

PALM BEACH COUNTY
BOARD OF ADJUSTMENT

Thursday, March 15, 2001
9:05 a.m. - 9:35 a.m.
100 South Australian Avenue
West Palm Beach, Florida

Reporting:

Sophie M. (Bunny) Springer
Notary Public

A T T E N D E E S

Robert E. Basehart, Chairman

Chelle Konyk, Vice Chairman

Mr. Stanley Misroch

Mr. Jonathan Gerber

Mr. Raymond Puzzitiello

Mr. Wayne M. Richards

David Cuffe, Civil Engineer II, Land Development

Michael Jones, Asst. County Attorney

Jon P. MacGillis, Principal Planner, Zoning

Mary Moody, Secretary

Janet Quinn, Secretary

I N D E X

<u>Petition</u>		<u>Page</u>
1	BATE 2001-015	6
2	BOFA 2001-016	8
3	BOFA 2001-017	14
4	BATE 2001-019	19
5	BATE 2001-020	21
6	BOFA 2001-018	23
Board Comments		31
<u>CERTIFICATE OF REPORTER:</u>		36

P R O C E E D I N G S

CHAIRMAN BASEHART: I'd like to welcome everybody to the March 15, 2001 meeting of the Board of Adjustment. Let's start out with the first item and that's roll call.

Well, wait a minute. Before we do that, do we need to swear our new member in?

MR. MacGILLIS: We could do it after roll call.

VICE CHAIRMAN KONYK: After roll call.

CHAIRMAN BASEHART: Okay. Do the roll call.

MS. QUINN: Ms. Nancy Cardone.

MS. CARDONE: (No response.)

MS. QUINN: Mr. Joseph Jacobs.

MR. JACOBS: (No response.)

MS. QUINN: Ms. Chelle Konyk.

VICE CHAIRMAN KONYK: Here.

MS. QUINN: Mr. Raymond Puzzitiello.

MR. PUZZITIELLO: (No response.)

MS. QUINN: Mr. Glenn Wichinsky.

MR. WICHINSKY: (No response.)

MS. QUINN: Mr. Wayne Richards.

MR. RICHARDS: Here.

MS. QUINN: Mr. Stanley Misroch.

MR. MISROCH: Here.

MS. QUINN: Mr. Jonathan Gerber.

MR. GERBER: Here.

MS. QUINN: Mr. Bob Basehart.

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

Okay. I guess before we do anything else, Bunny, I think it would be appropriate to swear our new member in.

COURT REPORTER: Certainly. Mr. Wayne Richards, would you raise your right hand, please?

Do you, Wayne M. Richards, swear to faithfully and impartially execute the duties of your office as a member of the Palm Beach County Board of Adjustment according to the best of your abilities and to support the laws of the State of Florida and Palm Beach County?

MR. RICHARDS: Yes, I do.

CHAIRMAN BASEHART: Welcome to the Board.

MR. RICHARDS: Thank you.

CHAIRMAN BASEHART: Okay. Next item on the agenda is the proof of publication. We have a copy of the proof in front of us. Can I have a motion to accept it in the record?

MR. MISROCH: So moved.

VICE CHAIRMAN KONYK: Second.

CHAIRMAN BASEHART: Motion and a second. All those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Okay. Takes care of that.

CHAIRMAN BASEHART: Next item is the remarks of the Chairman. The only thing I want to do is for those of you who are not familiar with the proceedings of this Board, the way we operate our meeting is that the agenda is broken into basically two sections. The first is what we call the consent agenda.

Those are the items that the staff has recommended approval of and if there are recommended conditions of approval, the applicant has agreed with those conditions, and where there's been no indication of opposition from surrounding property owners, those items are on the consent agenda. If there is no one here to object to those items and if after having read the staff report, the members of the Board are comfortable and agree with the recommendation, they will stay on consent, and no presentation will be necessary and they will be approved as a group, and the staff report will become the record of the hearing.

If any member of the public is here to oppose something that's on the consent agenda, we will pull that item from consent, or if any member of the Board is uncomfortable with the staff report or disagrees with it, we'll pull it from consent and there will be a full hearing on those items.

The second part of the agenda and at this point I think there's only one item that's not on consent, and those are items where -- pardon?

VICE CHAIRMAN KONYK: You just jinxed it.

