe we have some of the hardships that you do see in the overall project.

I do want to point out a couple of issues relevant to some of the surrounding communities around this property. We have no one in objection from the communities' perspective of the variance that we have before you today. Everybody is in favor of the variance. We have met with the Delray Villas community; we've met with the Huntington Pointe community.

Last month you had a resident from Huntington Pointe here indicating his support for the variance, again to move those spaces out to the front. There's been a more recent letter that's been submitted to the County, I believe, which again talks about trying to get parking away from that rear area and moving it to the front, and we do have support for the variance from again all the communities around this site. Everyone is in support of that variance.

Again, we presented it not only to the Board of Adjustment, but to the Delray Alliance, to the Huntington Pointe community, as well as to the Delray Villas community located to the east of the property.

The issue today is really a single issue and it is the variance. And some other issues have come into play, about dumpsters and things like that. They're non issues. The only issue today is do we have a hardship, are there natural constraints on this site, and who is going to be shopping here and what is the best design for this overall center concerning all of these issues?

On that note, we agree with the conditions of approval for the project and if you have any questions, we'll be more than happy to answer them. I'm not sure, but Joe may want to also add some additional comments in relative to the variance. Thank you.

CHAIRMAN BASEHART: Thank you. I'll ask again. I know when we swore the witnesses in, no one other than Mr. Lelonek and Mr. Bentz stood up. But is there any member of the public here that would like to speak?

(No response.)

CHAIRMAN BASEHART: Okay. Seeing none, any members of the Board have questions on this item?

VICE CHAIRMAN KONYK: I wasn't here last month, so I apologize. But maybe Bob, you could refresh my -- or maybe the County could.

This issue has come up before with the rear parking being moved to the front, and I was under the impression that there was going to be some revisions made in the Code. Is that correct?

MR. MacGILLIS: Actually that was made on September 28, 1999. The ULDC was amended in response to it. I think we only had two that I know of, one that Mr. Bentz mentioned in his last presentation, which was the Publix down on Palmetto, and that was a result of an access point variance they were requesting for. They had to shift the building back on the site in order to accommodate the circulation on site.

The ULDC was amended September 28th to allow -- they took it from 20% of the parking in the rear of the building and the side and reduced it to 10. That was part

of staff's argument from the last meeting.

VICE CHAIRMAN KONYK: Okay.

CHAIRMAN BASEHART: There had been some discussion about eliminating the requirement all together, but that didn't happen?

MR. MacGILLIS: Staff was opposed to that because they had -- before all of it -- when the MUPD standards were originally adopted in 1992, the intent was to encourage much more user pedestrian-friendly positioning of buildings and arcades and walkways. If you put the 20% in the rear, it was encouraging or forcing developers to design different buildings.

They keep saying on his presentation, Mr. Bentz, there's a lot of old people here. If the building was designed differently, rather than the linear type building we've seen for the last 30 years in Palm Beach County, you would have more central court yards and stuff where all that parking could be clustered around buildings in different ways, rather than the design that's here now where if you're having a lot of elderly people if that building wasn't the exact configuration that it is, it would encourage better access to the building for elderly people.

CHAIRMAN BASEHART: Yeah, I know philosophically that's a concept that is real interesting. My experience has been doing a lot of shopping center approvals that it's not practical. The fact is is that retailers generally won't locate in a portion of a shopping center where there's no visibility for their business from the street. So the concept of having a building centered on site with tenant bays all the way around or having arcades and things doesn't seem to be acceptable to the marketplace.

I can show you 15 shopping centers within a ten mile radius of this place where there are arcades and portions of shopping centers, and those are the spaces that are always vacant.

In fact, some of the communities in the county have gone to a requirement where they're actually -- Royal Palm Beach is an example. They limit your parking field to no more than 10% in the rear of the shopping center and they're actually requiring most of the parking to be in front.

And a lot of that has to do with the fact that by forcing people to park in the rear they've experienced higher incidents of muggings and car break-ins and car thefts and things like that, and they find that from an overall safety as well as convenience point of view you're better off having all the customer activity in front of the stores. But, you know, I guess it's a philosophical issue.

MR. MacGILLIS: Right, and I understand. But as far as staff is concerned, that's not really an issue for this Board. It's a code requirement and if what you're saying is true from what you -- as far as it not working, I mean, that's something for the Citizen Task Force to consider and bring it back, if they don't want any in the

back.

It's a code requirement now. It was just reduced several years ago, and as we can see, our comments are in the staff report and on the minutes on page 51 I went through some of my comments where staff was coming from with the denial. We already have two designs here. The top one is what the Board of County Commissioners saw on this MUPD which Mr. Bentz has explained has been in the system since 1999 in front of several hearings to get this design massaged because it's an MUPD in front of the BCC. That's what the Board saw. That's what everybody agreed on.

They come back here. They've got now constraints that they feel don't warrant it, but we have a site plan that's been approved and certified by the DRC that works. It meets code. It doesn't need any variances.

Staff's position is this does not meet the seven criteria considering the fact that the code was just amended to respond to the agent's needs that they don't want 20% of the parking in the rear. In our opinion it's self-created. The building has been moved back since the BCC, 14 feet closer to that rear property line.

He says the fact that dumpsters to the rear don't have any effect on this variance. Staff feels they do because with the parking back there you wouldn't have extra dumpsters back there because there would be parking back there, whether it was for employees or for people to park there.

So in staff's opinion, it does not meet the seven criteria, this variance. I mean, we've had some that come in where we have been able to work with the applicant, but we've gone back and forth on this and we see no justification on the literal or general intent of the code as to how this meets the seven criteria.

CHAIRMAN BASEHART: If I can ask one question, is the DRC approved site plan that meets code have the expanded lakes in it or is that before the lakes were expanded?

MR. LELONEK: Before the lakes were expanded.

CHAIRMAN BASEHART: Why were the lakes expanded? I assume it's not to create a recreational amenity or anything -- is it because of drainage requirements?

MR. BENTZ: That's correct. Yeah, the original lakes were one acre in size. The revised lakes are 1.7 acres in size.

Now, I mean, all of us know developments and developers. A developer is not going to increase lakes because he wants to increase lakes in this kind of a development. What eventually occurred by the increase of the lakes by 70% resulted in a decrease in the overall leasable square footage. The square footage, the actual building area that's going to be constructed on the site, which is revenue for the developer and the development, dropped by about 25,000 square feet from what the County Commission approved. They approved about 147,000. We're down to about 120,000 square feet now.

So it wasn't -- it's not the developer is

themselves wanting to increase the lakes by 70% and, I mean, nobody gets revenue by having bigger lakes. They get additional revenue by having additional square footage.

A couple other quick comments. You know, Jon has indicated that the intent of having the parking around the building, and he's correct, is to discourage more of the linear nature, create more parking around the building. Again, as you heard me repeat to you several, several times, we have a utility easement located right here (indicating) running all the way across the property.

It existed before the MUPD ever came through. It's always been a constraint to this property. And that is a physical constraint that is on this property that quite honestly was imposed on the site by the County 25 years ago when it put those utility lines through there. It was even given to the County, the easement. They didn't even buy the easement by the original property owners many years ago. That constraint creates the linear nature of the overall retail center.

We can't move these buildings to the middle of the site as we would like to do. This is certainly a constraint that applies to this property and doesn't apply to other retail centers in Palm Beach County. I mean, how many retail centers do you know have a big utility easement running right literally through the middle of the property?

And again, that combined with the fact that these lakes have increased in size as well as the buffer that was always there, but those factors themselves are constraints that, you know, are not being imposed by the developer. Those are constraints that are being created by water management issues and natural site constraints that really actually were applied by the County when it put the easement there 25 years ago.

So those are issues that we can't get around and problems we can't overcome. And believe me, the developer and the development would much prefer to have the parking behind the building and have an additional 25,000 square feet and have smaller lakes. That would be much to the benefit of the development and the developer.

The other comment is this is a food store. The latest proposal is that Albertson's is going into that property; that's the intent on that site. And the idea of having dumpsters -- and I already commented about the dumpsters -- I mean, where are we going to put the dumpsters? You know, we're certainly not going to put them in front of the building. I mean, that's an obvious issue there.

Where do we have the dumpsters now? They're located on the side of the building. I mean, you'll note the plans are extremely sensitive to the community to the east. I mean, as you can see, you know, the area -- we have a large 50 foot buffer. We put the loading areas along the side of the buildings where we attempted to locate them. The dumpsters along the side of the building. Unusual for most retail centers. Again, trying

to be very sensitive. I mean, obviously we're not going to put the loading area in front of the building nor are we going to put the dumpsters in the front of the overall site.