CHAIRMAN BASEHART: Those items that are not on consent will require a full presentation and justification by the applicant and there will be a presentation by staff as well. Members of the public will be invited to give their opinion and make their requests and then the Board will vote individually on those.

That being said, I have no other comments. Does any other member of the Board have anything they would like to say?

(No response.)

CHAIRMAN BASEHART: Let the record show Mr. Puzzitiello has now come to the meeting.

Okay. The next item on the agenda then is approval of the minutes. We all got the minutes from the February meeting. Anybody have any difficulty with the minutes? Any changes?

Then we're ready for a motion to adopt the minutes.

MR. GERBER: So moved.

CHAIRMAN BASEHART: We have a motion by Mr. Gerber.

MR. PUZZITIELLO: Second.

CHAIRMAN BASEHART: Second by Mr. Puzzitiello.

All those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Okay. The minutes of the February meeting are adopted.

CHAIRMAN BASEHART: Jon, remarks of the Director?

MR. MacGILLIS: Just two comments. We'd like to welcome Michael Jones. He's the new Assistant Attorney for the Board of Adjustment. Do you want to say anything?

MR. JONES: Just looking forward to working with you guys and if you have any questions for me or want to talk to me afterwards, I'll be around. Looking forward to working and hoping it will be fun.

VICE CHAIRMAN KONYK: It'll be fun, we can assure you.

MR. MacGILLIS: I'd also like to introduce Janet Quinn who's the new Board of Adjustment secretary. Mary's been promoted to Zoning Tech in the concurrency section.

CHAIRMAN BASEHART: Congratulations.

VICE CHAIRMAN KONYK: To both of you.

MR. MacGILLIS: Those are the only comments.

CHAIRMAN BASEHART: Okay. Then we'll get on with the regular business on the agenda.

The first item is -- well, there are no postponements or withdrawals.

MR. MacGILLIS: No, there are not.

CHAIRMAN BASEHART: Okay. So we'll go to the Consent Agenda. The first item is actually a time extension, BOFA Time Extension. Ellie Halperin is here to represent it. Time extensions are not advertised public hearings, so I'm sure there's no public here to speak on this.

Any member of the Board have any difficulty with this?

VICE CHAIRMAN KONYK: No.

CHAIRMAN BASEHART: Okay. It'll stay on consent. For the record, I would just like to make the record clear that I am involved with this property. I was the zoning agent when it went through the Board of County Commissioners. I was not involved with the variance and am not involved with the variance.

MR. MacGILLIS: Could we just have the agent for the record agree to the --

VICE CHAIRMAN KONYK: To the conditions.

CHAIRMAN BASEHART: That's right. There are four conditions. I think the same ones that were attached originally; do you still agree with them?

MS. HALPERIN: Yes, we do. Eleanor Halperin for Packer Ford.

CHAIRMAN BASEHART: Thank you.

MR. MacGILLIS: Mr. Chairman, it may be appropriate at some time to swear people in that are -- I know we're not going to have any discussion, but maybe if you want to swear everybody.

CHAIRMAN BASEHART: I was going to do that when we got to the regular agenda, but why don't we do it now. Anybody that's here to speak on any item on the agenda, consent or otherwise, will you please rise to be sworn in?

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

CHAIRMAN BASEHART: Okay.

STAFF RECOMMENDATION

Staff recommends of a maximum **7 month time extension for Condition #4, BATE 2000-24**, from November 21, 2000 to June 21, 2001, consistent with the 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 BATE2000-024, 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, certified by DRC, simultaneously with the building permit application. **(BLDG PERMIT:BLDG)**
2. Prior to DRC certification, the applicant shall ensure the BOFA conditions are shown on the site plan. **(ZONING-DRC) (COMPLETED)**
3. There shall be no modifications to the site layout or improvements, unless shown on Exhibit 19. Any minor modifications shall be reviewed by Board of Adjustment staff to ensure the intent of the Board of Adjustment approval is satisfied. **(ZONING-DRC)**
4. By November 21, 2000, the applicant shall have commenced construction of the proposed building in order to vest the setback and

landscape variance granted pursuant to BA98-32, and this Time Extension BA2000-024. **(DATE: MONITORING-ZONING/BA)**

Is hereby modified to read:

By June 21, 2001, the applicant shall have commenced construction of the proposed building in order to vest the setback and landscape variance granted pursuant to BA98-32, BA2000-024TX and this Time Extension BA2001-015. **(DATE: MONITORING-ZONING B/A)**

ENGINEERING COMMENT:

The requirement that the Base Building Line for the subject property be forty (40) feet beyond the existing south right-of-way line of Okeechobee Blvd. is hereby waived. Said Base Building Line is hereby established at the existing north property line of the subject property.

The Base Building Line along Shawnee Avenue is hereby established at the platted north right-of-way line, being the existing south property line of the subject property. (ENG)

CHAIRMAN BASEHART: Next item on the Consent Agenda is BOFA 2001-016, Kilday & Associates. Is the agent here?

MS. ANDERSON: Yes, I am. Candy Anderson, Kilday & Associates.

CHAIRMAN BASEHART: Okay, Candy, the staff is recommending approval subject to five conditions. Do you agree with those conditions?

MS. ANDERSON: Yes, I do.

MR. MacGILLIS: Actually, we're amending the conditions.

MS. ANDERSON: He's amended a couple, but he's gone over them with me and I agree with the amendments.

MR. MacGILLIS: Just for the record, page 23 of your back up material, condition number four is going to be deleted and replaced with the following condition:

"Prior to the final DRC approval of the site plan, the property owner shall provide documentation that money has been contributed to the Glades

Thoroughfare Beautification Master Plan equal to the cost of installing a 36" hedge along the portion of the south property line where the two setback encroachments occur."

Just for your information, the Board of County Commissioners is reviewing this particular use for approval. The use was established under an extended film permit, which has run out, so they have to come in to the Zoning Division to get the appropriate approvals for it to allow the use to stay there. Because of the location of this property out in the Glades, some of the landscaping that's typically required by code is not necessarily appropriate on this because there's no surrounding uses that would be benefitting from it. Therefore, we have a program set up where we can transfer the landscaping elsewhere in the community. There's a program set up that the planning division monitors where that landscaping goes.

In this case, we were recommending a hedge go there like we typically do to offset the negative impacts of the encroachment. But in this case, it's not going to serve much of a purpose because there's an airport next to it. So the airport agrees they don't have a problem with the money being donated instead of the planting of the hedges.

CHAIRMAN BASEHART: Okay. Is there another condition as well? You said there were two?

MR. MacGILLIS: No.

MS. ANDERSON: No.

MR. MacGILLIS: No, only condition four on page 23 was deleted and substituted with the new condition I just read.

CHAIRMAN BASEHART: Okay.

MR. RICHARDS: May I?

CHAIRMAN BASEHART: Go ahead.

MR. RICHARDS: Jon, where's the money being donated? I missed that; I'm sorry. Is it in here?

MR. MacGILLIS: It's donated to the Glades Thoroughfare Beautification Master Plan.

VICE CHAIRMAN KONYK: It's just transferred to a different landscaping project is what it is.

MS. ANDERSON: Right.

VICE CHAIRMAN KONYK: I mean, it's always going to be in landscaping; it's just going to be used somewhere else, other than that location.

MR. RICHARDS: I understand.

MR. MacGILLIS: There's actually a fund set up where currently no one has actually applied to use the funds yet, but there's a fund set up that the Planning Division monitors, so when Belle Glade asks for some of that money they petition to the Planning Division and they look at the plans where the landscape can go, and usually it'll go into right-of-ways around public buildings.

MR. RICHARDS: And what's the amount?

MS. ANDERSON: It's around thirteen, but it may change depending on -- it'll be established when I go to

the Board of County Commissioners, but it's around \$13,000. I think it's \$12,800, something like that.

MR. MacGILLIS: The \$13,000 will include additional landscaping through the public hearing process that will also be transferred off the site. The \$13,000 is not just for --

MS. ANDERSON: It's not just for the hedge. It's for trees and shrubs and everything else.

MR. RICHARDS: Thank you.

CHAIRMAN BASEHART: Okay. Is there -- are there any letters on this?

MR. MacGILLIS: No letters or no calls.

CHAIRMAN BASEHART: Is there any member of the public here with an interest in this application?

(No response.)

CHAIRMAN BASEHART: Seeing none, are all the members of the Board comfortable with the staff recommendation? Okay. We'll leave this on consent.