So the fact of the increased lakes' size, the fact that we have that utility easement running through the middle of the site, those are constraints again that we've not created. Now it's not our choice to reduce the overall square footage on this property, it's not our choice to increase the size of the lakes. Those are all requirements that we have to comply with on the site. And the plan that was approved by the County Commissioners showed 147,000 square feet, not 120,000 square feet. So we are reducing that amount of square footage in this portion of the overall site.

One final note, I haven't brought it but on the portion of the site that does run to the north, those are office buildings that run down there. They're not limited by retention ponds. They don't have the constraints of an easement running through the middle of their site. Those buildings literally have parking all the way around those buildings, and they more than comply with what the County would like to do. When you look at the overall site, and you combine the entire property together, we have more than enough parking behind the building. It's just that there's more on the north end and not as much on the south end.

And my final note relevant to that, the neighbors that abut up to that, now you know what they're asking us? They even sent a letter to the County. They're asking us to move that parking away from their homes and put it in the front of those buildings, you know, which of course again is contrary to what, you know, the County code says.

But that's simply an example of where we have that flexibility. We have more than met what the code has asked us to do. We have some real constraints, some real limitations on this portion of the property. We cannot meet that criteria and that is why we are asking for the variance for that portion of the property.

Again, it's not our choice to increase the lakes. We didn't create the easement and we don't want to drop the square footage by 27,000 square feet. Those are requirements we have to do because of the layout and the limitations on the overall site.

VICE CHAIRMAN KONYK: Jon, can I ask you a question?

That utility easement that runs down the middle of the property, how could they get around that? I mean, how could they move the building?

MR. MacGILLIS: I mean, I'm not going to sit here and tell them how to design the building, but I know that Cross County Mall which was a redesigned project that had easements running all over the project, and they designed the project, I mean, moving the building --

VICE CHAIRMAN KONYK: I mean, they're building a grocery store, though, which is huge square footage.

MR. MacGILLIS: Well, that's where they could

have left the area with the arcade where you wouldn't have had a building on it and just the parking on it. Where you could have had the buildings with an L-shape with an opening in the center where the easement ran through it and just had the other buildings on this side. I'm not going to sit here and argue their point --

VICE CHAIRMAN KONYK: No, I just wondered about the easement, if that wasn't creating an issue.

MR. MacGILLIS: Well, they had met it before and they can design those lakes. I mean, if they could not get this variance here today and you denied it, believe me, this project would go forward. It's not going to be denied because you people say you're not giving them this variance. They're going to come back and go forward with what they have or they'll design it --

VICE CHAIRMAN KONYK: I just asked a question, you people.

CHAIRMAN BASEHART: Any other questions?

VICE CHAIRMAN KONYK: I have a question for Bob. You had to increase the size of your lakes and you went this way. What if you went down?

MR. BENTZ: Actually, they've gone in all directions. They've gone this --

VICE CHAIRMAN KONYK: But you went to the center of the property more and knocked out that rear parking.

CHAIRMAN BASEHART: That's because there's an easement running laterally across the property. You can't put the lake there.

VICE CHAIRMAN KONYK: Oh, I was asking that Bob.

CHAIRMAN BASEHART: Yeah. He explained that as a part of his presentation.

VICE CHAIRMAN KONYK: Okay. I was just asking him again.

MR. BENTZ: I also will add, too -- an observation, too, is somebody might say well, why are the lakes in that location? Why are they there? Well, there's a couple of reasons.

Number one, they were originally asked to be there by the County Commission and community as a further buffer to the residents. In other words, the idea -- in fact, ironically, some of the neighbors who abutted the property wanted the buffer to go around the lakes so they could be a waterfront property and have the lakes back there as an additional buffer.

But from a practical point of view, the lakes can't go up here (indicating) because the County requested wellfields. Wellfields are where the County pumps their water out of the ground for public water supply. That precludes or prevents us from being able to have these lakes in that area. There's these wellfield zones which are code criteria requirements. The lakes or drains under the ground cannot be located anywhere in the northern portion of the property at all because of these wellfields that the County again has imposed on the site.

Again, it was not something that we wanted; it was wellfields that were imposed upon the overall property. So there really was no option to move those

lake areas to the north.

And I also want to add, you know, we do have a linear system of walkways through the property. You'll see there's a gazebo here. A gazebo is designed to be a walkway that extends across the front of the site to this little facility, ties in with all the office buildings. So in other words, it is the intent to be able to walk from one site to the other site to the other site.

In other words, Jon I think implied we could do an L-shape center here. Well, if we did an L-shape center here, we'd be turning our back to the remaining portion of the property. Again, it's the site features; it's a long, linear site, that's simply the way the property is. It is very linear in its nature.

And so we in turn responded to that by having a linear system of connections and pedestrian ways and amenities for the residents that will be shopping here in the overall property. So that's my final note.

CHAIRMAN BASEHART: Okay. Any other questions? Any comments?

MR. GERBER: I have a question. Mr. Bentz, as you may have seen from the minutes of the last meeting, I think that the issue here is the issue of self-creation vis-a-vis these lakes.

The plan was originally submitted with the lakes a certain size and we've heard both from your colleague and yourself that at the last meeting and today that it was discovered somewhere in between that the lakes weren't big enough. I need more detail on that. It's not as simple as just saying it was discovered, to me, to make it self-created.

MR. BENTZ: Before Joe comments on that, I just want to add that as I mentioned earlier, you know, the addition of the lakes in size, if it was a residential community and there was some value to that lake, i.e. people could -- you could charge more money and more premium for a home because they had a waterfront view, you know, that would be a reason why a developer would want to create a lake, for example, on a residential development.

On a commercial development, of course, you get no more tenant rent, you get no more anything by having additional lakes on the site. There's no again premium that you get from a renter for having a lake on a commercial site, as there is, for example, on a residential property.

The reason I'm saying that is is that there's no developer motivated reason to have more lakes than you have to have on a commercial site, especially when it results in a reduction in overall square footage on the site and effectively costing them money.

Now Joe can tell you the technical reasons why we have to do that.

MR. LELONEK: Thank you. The real simple answer is they're related mostly to the well sites that are on the property. When we went through the system originally, our engineers had advised the client that underground

French drain type of systems were very good for this site to handle the drainage. This is a system of having piping and shellrock underneath the pavement to help contain the water and help it perc into the water table without having to collect it into large retention areas such as lakes or other dry retention areas. That was the system that we had applied all the way through the process up to the Board of County Commissioners' approval.

The problem is, however, that Water Utilities Department, the same people that put the easement down the middle of the property, have come and requested two well sites. I say "requested" loosely because it's more of a requirement than anything else. Two well sites to be placed wherever we possibly could on this site along Jog Road. Well sites, as you know, are being used right now in this corridor to help serve their new water treatment plants, and to take water out of the aquifer for the processing to serve the growing needs of the community out here.

So every new development that is being proposed in this area has to dedicate a certain number of well sites according to code, as well as the additional well sites that they get conditioned by the Board of County Commissioners. This project ended up with more well sites than originally anticipated.

Now I will point out something. On the other side of the road there's also another well site, so it's not uncommon for those developments to have that. You'll notice some rings on the plan that kind of radiate out from those well sites. Those are called zones influence that Bob had mentioned a couple of minutes ago. You cannot do French drains in zones 1 and 2 of those well site areas. That's about 300 to 600 feet away from those well sites which encompasses the entire north end of this property, as well as a small portion of the southern portion of this property out in front.

The only place we had the ability to come in here and change the drainage system, which is something we discovered after the Board of County Commissioners and after we got the site plan approved through a staff level review, when we had the engineer do some final review of this detailed drawings, detailed analysis, detailed soil borings, all of those studies dictated the fact that we need more retention.

We have no ability to do French drains. We have only one opportunity which is the open water system of retainment. That's why you have a new lake system on this plan now versus what was approved by the Board. It's a system of here's additional requirements that are being imposed on the property, well sites, restrictions, and when the engineers finally get a hold of the final data and say here's what we have to work with, you have two options.

One is we get rid of square footage, we open up water bodies or the other is we scrap the plan and try something new. This plan that we're trying to get approved here this morning is probably the best of both

worlds.

One is it keeps the plan similar to what the Board had actually approved. It eliminates that parking which the residents, the people that have to live with this site in the long term, it keeps the parking away from their homes which they desire, and it helps make this plan more workable for a marketable type of plan for the ultimate user.

I'll make two quick comments. The variance that was approved a number of years ago on Palmetto Park Road was a very similar situation to this. That was a Publix. There were two issues that were being heard that day. As Jon had mentioned, one was an access issue regarding an old code condition for PUDs and then the variance issue.

The variance for the parking was very similar to this in that they had a Publix with a small area of local retail right next to it. The market out there dictated that all the parking would be in front. The people behind that center did not want to have any activity behind them. They wanted it to be walled. They wanted to have nothing but loading as far away from them as possible and to have all the activity out in front. Exact same circumstances, exact same system.

This is what we're asking here again today. You notice the decreased percentage because people are realizing it's not working. However, it has not finally been removed out of the code. This is a situation where everybody's behind it and it is clearly a superior situation to what the code requires.

MR. GERBER: If I understand you correctly, what happened between August and November and December is that Water Utilities came along and said what got passed in August isn't workable for Water Utilities Department; is that correct?

MR. LELONEK: No. What happened in October or August, once we had those conditions of the well sites we were imposed to place those on this property. And when working with Water Utilities and ERM who handles the zones around these well sites, it was discovered that we were encroaching on our design from an engineering standpoint, that the original design we contemplated will no longer work because of those well sites.

MR. GERBER: Has staff had the opportunity to check into what the argument is about what has happened since August? I mean, that's my concern.

My concern is that the claim is that something has happened since August. If it pre-existed before August, I think he's got a problem. I think if something came up before or after August, then I think they may have a valid argument as to this is not self-created.

MR. LELONEK: These are conditions of approval that were placed on the project by the Board. The engineering review, as many people in the industry know, does not happen until after that Board approval because you don't waste a lot of time to do detailed analysis of the site until you have an approval. So it's standard

practice in the industry.

MR. BENTZ: And you don't even know what all the conditions of approval are until after the Board has approved the item, you know. That's when all the wellfields and everything else are applied to the site. So you do an initial analysis originally and then you come back after the County Commission approves the project and you have to comply with all those conditions of approval, and that's when it was discovered that the additional lake area was required.

And again, as I mentioned, I know you're sick of hearing me say that, I mean, there's no benefit to the developer to increase the lake sizes and reduce the square footage. I mean, that only hurts.

One thing we have not done and which we certainly could do is bring our civil engineer in to the variance hearing and have him testify to that same fact. But I mean, Joe's been involved and been working with Joel Wantman of Wantman Engineers now for the last year or so on the project, and that's exactly what has occurred.

And again, there's no benefit to increasing the lake sizes for a commercial development. That combined with the utility easement and the fact that we have nowhere to go, we can't move, you know, that building is where it has to be and it can't be relocated to another location on the overall property.

And again, there's no benefit to us losing, you know, 27,000 square feet on the site. So that's -- the value and the whole economics of the site are based on the amount of square footage you get and not the size of the lakes. So unfortunately the lakes have to go up and the square footage goes down, which is, you know, not good news from a development point of view. But it's a reality from an engineering perspective. I don't know if Dave Cuffe has any comments about that. He's saying no.

But in any case, the engineering plans I believe have been submitted or are getting ready to be submitted here in the next month to the County for review and to South Florida.

CHAIRMAN BASEHART: Okay. Any other questions?

MR. GERBER: I just want --

MR. MacGILLIS: His justification is in your backup material. I mean I don't --- staff never saw that as being one of their hardships or uniqueness. If you go through the seven criteria, we provided it with the applicant. I mean that's something that they're basing their argument on now, the last major argument was that the neighbors to the adjacent property didn't want this activity behind the building. That was the argument.

MR. GERBER: To me the issue of the neighbors is irrelevant because the issue of neighbors' preferences as to where they want to park, and how often they shop, existed since the dawn of the elderly population retired to Florida. The issue to me is the lakes.

MR. BENTZ: Actually, I think I agree with you. The issue of neighbors is an issue of -- universal issue

of any older population base within an area.

But it is unique having the utility easement and having the lake constraints. Those are unique constraints that affect this parcel that are unique to this site that are not universal to all of Palm Beach County. Those are unique issues that are unique again to this property. We have a utility easement. I don't know of any other centers that do have it.

By the way, it's a 24 inch force main, 30 inch water main that runs through the site. I mean, these are the big mammas that service again the entire area. It's basically unmovable for the most part. Those are the site constraints that do -- that really is the justification for the variance.

CHAIRMAN BASEHART: Okay. Any other questions or comments?

MR. JACOBS: I have one. What happens to this project if the variance is denied?

MR. BENTZ: That's a good question. Probably there will be a further reduction.

The lakes can't change. The lakes aren't going anywhere. Probably there will be a further reduction -- and the building can't move, and so there will probably be a further reduction in the overall square footage, further downward from where it is right now, you know, to provide the additional parking because the lakes are set. They've got to have 1.7 acres of lakes. That's not going to change. And the easement, again, as we talked about, is not going to go anywhere.

The only thing that can really give is the overall building which again has already dropped by about 15 %.

VICE CHAIRMAN KONYK: How many parking spots are required in the rear, numbers-wise?

MR. BENTZ: Forty-one.

VICE CHAIRMAN KONYK: Forty-one?

MR. BENTZ: Forty-one parking spaces in the rear. Probably leave about -- I think we have about 18 in the rear I believe right now.

VICE CHAIRMAN KONYK: You need 41 more?

MR. BENTZ: No, we have a total of 41.

VICE CHAIRMAN KONYK: Forty-one total?

MR. BENTZ: Yeah, we need about another 23 more spaces.

CHAIRMAN BASEHART: Okay. Any other comments?

(No response.)

CHAIRMAN BASEHART: Seeing none, I think we're ready for a motion.

MS. CARDONE: Jon, is it possible for you to comment on that? I mean, I know you don't want to argue with them and I understand that.

MR. MacGILLIS: No, I'm not. Technically that's not my purview. I don't know anything about -- the wellfield protection is not zoning's authority; I can't comment on it.

But as I said, if that issue is being brought up now in his seven criteria justification and we all have

it here, none of that was brought up. I mean, it's a new thing that they're bringing up now.

VICE CHAIRMAN KONYK: You know, I'm inclined to agree with staff on these issues normally, and I just think it's ridiculous that we're sitting here and arguing over 23 parking spaces that probably aren't going to be used anyway. I mean, I really don't like to come forward and say that I agree with Bob Bentz, but I'm looking at this and I wasn't here last month so I didn't hear the whole hearing last month.

I do serve on the Water Utilities Advisory Board as well as this Board, and I do know what he's talking about, the wellfields that are required. I know that is a requirement, and I know the constraints that it does put on a piece of property.

It's unfortunate that Bob didn't bring that up prior to this and possibly was relying on the opinion of the neighbors thinking that that would sway this Board, but I think in the history of this Board the opinions of the neighbors doesn't really ever sway us.

I think it's important that those wellfields are there in order to provide water for the people that we're allowing to move into the area, and I understand the difficulties that they're faced; because of those wellfields they aren't able to put the additional drainage underground, so they're required to put it above ground. Drainage is a major important issue as far as keeping our areas from flooding.

I think 25 or 30 years ago it was acceptable to let everything flood when there was rain and wait for it to dry out, and in the last 10 years we've realized that there's a lot of problems with that approach. People's neighborhoods flood; we have more population here that's newer to the area and isn't used to roads and all these other things being part of the drainage system, and I think the people that are in charge of these things have addressed this in such a way to try to alleviate some of the drainage from being in the roadways, et cetera. I just see so many issues here.

Obviously, yes, he could cut down square footage, but they've already done that once to accommodate the lakes. If we were talking about more than 23 parking spots, I think I could sit here and argue that it wasn't necessary.

But I am going to make a motion to support this variance and to give staff an opportunity to impose any conditions that they might think are necessary based on the report today mostly because of the wellfields, and I would say that's unfortunate that the applicant didn't identify the wellfields as being a problem. And not that they didn't -- I don't think they didn't know they were a problem. I just think that they were coming in on another angle and I think that's unfortunate.

But I will make a motion supporting this variance and allowing staff to add any conditions they feel are appropriate and the meeting today becoming part of the record.

CHAIRMAN BASEHART: We have a motion by Ms. Konyk for approval. Is there a second?

MR. WICHINSKY: I'll second it.

CHAIRMAN BASEHART: With a second by Mr. Wichinsky. Any comments by members of the Board?

MR. GERBER: In a perfect world staff would have an opportunity to look at this issue, of the wellfields and verify whether they agree with the applicant.