MS. ANDERSON: 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 3.06 acre property is located within the HR-12 land use category and RH zoning district. The property is located within the Glades Overlay District and adjacent to the Pahokee Airport. The surrounding land uses are: airport to the south, animal shelter park to the east, Lake Okeechobee to the west and residential to the north. The property supports nine structures that are utilized for the motion picture and outdoor entertainment use. The use has been operating on an Extended Film Permit which has expired. The applicant's client would like to make the use permanent on this site, however, this requires several conditional uses. The applicant has a zoning application in the process for 3 conditions uses, Petition 00-090. In order for the use to be approved and the existing structures made legal, building permits will be required. Since several of the structures were constructed in the setbacks

without permits. Because of the temporary nature of the use, the owner did not understand regular building permits were required. The applicant is willing to obtain the necessary approvals, permits and inspections, however, the two requested variances must be obtained.

The unique aspect of the structures, that are subject of this variance, is the fact there is an airport to the south that provides adequate open space to mitigate the encroachments. Staff is recommending conditions of approval that will future ensure the setback variances, if granted, will be mitigated to ensure compliance with the general intent of the code.

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

NO. The applicant's client established the use and situated many of the structures on site under an Extended Film Permit. This permit is good for a specific time period (maximum 5 years) and allows this type of operation in various Zoning districts. The applicant has utilized the maximum amount of time on this site for this use. In order to keep the use on this property, the applicant must obtain Class A conditional use approval from the BCC. This will also require the applicant to obtain all necessary permits for structures currently existing on the site. The applicant is prepared to obtain the necessary approvals and permits, however, the requested variances must be granted for two existing structures. The metal shed and raised wood deck encroach the required setback along the south property line. If the variances are granted the applicant can keep the structures and obtain the necessary approvals. If the variance is denied the applicant would have to remove the metal shed that currently is utilized for storage. The raised wood deck surrounds a pool and is utilized by spectators of the shows that occur on-site. Staff is recommending a condition of approval that the applicant complete a Removal Agreement to remove the deck from the adjacent property to the south should the need arise.

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

NO. The applicant is requesting the minimal variances to allow the existing metal shed and raised deck to remain. The fact the Pahokee

Airport is to the south and will not be adversely affected by these structures that have existed for man years. With the conditions recommended by staff the two setbacks will be mitigated to protect the adjacent property owner to the south.

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

YES. A literal interpretation of the code would require the applicant to remove both the structures. The metal shed is 100 by 40 feet and is used for storage. The structure is a prefab structure and would be very costly to relocate on the property. The raised wood deck actually encroaches on the property to the south. The deck was placed around the raised pool and is used by spectators and users of the pool. The fact the Pahokee Airport exists to the south there will be a wide expansive separation between these structures and any structures on the lot to the south. Staff is recommending conditions of approval to ensure the two setback variances are mitigated.

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 use was originally established under an Extended Film Permit. The structures on the site are utilized for housing staff, storage and relaxation (deck). The two structures that are subject of the variance application were constructed without permits. If the variance is granted, the applicant will have to pay triple building permit fees. Prior to the final Certificate of Occupancy and Completion, both structures will be inspected by the Building Division for compliance with all building code.

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

YES. The applicant was originally operating under an Extended Film Permit and is now applying for several conditional uses to make the use permanent at this location. The land use and zoning are consistent for this use, provided the BCC approves it at the public hearing. The ULDC setback provision is to ensure property values are maintained, minimum separations for the RH zoning are adhered to as

well as providing adequate land area for air and light to travel between properties and structures. The two side setback encroachments occur along the south property line, adjacent to the Pahokee Airport. There will be no negative effects on this property to the south. Staff is recommending conditions to mitigate any negative impacts that might be associated with the variances, if granted.

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

NO. The property is located in the Glades Overlay District. The intent of the overlay district is to encourage commercial uses in the Glades. This use has existed for several years and provides employment opportunities for people in the western community. There is little commercial development in this area, so this continuance of the use is important to the area. The Pahokee Airport to the south benefits from this use as they utilize the airport as part of the business. With the conditions recommended by staff, granting the variances will not be detrimental to the public welfare.

ENGINEERING COMMENT

No Comment (**ENG**).

ZONING CONDITIONS

1. The property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the certified Site Plan, simultaneously with the building permit application. (**BLDG PERMIT: BLDG**)
2. Prior to DRC certification, the applicant shall ensure the BOFA conditions are shown on the site plan. (**DRC:ZONING**)
3. By December 15, 2001, the applicant shall obtain a building permit for both the 100 by 40 foot metal building and a permit for the 64 by 59 foot raised wood deck along the south property line, in order to vest the side interior setback variances of BA2001-109. (**DATE:MONITORING-BLDG PERMIT-BA**)
4. Prior to the issuance of the Certificate of Occupancy for the 100 by 40 foot metal shed the applicant shall install a 4 foot hedge along the south property line to mitigate the setback encroachment. The applicant shall contact the

Landscape Section for a Landscape Inspection on the hedge. **(MONITORING-CO-LANDSCAPE)**

5. Prior to July 15, 2001, or issuance of a building permit for the raised deck or metal shed, whichever occurs first, the applicant shall provide the Zoning Division and Building Division with a copy of an executed removal agreement for the deck. The removal agreement shall be specific to the removal of the deck at no cost to the Palm Beach County or Pahokee Airport. **(DATE: MONITORING-ZONING-BLDG PERMIT-BA)**

CHAIRMAN BASEHART: Next item is BOFA 2001-017, Ervin Keel, and Elk Consultants. Staff has recommended approval of this application also with four conditions. Are you familiar with them?

MR. KEEL: Yes, sir.

CHAIRMAN BASEHART: Do you agree with them?

MR. KEEL: Yes, sir.

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

MR. KEEL: Ervin Keel. I have the pastor of the Jupiter Farms Community Church with me, Clifford Donaldson, and a couple of other church board members.

VICE CHAIRMAN KONYK: Just your name is fine.

CHAIRMAN BASEHART: Thank you. Jon, any letters?

MR. MacGILLIS: Yeah, we had one letter of opposition from Mrs. Brown at 12694 179th Court. Her primary reasons for opposing this variance are she said it was approved as a church and that she believes that the extension is going to support a school, and she feels that the additional traffic that will be generated as a result of adding classrooms to this area will spill out onto the street and cause unnecessary additional traffic in the area. So she's opposed to it. Staff does not feel this warrants pulling it off.

When this project got approved back in the early '80s when it went to the Board of County Commissioners, this addition actually was shown on the site plan, and they're just coming in now because apparently they never went through the final DRC certification process 15 years ago. It's partly a mechanism for cleaning up the

records that they're having to do this now.

CHAIRMAN BASEHART: Well, and the other issue, of course, is this Board is not a land use decision making Board. All we can consider is the setback variance. We can't consider whether the use that they may put the space to is appropriate. That's a Board of County Commission decision.

Any member of the public here to oppose this application?

(No response.)

CHAIRMAN BASEHART: Seeing none, any member of the Board feel this item needs to be pulled?

(No response.)

CHAIRMAN BASEHART: Okay. We'll leave it 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:

NO. This legal non-conforming 2.32 acre parcel is located off Indiantown Road in the NW part of Palm Beach County. The site is surrounded by 1.5 acre residential lots. The site currently supports a church that was approved by the BCC in 1981. The existing church was constructed in 1982. The applicant is proposing to expand the existing facilities to meet the expanding congregation needs. The expansion was shown as "future expansion" on the site plan presented to the BCC, Exhibit 3. However, the applicant is proposing to modify the Site Plan and extend the footprint of the building. Therefore, DRC approval is required in order for the proposed changes to occur. The overall square footage that the BCC approved will be reduced by 2,117 feet. The applicant is applying for 3 vacancies that are necessary to accommodate the proposed expansion. The front and rear setback are required since the original building was approved and permitted in the setbacks. In order to align the addition to the west side of the building and not encroach onto designate

open space, the building has to wrap around the front and rear facade, thereby encroaching into the setbacks. The existing vegetation will provide buffering to mitigate the encroachments. The lot coverage exceeded code when the original site plan was approved, the proposal to reduce square footage will decrease the amount of the lot coverage variance needed to .5 feet.

Therefore, there **are unique** circumstances surrounding this AR lot that currently supports a church constructed in 1982.