What would be involved in the staff doing that? Could staff do it, check into it?

MR. MacGILLIS: I'm sure we could do it.

MR. GERBER: Could you do it by next meeting?

MR. MacGILLIS: I mean, he's under oath on the record. So I mean, where staff is concerned I would hope he's under oath that he's telling the truth as far as the size of the lakes being that big. I mean, as I said, if it had been the issue brought up in the staff report, like Ms. Konyk said, there could have been approval on this thing, but it wasn't issue.

It was all along for the last two months it was the fact that it was the better design for the neighbors to the rear. And staff couldn't understand how that was the justification for any approval on this.

MR. BENTZ: Well, actually, in all fairness to ourselves, Jon, we tried to meet with you. We met with Alan on the issue, went over it with him. We met with Bill Whiteford, went over the issue with him, and that was what we discussed in those meetings. You were not in those meetings. And we tried.

I would propose a condition of approval. I mean, we're happy to -- when the engineering comes in here in the next 30 days, you know, as part of the engineering submittal, you know, if engineering does verify that we need 1.7 acres of lakes, I mean, if we need 1.5 acres of lakes, hey, we're happy to add parking back in there.

But we're happy to have a condition saying that as the engineering submittals are submitted to the County, and they can't submit an engineering submittal by the way until we have an approved site plan. So it's sort of a chicken or egg thing. We have to get the variance and then get our site plan approved and then submit the engineering drawings. But we're happy to, you know, as far as engineering submittals make sure that the County Engineer is justified in that that is correct and we need that much area of lake because certainly we don't want to have any more lake area than what we need to have.

And I understand your concern. I think it's a legitimate concern and we know that that's our issue and I can understand your concern. We're certainly willing to have a condition that would say we have to show that.

VICE CHAIRMAN KONYK: Can you add a condition that they have to demonstrate that the additional wellfields have created the need for the additional drainage and that they can demonstrate that? Can you make that a condition of approval?

MR. BENTZ: Yeah, the overall site because of the

wellfields and all the other factors. I mean, we're happy to agree to that.

VICE CHAIRMAN KONYK: Okay. So why don't you come up with a condition that we can add to this, that if they can have the engineer certify that the additional wellfields have created the problem with the additional lakes because they're unable to have the drainage underground, that would be the condition of approval. If they can't prove that, then it's not approved.

MR. MacGILLIS: Which department is this? The County Utilities?

VICE CHAIRMAN KONYK: This would be Water Utility, Palm Beach County Water Utility would be the person requiring the wellfield, but I think it wouldn't be them that would certify it; I think it would be their engineers that would have to certify that.

CHAIRMAN BASEHART: Basically what would happen is during the engineering review they could verify that they will not permit exfiltration system as a drainage solution, you know, within the first two zones of influence for each well hat. That's the issue.

I mean, to be perfectly frank, I don't know that we need a condition like that.

VICE CHAIRMAN KONYK: Well, I think that would satisfy the Board members' concern and maybe make them more apt to vote for the motion, you know. I think that's what I'm trying to accomplish here.

And they're convincing us that that's the reason, so I don't think they're going to have trouble coming up with it.

MR. LELONEK: It might be an easier situation for us to provide a letter or statement from our engineer within a certain number of days to the Board of Adjustment staff that due to the well sites and due to the site's constraints we're forced to open up the water bodies as shown on the plan that we've submitted to the Board of Adjustment staff.

That way it's putting into the record that confirmation from a certified engineer to allow that to happen. Otherwise, we can drag this out during a period of --

VICE CHAIRMAN KONYK: Well, since I was the maker of the motion I guess I would agree to that if staff agrees to that.

MR. MacGILLIS: I'm sorry; I'm trying to write and listen. I didn't hear what he said.

CHAIRMAN BASEHART: Well, what she's doing is suggesting a condition that within 30 days --

VICE CHAIRMAN KONYK: I'd say 30 days.

CHAIRMAN BASEHART: -- within 30 days -- go ahead.

VICE CHAIRMAN KONYK: That their engineers provide staff with a letter certifying that the additional wellfields have created a problem for that -- you say it, Joe.

MR. LELONEK: The additional well sites have created a situation where French drain systems or

underground drainage systems are not allowable on the north side of the site, and as a result we've been forced to create larger open water bodies on the project. And that the 1.7 acres of open water bodies or whatever the plan shows here -- I believe it's 1.7 acres -- is the requirement for this site.

That's the same type of comment that he's going to have to make to South Florida and to the County Engineering Department to be able to get these plans approved.

CHAIRMAN BASEHART: Is that acceptable?

VICE CHAIRMAN KONYK: That's acceptable to me. Another thing that we all need to consider here is the fact that if we grant this variance that doesn't mean that the project is going to go through, anyway. It still has to go through more approvals than just us, so we're just giving them the opportunity to take the project forward.

CHAIRMAN BASEHART: Is that additional condition acceptable to the seconder?

MR. WICHINSKY: Absolutely.

CHAIRMAN BASEHART: Okay. So we have a motion and a second with an additional condition as discussed.

VICE CHAIRMAN KONYK: Would the staff have any other conditions that they would want to impose?

MR. MacGILLIS: Yes. First one, prior to DRC certification the applicant shall provide foundation planting of a minimum of 10 feet in width along the rear east side of the retail structure number one, supplemented with a combination of palms and shrubs.

Number two, all these pedestrian amenities shall remain in the general location as indicated on the site plan dated February 24, 2000. That was presented to the Board of County Commissioners.

Number three, in addition to the pedestrian amenities as shown on the site plan of February 24, 2000, as shown to the Board of County Commissioners, the applicant shall provide the following. And these were conditions that were discussed, I guess, with Bill Whiteford and the project manager Joyce, a focal point on the east side of the retail structure number five consistent with pedestrian amenities. The installation of this focal point shall be in accordance with the approved phasing plan. If you have any clarification, Joyce will have to give it to you on this.

At a minimum --

VICE CHAIRMAN KONYK: Are you listening to these conditions?

MR. MacGILLIS: I gave them a copy.

VICE CHAIRMAN KONYK: Oh, okay.

MR. BENTZ: Yeah, we just got it a minute ago.

VICE CHAIRMAN KONYK: Okay.

MR. MacGILLIS: At a minimum, the focal point shall include but not be limited to a gazebo, fountain, garden with sculpture or clock tower, et cetera.

Number 3B. A fountain in the lake area located on the southeast corner of Spalding MUPD.

VICE CHAIRMAN KONYK: Okay.

MR. BENTZ: This is a variance, as we all know. You know, some of these conditions really aren't -- I'm not sure how they're related to the variance to tell you the truth. That would be my first question.

We are seeing them for the first time. Number one, I think we have a difficulty with number one. We already have -- I mean, this was part of the comprehensive plan approval, a 50 foot wide landscape buffer. The requirement is 15 feet, you know, it's 3-1/2 times already and the buffer is twice as high as what the code requires. So we're 3-1/2 times wider and we are twice the height already. So I'm not sure why we're adding additional materials back there, but --

VICE CHAIRMAN KONYK: What are you adding?

MR. MacGILLIS: Ten foot foundation planting along the rear building of the retail structure number one.

VICE CHAIRMAN KONYK: Okay.

CHAIRMAN BASEHART: That's already a part of the plan, isn't it?

MR. BENTZ: I believe it's four feet actually.

MR. MacGILLIS: That's the building that was shifted back 14 feet closer to the rear property line than the BCC saw. So that's where that came from, from Bill Whiteford.

VICE CHAIRMAN KONYK: So what does that entail? I mean, is that a hardship?

MR. BENTZ: I just don't know how -- is that a hardship? Well, I don't know how -- I guess there's some rationale nexus between what we're asking for and between --

VICE CHAIRMAN KONYK: Well, the point is we have a motion and a second. They're imposing conditions, so if you want to move forward, let's try to get through these conditions. If you don't we can withdraw the motion and just forget it. So if it's something that can be worked with, let's work with it.

MR. LELONEK: We'll go back past that condition. I think we can modify that. There's one condition let me just draw attention to real quick.

Retail 5 they're asking for a focal point behind that building I believe in this area here. This is where we have our service area for that building.

VICE CHAIRMAN KONYK: Could that be the focal point?

MR. LELONEK: I think we have a dumpster in this location. We're bringing all the pedestrian activity out to the parking and then up to this focal point on the main retail. Not that I am trying to get out of doing this --

MR. MacGILLIS: Joyce will go up to the drawing board and show you where it is.