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

NO. The applicant is proposing to modify the existing church to allow for expansion to meet the needs of the congregation. The church was approved in 1981 by the BCC at which time a future addition was shown on the site plan. Minor changes to the site plans can be approved by DRC. When the applicant submitted an application to DRC in 2000, they were informed that variances were needed to allow the future expansion to occur. The applicant's site plan modification is on hold until the variances are secured. As previously stated, neither the applicant or staff can find Exhibit 13 that was approved by the SPRCM in 1982 showing the final site layout and setbacks. Therefore, staff can not confirm that the encroachments were ever granted a variance. Staff did find a record that the church did apply and was granted a grass parking variance in 1982.

Therefore, the applicant is willing to apply for the variances in order to correct the official record and accommodate the proposed modifications to the original site plan and building layout. The granting of the variances will allow the future expansion to move forward as consistent with the previously approved conceptual site plan presented to the BCC in 1981.

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. When the church special exception was approved in 1981, the site plan clearly showed the church and future expansion in the required setbacks in effect at the time. A building permit was approved for the existing church into

the required setbacks. The applicant is simply trying to move forward with the expansion to the west side of the building. The granting of the three variances will allow the DRC to approve the final revised Site Plan and then the applicant can apply for a building permit. Other applicants who can demonstrate that minor encroachments will not have a negative impact on the area, if mitigated by conditions, have been granted variances. Also, what is unique about this situation is the existing church is already in the setbacks. In order for the addition to be constructed on the west side of the building, it must align with the existing building. This will require the building to encroach into the front and rear setback. The lot coverage variance of .5% is minimal and considering the large amount of open space and native vegetation on this site this increased coverage will be mitigated.

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. To enforce the literal terms of the AR setbacks and lot coverage without considering the history of the approvals on this site would deprive the applicant of rights enjoyed by other property owners. It would also place an undue hardship on the applicant since the expansion could not be attached to the existing church as approved and proposed. In 1981, when the special exception for the church was approved by the BCC, the site plan reflected the future expansion. However, since staff can find no record of Exhibit 13, which is the last approved Site Plan for this site, there is no confirmation that the addition was vested to be constructed in the setbacks. Therefore, the applicant must apply to Board of Adjustment for the variances in order for the current site plan modifications to be approved.

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 the rear and setback will allow the proposed expansion to the church to occur. The congregation needs extra meeting and storage area and considering the existing building, parking lot layout and native preservation the options for locating the addition are limited. It was always anticipated

that the addition would be located at the west side of the building and it would extend out beyond the existing rear and front facades. Therefore, in order to align the expansion to the existing roof line, footer and openings it is necessary that it be placed in the proposed location.

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

YES. The property has a Inst. Land Use and with an AR zoning designation. The surrounding properties support primarily single family lots. The church was approved as a special exception in 1981, consistent with all regulations in effect at that time. As previously stated the Site Plan, Exhibit 3, presented to the BCC, when the church was approved clearly showed the expansion in the location the applicant wanted to construct it today. However, the applicant is making minor modifications to the site plan that require DRC approval. The DRC informed the applicant that setback variances and lot coverage variances are required prior to DRC certification of the changes to the plan.

The intent of AR setbacks is to ensure adequate open space of 100 feet between the buildings and property lines. This helps maintain the openness and natural preservation in this 100 feet. However, as previously noted, the church was permitted and constructed within the setbacks inconsistent with the established AR setbacks. However, considering the mature vegetation that surrounds the property and buildings, the encroachments are not noticeable. The proposed additions will extend beyond the existing front and rear facade. The applicant has indicated that, similar to the existing building, the addition will be in harmony with the natural character of the site and architecture of the existing church.

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

NO. Granting the variance **will not** be injurious to the area. The church has existed since 1982. The site is well maintained and supports significant amounts of native trees that buffer the church from the surrounding streets and properties. The proposed addition will be in harmony with the site and existing architecture of the church. The three requested variances will not be injurious to the surrounding

property owners.

ENGINEERING COMMENT

No Comment. (ENG)

ZONING CONDITIONS

1. The property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan, Exhibit 9, presented to the Board, simultaneously with the building permit application. **(BLDG PERMIT: BLDG)**
2. Prior to DRC certification the applicant shall ensure the BA2001-017 conditions are attached to the Site Plan. **(DRC)**
3. Prior to March 20, 2002, the applicant shall obtain a building permit for the expansion to the church to vest the front, rear setback variances and the lot coverage variance approved pursuant to BA2001-004. **(DATE:MONITORING: BLDG PERMIT)**
4. Prior to DRC certification the applicant shall indicate on the Site Plan additional landscaping around the foundation of the future expansion at both the rear and front to mitigate the setback variances. The use of native plant material is encouraged to maintain the natural character created by the existing vegetation. **(DRC)**

CHAIRMAN BASEHART: Next item on the agenda is BOFA Time Extension 2001-019 for Albertson's. Ms. Lockhart, your name for the record?