CHAIRMAN BASEHART: What's the nexus between the variance request and the focal point requirement?

MR. LELONEK: There is none that I can bring up and this is a --

CHAIRMAN BASEHART: I'm asking Jon.

MR. MacGILLIS: I think on a similar one where we've come in for variances where they're reducing the parking in the back of the building which is part of the MUPD provisions to enhance the pedestrians' experience on the site, get them closer to the building. Certain amenities and stuff make it easier. It's been demonstrated for people walking through parking lots without appropriate sidewalks and stuff, whether it's focal points like clock towers or -- I know we did this on the Korrektus (phon.) Plaza which Bob Bentz brought in.

We did numerous stuff with wider sidewalks which never got built, but there were numerous widened sidewalks, focal points, fountains and stuff, which is I think what they were -- Bill and Joyce were doing was enhancing on what the Board had already approved.

VICE CHAIRMAN KONYK: Why are we enhancing on what the Board had already approved? Because we're giving them a variance to not put 23 parking spots in the rear? I mean, enhance it all you want, but I just don't want to get ridiculous with this thing.

MR. MacGILLIS: I mean, they're suggested conditions. You could strike them.

VICE CHAIRMAN KONYK: Okay.

CHAIRMAN BASEHART: Any other conditions that have been suggested?

MR. LELONEK: All the pedestrian amenities shall remain in general location as indicated on the site plan. We have proposed all those consistent with the Board. That is fine with us. They are asking for a fountain in the south lake. That is fine with us. Okay.

The only two issues that are really issues being the -- trying to find a rational connection here with the 10 foot behind the building and that focal point behind building number five.

One of the things we've done is we've pushed all the parking to the front of this site just to have the parking in the front and to get these lakes and everything. Now we're asking to move the building back out another six, seven feet. We're having a hard time finding out how that correlates with the request.

MR. MacGILLIS: Because you presented a site plan to the Board of Adjustment that it moved the building 14 feet more into the site --

MR. LELONEK: That's correct, and it's still within --

MR. MacGILLIS: -- that was different from the BCC.

MR. LELONEK: -- the code requirements, well within the code requirements. Still keeping all the conditions that we agreed to with the Board of the 50 foot buffer, that access behind there and so forth. There's no condition on that building being "x" number of feet from the property line, and we're still well within the code.

CHAIRMAN BASEHART: It seems to me that the only two options are to impinge upon -- in order to gain the

extra six feet you would have to reduce the perimeter buffer or you'd have to cut the building back more square feet than you already have.

MR. LELONEK: Correct.

VICE CHAIRMAN KONYK: Now what condition is that? Is that a condition?

CHAIRMAN BASEHART: That's the first one.

MR. LELONEK: That is condition one.

VICE CHAIRMAN KONYK: One. Okay. Can you modify that, Jon, or strike it?

MR. MacGILLIS: I can strike it. I can just go with condition number two and number three will just be three feet in. We're just going with three feet. Strike all the rest of the conditions.

VICE CHAIRMAN KONYK: Except for the first one that we imposed.

MR. MacGILLIS: Right.

MR. BENTZ: Which is really tied with the variance.

CHAIRMAN BASEHART: Okay.

VICE CHAIRMAN KONYK: Right, because if you can't provide that, then you don't get the variance. You understand that, right?

MR. LELONEK: That's correct.

VICE CHAIRMAN KONYK: Joyce, did you have something you wanted to add?

MS. CAI: Yeah, I just wanted to point out that in the approved BCC plan and the DRC site plan, they all show the foundation planting or some landscape area behind retail structure number one. And I just want to --

VICE CHAIRMAN KONYK: Why do we have to reiterate it if it already shows it?

MR. LELONEK: We still have four feet back there; we are intending to plant that four feet. I think the only difference is the additional linear feet.

VICE CHAIRMAN KONYK: We're not allowing them not to do something they're already required to do. We're just saying don't add more to it.

MR. MacGILLIS: Right. Four feet, I don't know what was shown on the original plan, but four feet any landscape architect knows you can't even get a root ball in four feet, so you might as well not have anything back there. I don't know what you're --

MR. BENTZ: We've got a 50 foot buffer already, you know.

MR. MacGILLIS: Well, the foundation planting. If you're putting four feet in, you realize what kind of shrubs are you going to put in there?

MR. BENTZ: I mean, it's been our intent to buffer that building. Again, I know you've heard me say this a zillion times, but the whole intent was to provide them a buffer that's 50 feet wide --

VICE CHAIRMAN KONYK: Isn't the buffer in the rear?

CHAIRMAN BASEHART: Yeah.

MR. BENTZ: Yeah, I mean, this is a 50 foot wide buffer. It's a six foot high earthen berm. On top of the

berm we have a six foot wall. So we have a berm six feet, a wall on top of that six feet for a total of 12 feet. I honestly don't know how many retail centers have buffers -- I mean, the code requires six feet. We have 12 feet in height. Plus there are trees and shrubs all along this berm and buffer area, plus we have three-and-a-half times the width, you know, so it's huge.

VICE CHAIRMAN KONYK: All right. Jon, so what conditions are we staying with? Would you just read those again? The first one which the Board imposed.

MR. MacGILLIS: All the pedestrian amenities shall remain in the general location; that condition shall remain. And there will be a condition number two. In addition to the pedestrian amenities as shown on the plan, a fountain in the lake shall be located in the southeast corner of the Spalding MUPD.

VICE CHAIRMAN KONYK: How come you're only putting in one fountain? Why aren't you putting a fountain in both lakes?

MR. MacGILLIS: Do you want to recommend that?

VICE CHAIRMAN KONYK: Well, I mean, if they don't want to do the other focal point maybe they could put another fountain in.

MR. MacGILLIS: That's fine with staff.

MS. CAI: I want to have the Board members -- behind retail structure No. 5, if they use it as the dumpster, you can imagine, it's a main -- I mean --

VICE CHAIRMAN KONYK: I thought they were enclosing the dumpsters.

MR. BENTZ: It is enclosed.

VICE CHAIRMAN KONYK: I thought they were in walls? I thought they had walls around them or something.

MS. CAI: Yeah, but that area -- I had a meeting with Mr. Bill Whiteford --

MR. BENTZ: It's already approved that way. That's the way the approval is today.

MR. MacGILLIS: Joyce, just forget it.

VICE CHAIRMAN KONYK: All right. Jon, the first condition is the one that the Board imposed?

MR. MacGILLIS: Correct.

VICE CHAIRMAN KONYK: The second two conditions are the ones that you read?

MR. MacGILLIS: Correct.

VICE CHAIRMAN KONYK: Ask them if they understand the conditions.

CHAIRMAN BASEHART: Do you understand and agree with those three conditions?

MR. LELONEK: Yes, sir.

MR. MacGILLIS: Just for clarification --

VICE CHAIRMAN KONYK: So those three conditions become part of my motion.

MR. MacGILLIS: The fountain is only -- staff was only recommending it for the one lake. You made a comment that --

VICE CHAIRMAN KONYK: Well, I mean, I don't really --

MR. MacGILLIS: Because I don't want it to end up

in a condition --

VICE CHAIRMAN KONYK: I mean, if they want to do it voluntarily, fine. I'm not going to impose it as a condition, no.

MR. MacGILLIS: So it's not a condition of approval, okay.

CHAIRMAN BASEHART: All right. Is everybody -- other than the applicant --

VICE CHAIRMAN KONYK: So my motion includes the three conditions that were just discussed.

CHAIRMAN BASEHART: And Glenn, your second is --

MR. WICHINSKY: My second backs up Ms. Konyk's motion.

CHAIRMAN BASEHART: And everybody understands the conditions?

VICE CHAIRMAN KONYK: Well, we don't have to; they have to.

CHAIRMAN BASEHART: Okay. Let's call for a vote. Let's do a roll call vote.

MS. CARDONE: And this includes the letter from the engineer --

VICE CHAIRMAN KONYK: That's the first condition.

CHAIRMAN BASEHART: That's the first condition.

MR. MacGILLIS: That letter, could we just make it prior to the DRC certification? That way then I don't have to monitor when it comes in? Prior to them getting them certified they'll have to give it to the DRC staff.

VICE CHAIRMAN KONYK: Okay. Great.

CHAIRMAN BASEHART: Okay. Roll call.

MS. MOODY: Ms. Nancy Cardone?

MS. CARDONE: Yes.

MS. MOODY: Mr. Joseph Jacobs?

MR. JACOBS: Yes.

MS. MOODY: Ms. Chelle Konyk?

VICE CHAIRMAN KONYK: Yes.

MS. MOODY: Mr. Glenn Wichinsky?

MR. WICHINSKY: Yes.

MS. MOODY: Mr. Stanley Misroch?

MR. MISROCH: Yes.

MS. MOODY: Mr. Jonathan Gerber?

MR. GERBER: Yes.

MS. MOODY: And Mr. Bob Basehart?

CHAIRMAN BASEHART: Yes.

VICE CHAIRMAN KONYK: Things really do go smoother when I'm here, don't they?

MR. BENTZ: Thank you.

STAFF RECOMMENDATIONS

DENIAL, 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:

NO. The subject 25.82 acre property is located at 6405 and 6465 Sims Road, on the N.E. corner of Jog Road and Sims Road (aka Lake Ida Road), approximately one mile north of Atlantic Avenue, within the proposed Spalding MUPD, in the MUPD Zoning District. (Pet. 99-092). On April 27, 2000 the site was granted an approval of a rezoning from Agricultural Residential (AR) to Multiple Use Planned Development (MUPD) (R-2000-0591). On August 9, 2000, the applicant received final site plan approval from Development Review Committee (DRC).

There is **no unique** characteristics or approvals related to this site or proposed structures that warrant a 4% (req. 10%) of the required parking to be located at the side or rear of Retail Structures No. 1 thru 3. It is a conforming parcel with normal land uses. The overall Spalding MUPD development was approved by the Board of County Commissioners (BCC) subject to numerous conditions to ensure that the proposed development does not result in adverse impacts on the surrounding properties. To protect the easterly neighboring residents of Delray Villas from aural and visual impacts from this development, the BCC required that the applicant provides a 50 foot landscape buffer strip as well as a 6 foot high continuous berm and a 6 foot high opaque concrete wall. The final Site Plan certified on August 9, 2000 meets the required parking location requirement, which provided 91 spaces to be located to the rear of the Retail Structures No. 1 through 3.

The applicant indicated in the justification that the parking to the rear and side of the buildings would increase vehicular activity and noise behind the building, adjacent to the neighboring residents. However, as previously mentioned, the applicant proposed to move the 50,000 square foot retail structure 14 feet closer to the residential neighborhoods than previously approved. In addition, 4 more dumpsters were added behind the affected buildings and a 240 foot long foundation planting along the rear of the Retail Structure No. 1 was eliminated by the applicant. These changes, in

fact, may impose a negative impact on the neighboring residents. The noise generated from the loading and trash collector's trucks is much louder customer's cars. Staff believes that the applicant has several alternative design options to work through site layout to eliminate or reduce the variance amount.

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

YES. The variance is **self created**. As a land development agent for many years, the applicant is fully aware of the design methods and ULDC code requirements. For this particular case, all the concerns from the adjacent property owners were heard and well considered prior to the final approval of the development order by BCC at the April 27, 2000 hearing. The final site plan was certified on August 9, 2000 reflecting conditions of approval as well as all other applicable rules and regulations. The applicant has designed many similar MUPDs in the past years and never had a hardship in complying with this MUPD parking location requirement. In fact, the applicant did provide an adequate percentage (22%) of side/rear parking spaces on the final site plan, which was approved by the Development Review Committee 2 1/2 months ago. No hardship on parking locations was indicated throughout the entire review process of this development. What's more, the applicant is required a 50% less than the previously required for the side/rear parking location due to the code revision adopted on September 28, 1999.

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:

YES. For the past years, no similar variance was ever applied. To grant this variance **would be** a special privilege. The applicant **has not** demonstrated that this variance is not self created or there is any unique features to this parcel or proposed buildings that prohibited the construction of this multiple use commercial development. Therefore, if this variance is granted, the property owner **would be** granted a special privilege that has not been granted to other parcels under similar situations. The applicant needs to explore alternative design options to either eliminate or reduce the variance request.

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:

NO. In fact, 2 1/2 months ago, the final Site Plan proposed by the applicant was certified by the Development Review Committee for complying with all the applicable code requirements and conditions of BCC approval for development order. Therefore, if this variance is denied, it **will not** deprive the applicant of rights to develop the subject parcel, neither will it work an unnecessary and undue hardship. The applicant can use the approved Site Plan or modify the Site Plan to reflect the proposed changes while still meet the code requirements.

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

NO. The requested variance **is not** the minimum necessary to make a reasonable use of the property or proposed structures. The applicant has approved design options with no need for a variance. As previously indicated, the applicant provided 91 spaces behind the Retail Structures No. 1 through 3 and was approved by the DRC without indication of a hardship. The hardship on placing 41 spaces, 50% less than the previously required, at the side or rear of those affected structures **is not** justified by the applicant.

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

NO. The granting of this variance **will not be consistent** with the intent of the ULDC parking location requirement for MUPD. The required 10% of the required parking spaces to be located at the side or rear is intended to accommodate employees' parking as well as to better integrate different land uses within short walking distances. The granting of this variance will not meet the literal or general intent of the MUPD parking location requirement.

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

NO. The granting of this variance **would be injurious** to the property owners to the east.

The changes made by the submitted Site Plan in this application are substantial as compared with the approved Site Plan. They may cause an adverse impact to the adjacent residential property owners to the east. The Retail Structure No. 1 was placed 14 feet closer to the east property line with 4 more dumpsters added behind the Retail Structures No. 2 and 3. Foundation planting behind the Retail Structure No. 1 was eliminated by the applicant. All these changes will impose negative impacts on the neighboring residents of Delray Villas.

ENGINEERING COMMENT

No Comment. (ENG)

ZONING CONDITIONS

No conditions, staff is recommending denial. However, if the Board chooses to approve this petition staff would reserve the right to suggest conditions of approval.

CHAIRMAN BASEHART: I think that maybe we need to let the applicant know and the staff know, several of us have timing problems here. I have a presentation to make to the Chamber of Commerce this morning, so I'm going to have to be leaving here probably in 30 minutes at the latest. Chelle's got to leave right around that time. Glenn has to leave at 11:15. So we need to move this along.

MR. MacGILLIS: Three minutes? Is that enough?

CHAIRMAN BASEHART: We'll do five, but hopefully this won't be a long presentation.

(Whereupon, a short recess was had.)

CHAIRMAN BASEHART: Okay. Everybody back, let's reconvene this meeting.

Mr. Hertz, the situation is that within the next -- at varying times within the next half hour or so three members of this Board are going to need to leave. That would still leave us with a quorum, but it would be a bare quorum.

Secondly, I understand the Zoning Director who was going to be here has been called to a meeting that he couldn't control, and therefore he -- and he had intended to be part of the staff's presentation, he's not available.

Under the circumstances, you've certainly got two choices. You can ask that the matter go on and be heard or you can request -- or at least you can agree, I think

it's the Board's pleasure that we would like to postpone this item till next month so that the full board can give consideration to the item and everybody's presentation can be heard in full.

VICE CHAIRMAN KONYK: And he would be rewarded as the first item on the agenda then?

CHAIRMAN BASEHART: Yes, we would put you first on the agenda.

MR. WICHINSKY: And Mr. Chairman, my only concern as I stated off the record was as long as such a suggestion wouldn't prejudice their position and they're agreeable to it, maybe it's better all around for all parties.

MR. HERTZ: Mr. Chairman, members of the Board, for the record, Cliff Hertz here on behalf of Atlantic Coast Tower, the applicant.

Obviously in this particular business time is money like any other real estate business, but I do agree with the Chairman that we would be best off having a full Board.

And also I would welcome Mr. Whiteford's presence in terms of explaining the staff position. I wouldn't want to put other members of the staff have to try to have them be in Bill's shoes when they may not know exactly what Bill had in mind or didn't have in mind in connection with the staff report.

So we would reluctantly agree with the Chairman's suggestion and we would appreciate being put first on the agenda next time and we can move this along.

I guess the only alternative for you beside us being first on the agenda would be a special meeting. I'm sure you don't want to do that and we're happy to be first.

CHAIRMAN BASEHART: We can do that if anybody wanted to.

MR. HERTZ: As long as we're going to be first, we don't care.

CHAIRMAN BASEHART: Okay. All right. Then my suggestion is we postpone this to our February meeting and make it the first item on the agenda right after consent.

VICE CHAIRMAN KONYK: Do we need to do a motion for this?

CHAIRMAN BASEHART: Yes, we do.

VICE CHAIRMAN KONYK: Why don't I make the motion to postpone -- what's the item number?

MR. GERBER: Before we do that, excuse me, at the last meeting because of Mr. Hertz's absence which we know was due to inadvertent miscommunication between staff and Mr. Hertz, I think don't we need to first do our motion to reconsider this and then we move to postpone it?

MS. BEEBE: Yes, you can do that.

MR. GERBER: Okay.

VICE CHAIRMAN KONYK: Then you do that.

MR. GERBER: I move that we reconsider BAAA 2000-072 which had been voted down at the last December, 2000, meeting.

CHAIRMAN BASEHART: Okay. We have a motion by Mr. Gerber. Do we have a second?

VICE CHAIRMAN KONYK: I'll second it.

CHAIRMAN BASEHART: Second by Ms. Konyk. All those in favor indicate by saying aye?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?
(No response.)

CHAIRMAN BASEHART: Motion carries unanimously.

VICE CHAIRMAN KONYK: Okay. Now I'll make the motion to postpone BAAA 2000-072 to the February hearing with this being the first item on the regular agenda.

MR. MacGILLIS: That's February 15, 2001.

VICE CHAIRMAN KONYK: February 15, 2001.

MR. WICHINSKY: I'll second the motion.

CHAIRMAN BASEHART: Okay. We have a motion by Ms. Konyk, a second by Mr. Wichinsky for that 30 day postponement.

All those in favor indicate by saying aye?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no?
(No response.)

CHAIRMAN BASEHART: Motion carries unanimously.

Thank you.

MR. MacGILLIS: The material that you have on your desk, do you just want to leave it there or if you want to take it, because we can send it all back out again?

CHAIRMAN BASEHART: If everybody would just leave it --

VICE CHAIRMAN KONYK: Which material? All of it?

CHAIRMAN BASEHART: We can leave the whole thing here.

MR. MacGILLIS: Just the stuff regarding the minutes.

VICE CHAIRMAN KONYK: Is it this that you want?

MR. MacGILLIS: That's the minutes.

VICE CHAIRMAN KONYK: Leave that? Do you want this, too?

MR. MacGILLIS: I have the minutes here that's only like a few pages.

VICE CHAIRMAN KONYK: Okay.

MR. MacGILLIS: I don't know if anybody wants that. We'll send that out again because you'll get the minutes the next meeting.

VICE CHAIRMAN KONYK: Okay.

CHAIRMAN BASEHART: Okay. Then we've got one more item --

VICE CHAIRMAN KONYK: No, we've got two. The election.

MR. MacGILLIS: We have the last item, and Fusun will be here, I can -- does everyone have a copy of this or is Fusun bringing it? Does he have a copy of that on your desk? Okay. Just be a minute.

CHAIRMAN BASEHART: Okay. Then there actually are two items left. We had the DRC thing that was going to be added.

MR. MacGILLIS: Fusun is on her way.

CHAIRMAN BASEHART: Okay. And we've got the approval of the attendance report for last month. We had Ms. Konyk, of course, wasn't here because of her husband's accident. We had Mr. Wichinsky wasn't here because he had a business conflict and was out of town. And Mr. Jacobs was on vacation in Antarctica.

So we'll just consider this a unanimous support of excused absence for those three individuals, if no one has an objection?

MS. CARDONE: I move that we excuse those three absences.

CHAIRMAN BASEHART: There's a motion by Ms. Cardone. Somebody that was here has to make the second.

MR. GERBER: Second.

CHAIRMAN BASEHART: Second by Mr. Gerber. All those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: It carries unanimously.

We've got the two other items. One is the election of officers. While everything is being passed out, do you want to do that or do you want to wait till next month? Why don't we do it and get it over with?

MS. CARDONE: Can I ask --

CHAIRMAN BASEHART: Yes, ma'am.

MS. CARDONE: Last year when we went through this process, I was newly appointed to this Board. How do you go about your election of officers or your nomination process, voluntary process? I'm just wondering because I don't have a clue.

CHAIRMAN BASEHART: Basically the code provides that at the beginning of every year we elect the Chairman and the Vice Chairman for a one year term. The code also provides that the Chairman is limited to two consecutive terms, so the same person can't be reelected every year.

VICE CHAIRMAN KONYK: Every two years.

CHAIRMAN BASEHART: Every year, I mean, continuously, yeah. Two years is the limit. But basically the way we do it is at this meeting there are nominations for chairmanship and then there's a vote and then there's a nomination or nominations for Vice Chair, and then a vote, and that's all we do.

MS. CARDONE: Okay. Let me just ask you another thing. Last year, this past year was your first term; is

that correct?

CHAIRMAN BASEHART: Yes.

MS. CARDONE: And Chelle had the chairmanship prior to that?

CHAIRMAN BASEHART: Yes.

MS. CARDONE: For I'm assuming two years?

CHAIRMAN BASEHART: Yes.

MS. CARDONE: And prior to that time?

CHAIRMAN BASEHART: I was Chairman for two years as well.

MS. CARDONE: Okay. I get the pattern.

VICE CHAIRMAN KONYK: You were Chair, Glenn was the Chair.

MR. WICHINSKY: I was Chair for one year somewhere in there.

CHAIRMAN BASEHART: And then he didn't want to do it again.

MS. CARDONE: So, Bob, can I ask you if this is something that you would consider continuing?

CHAIRMAN BASEHART: Absolutely. Okay. Let's open up the floor for nominations.

Do we have any nominations first for Chairman?

MS. CARDONE: Then I would nominate Bob Basehart.

MR. JACOBS: I'll second that.

CHAIRMAN BASEHART: We have a motion and a second. Are there any alternative motions?

VICE CHAIRMAN KONYK: No.

CHAIRMAN BASEHART: Then we'll close the motions and vote.

MR. WICHINSKY: Shouldn't this be roll call?

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

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Okay. Thank you.

Now we'll open the floor for nominations for Vice Chair.

MR. WICHINSKY: I'll move for a second term with Ms. Konyk.

CHAIRMAN BASEHART: We have a motion.

MS. CARDONE: I'll second that.

Can I -- Chelle, is this something that you would consider or accept?

VICE CHAIRMAN KONYK: Oh, I'll consider it, yeah. Bob took the heat off me by being the Chair, so that's fine.

CHAIRMAN BASEHART: We have a motion by Mr. Wichinsky and a second by Ms. Cardone. Any other motions or nominations?

(No response.)

CHAIRMAN BASEHART: Seeing none, all those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Motion carries unanimously.

VICE CHAIRMAN KONYK: Thank you.

MS. CARDONE: And so the Chairman hosts the Christmas party? Is that how that goes?

CHAIRMAN BASEHART: Yes, that's what we do.

CHAIRMAN BASEHART: Okay. Now we are going to have a presentation from the DRC staff.

VICE CHAIRMAN KONYK: Is this something to do with this?

MR. MacGILLIS: What I'll do is introduce -- some of you may remember Fusun Mutgan. She used to work with the Board of Adjustment. She's now the Principal Planner in charge of the DRC section.

What she's given you here, and I'll let her to go over it, but this is kind of unusual when we bring something like this to you, but Bill Whiteford asked if you would consider what Fusun is going to present to you to get some feedback on a provision that's in the Unified Land Development Code that wasn't clear, and it's requiring the Zoning Director in his authority to draft a policy to clarify a provision in the code.

VICE CHAIRMAN KONYK: Does it have something to do with this or no?

MR. MacGILLIS: No. And with that, Fusun will explain exactly what the code provision is and what the policy is and -- because any appeals to this policy the Zoning Director implements would eventually -- if anybody wanted to appeal it would come before you. So we thought it was kind of appropriate to get some feedback from you if you see any inherent problems with the language and the policy.

CHAIRMAN BASEHART: Okay.

MS. MUTGAN: Thank you for allowing us to add this item to the agenda.

This issue came up with an increased request for stealth towers and on the second page, Exhibit A, what I called Exhibit A, there's a definition for a stealth facility and defines it as a structure which is not readily identifiable as a tower and is compatible with the existing or proposed uses on site. The structure may or may not have a secondary function.

Examples of these are like bell towers, flagpoles and tree towers. And what we're dealing with here is the tree towers, and there's an increased request for tree towers because of their lesser inconspicuous nature. They can adapt to their surroundings better and they may have lesser adverse impacts on the surrounding residential

areas. So the industry is encouraged also by the Board to come with more stealth towers instead of monopole towers and guyed towers.

And another advantage of stealth towers from their point of view is that they can be approved through an administrative approval process, which is DRC in this case, versus a public hearing process. But then that puts pressure on the zoning staff or the DRC staff because as we know how sensitive the towers are, we need to be able to make the right decisions and we have to make a sound and good determination whether or not that tree tower is compatible with its surrounding area and will have really lesser impacts than the regular tower which would normally require a public hearing approval.

The code has lengthy requirements regarding towers, and under stealth towers we have citing requirements which -- well, under, again in Exhibit A I put an arrow that is b.1.4.

The code says the structure shall be related to and integrated into the existing natural and/or man-made environment to the greatest extent possible.

That is quite a general clause. So we ran into a problem where industry was coming with 200 feet tall tree towers on entirely vacant properties which would obviously look very conspicuous rather than an inconspicuous -- or they were proposing towers on properties with no vegetation at all so this tree tower would be sticking out all by itself and would be readily identifiable. And we were wondering if it would be -- how we would be meeting their question, the integration clause of this code to the maximum extent possible.

So we had problems of this sort. So we said perhaps we need to put together policies so that, you know, we'll have criteria and guidelines for the industry as well as the zoning staff to regulate tree towers. And we put together the memorandum. Did you see as the second page in your package?

And on that memorandum what you're seeing basically is that the site will have to have some native trees which will screen the proposed tree tower so that the proposed tree will not be all by itself and it will be readily identifiable. And we are coming up with provisions to determine its height.

The code allows stealth towers to be up to 200 feet high, and you know, if you have like 30 feet or 50 feet high vegetation, obviously a 200 feet high tower will not be, you know, will not look well and will be very conspicuous there. So we have to come up with some criteria based on the height of the existing native vegetation to determine the height of the tower.

And what we came up with this memo is 100% additional height of the highest tree on the site. So we're going to request them to present us with a survey which indicates the heights of several trees surrounding the proposed tree location and we're going to allow them to go 100% higher than the highest tree on the site. For

example, if they have slash pines 50 feet high, 100%, so they're going to be allowed to go to 100 feet tall tree.

The industry's concern is also being able to accommodate additional users and they say they need an additional 10 to 15 feet depending on the carrier for each additional user, and if they have three additional users multiplied by 15 feet each so that gives them 45 or 50 feet. So if they have, you know, highest 50 foot tree height on the site, add another 50 feet. That seems to us a reasonable height to accommodate the needs of the industry as well as, you know, kind of trying to integrate the proposed stealth tower into existing natural environment.

And the other thing we're suggesting is the stealth tower should be maintained. The owner of the property should agree to maintain those trees on the site so that, you know, the erected stealth tower and then the next day he goes and clears all the trees surrounding the tower and the tree stands all by itself. So we want to designate on the site plan an area which includes existing trees and we want to get an assurance from the owner that he's going to maintain those trees on the site as long as the tower is maintained on the site.

Another thing is we are encouraging the industry to come up with a tree appearance which is very compatible with the nature of growth trends of the existing trees on the site. There are many different products available on this site, as I added a couple of them. Some are much more natural looking than the others. I mean, you don't want to -- you know, it's all relating to the cost, of course. You know, better looking ones are a bit more costly. But we want those trees to be consistent with whatever there is on the site as much as possible.

Therefore, we wanted to add this criteria which says in the color, form, texture and overall appearance it should be consistent with the existing trees on the site. And we want them, of course, to show that on the site plan as a visual and as elevation.

So this is the summary of the concerns. If you wanted to respond to, I would be very glad to answer if you have questions.

CHAIRMAN BASEHART: I'm comfortable with everything you have here. Just one question, though. Stealth towers can emulate trees or as you said clock towers or other things, but you're setting the height to double the height of the highest tree on the site.

MS. MUTGAN: This will apply to only tree towers, though, not to bell towers, not to --

CHAIRMAN BASEHART: Okay. So they can be a function of -- let's say you have a 3-story office building or let's say a five story office building, would there be an unlimited opportunity for the height of the stealth tower if it were done in, say, a bell tower or clock tower or something or would it be as a percentage of the height of the building?

MS. MUTGAN: As I said, when we had these issues with tree towers, so these criteria covered only tree

towers. We're going to deal with the other towers as it comes like -- we had flag towers, for example.

We didn't really have that much problem with them, but if he gets a tower, additional tower type or, you know, proposals then we're going to consider elevations of the site, what is there on the site, and we're going to try to apply the criterion called integration into the maximum extent for those type of structures separately.

CHAIRMAN BASEHART: Okay. Board members? Any feedback?

MR. JACOBS: I have two questions. You don't require environmental impact statements, do you, for these towers?

MS. MUTGAN: No, they usually do not. Our only concern is when they install the tower, you know, we want them to install it within a group so that the existing trees will screen the tower and that they pay attention not to damage those trees during the installation phase.

I mean, that may be one impact, but other than that, we're not aware of any environmental impacts of towers.

MR. JACOBS: What I was thinking of -- I know from personal experience in some places, particularly along parkways and that type thing, before you can put up any tower you have to have an environmental impact statement. It seems to me that an increase of 100% for a tree stealth tower is not very stealthy. I think if you've got trees that are 50 feet high and suddenly there's a 100 foot tree in the middle of the thing --

VICE CHAIRMAN KONYK: Well, we're not here to --

MR. JACOBS: No, but I --

CHAIRMAN BASEHART: That's not an environmental impact. It's a visual impact.

MR. MacGILLIS: Well, if he has feedback, we're looking for that because --

MR. JACOBS: Well, that's what the environmental impact statements are on these towers that take place like along the Henry Hudson Parkway and places like that. They are concerned about the scenic value.

MS. MUTGAN: But I can perhaps, you know, respond. The DRC has as you know many agencies who look at all the site plans they come into the system, and ERM is one of those. So we usually ask ERM to look at those plans, Environmental Resource Management. So they would be one of the agencies who is going to look at those plans.

And If they have any environmental concerns relating to vegetation, wetlands, et cetera, they may hopefully catch it, and the Health Department will be looking at them, too, regarding other types of impacts. So we're hoping that we're going to be covered from those respects.

MR. MacGILLIS: Mr. Jacobs, is your concern that -- is it more of an environmental or a visual because I know some have visual surveys.

MR. JACOBS: It's a visual thing, but my own experience with environmental impact statements have dealt with visual impact and that thing has been covered by environmental impact statements.

MR. MacGILLIS: And that's something I don't know -- we don't have anything in the code regarding visual assessment. We only have environmental and that's what Fusun is referring to, the environmental impact rather. We don't have a visual assessment statement that they have to present.

MS. MUTGAN: We try to cover the visual part with these provisions here because there was no clear criterion in the code which allowed us to go so much higher or so much bigger. So we tried to make it sound reasoning.

We hope we did, to allow the industry to function properly, and also to try to consider the rights of the residents. So we thought that a 100% increase would not look too bad.

We would have preferred to keep it lesser, but then the industry doesn't get what they want to get out of the tower because of emission issues and they also -- we're really encouraging them to have share users and each share user adds to the height of the tree. So we thought that this was a good compromise between what they need and what they were going to get out of it.

CHAIRMAN BASEHART: Nancy suggested that what you probably need to do is require a woodpecker relocation or education program so that they don't get surprised.

MS. MUTGAN: I know. We may do that. We can add it as an additional criteria here.

CHAIRMAN BASEHART: Do you need anything back from us?

MS. MUTGAN: Well, perhaps I would just request of you to look at the policy memo once more and if you see anything that draws your attention and if you have concerns, we would be very happy to address those.

CHAIRMAN BASEHART: Okay. Very good.

MS. MUTGAN: Thank you very much.

CHAIRMAN BASEHART: Thank you. That being the end of business, do we have a motion for adjournment?

VICE CHAIRMAN KONYK: I'll motion for --

CHAIRMAN BASEHART: We have a motion for adjournment.

MR. MISROCH: So moved.

CHAIRMAN BASEHART: Second. All those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: We're adjourned.

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(Whereupon, the meeting was concluded at 11:00 a.m.)

C E R T I F I C A T E

THE STATE OF FLORIDA)
COUNTY OF PALM BEACH)

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

DO HEREBY CERTIFY that the above-entitled and
numbered cause was heard as hereinabove set out; that I
was authorized to and did report the proceedings and
evidence adduced and offered in said meeting and that the
foregoing and annexed pages, 1 through 62, comprise a true
and correct transcription of the Palm Beach County Board
of Adjustment Meeting.

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

IN WITNESS WHEREOF, I have hereunto set my hand
and seal this 5th day of February, 2001.

Sophie M. Springer, Notary Public.