MS. LOCKHART: Good morning. Sarah Lockhart.

CHAIRMAN BASEHART: Staff has recommended approval subject to eight conditions. Do you agree with those?

MS. LOCKHART: Yes.

CHAIRMAN BASEHART: Those are pretty much the same ones that were originally imposed?

MS. LOCKHART: Pretty much.

CHAIRMAN BASEHART: Any member of the public hear to speak on this item?
(No response.)

CHAIRMAN BASEHART: We won't have any letters because it's not advertised. Anybody feel this needs to be pulled?

(No response.)

CHAIRMAN BASEHART: Okay. This application remains on consent as well.

STAFF RECOMMENDATION

Staff recommends approval of the requested modification to Condition #4 of BATE 2000-053. This will allow this project to move forward and the County to obtain the additional 2.3 feet of right-of-way along a portion of the site adjacent to Military Trail. With the modified landscape plan reviewed by staff and made a condition of approval of this condition modification, the intent of the original variance approval and conditions will be met.

The applicant shall comply with all conditions of approval of BATE 2000-053, unless modified herein:

ZONING CONDITIONS

1. The property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application. **(BLDG PERMIT: BLDG)**
2. Prior to DRC certification to the Site Plan, the applicant shall ensure the Board of Adjustment conditions are on the final certified site plan. **(ZONING-DRC)**
3. By November 15, 2001, the applicant shall apply for a renovation permit for the Albertson's store. **(DATE:MONITORING-BLDG PERMIT)**
4. By November 15, 2000, the applicant shall install the upgraded landscape in the right-of-way buffers along Military Trail and Lake Worth Road as well as on site according to the approved Landscape Plan, Exhibit 22, in the BA File BA99-59. **(MONITORING-DATE-LANDSC)**
5. The parking variance is limited to the reduction of 24 spaces for a total of 278 spaces to be provided on site. Prior to final Certificate of Completion of the renovations to the Albertson's Store, the required on-site parking shall be confirmed by the Building Inspector. **(CO-Bldg)**

Inp)

6. Prior to Nov. 15, 2000, or issuance of a Certificate of Completion for the proposed renovations to the Albertson's store, the applicant shall contact the Landscape Section to request a final landscape inspection for the site. All required upgraded landscape shall be in accordance with the approved plan. The spacing and height of the trees along both Military Trail and Lake Worth Road shall be upgraded to compensate for the reduction in the width of the landscape buffer. **(DATE: MONITORING-LAND INSP)**
7. Two additional off-street spaces that current abut Military Trail shall be eliminated to allow for a 10 foot wide interior landscape island in the parking lot. The islands shall include 3 booted sabal palms (**Landscape**).
8. The Landscape Plan, Exhibit 42, submitted with BATE 2001019 application, shall be submitted to the Landscape Section, simultaneously with the Building Permit application for the renovations to Albertson's. **(BLDG PERMIT-LANDSCAPE)**

ENGINEERING COMMENT

Note that the parking study referred to is not a "shared parking" analysis based on the same parking spaces serving different uses at different times of day, but is a special purpose parking demand study based on the particular commercial uses currently proposed for the site. **(ENG)**

CHAIRMAN BASEHART: And the final item on consent is another Time Extension, 2001-020, Chuck Millar for AT&T.

MR. MILLAR: Good morning. Chuck Millar.

CHAIRMAN BASEHART: Okay. Mr. Millar, there are five conditions related to this.

MR. MILLAR: They're accepted, they're fine.

CHAIRMAN BASEHART: They're acceptable.

Any member of the public here to speak on this?
(No response.)

CHAIRMAN BASEHART: Any member of the Board feel it needs to be pulled?

(No response.)

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

MR. MILLAR: Thank you.

STAFF RECOMMENDATION

Staff recommends of a maximum of 12 month time extension for the development order for BA2000-004 from January 20, 2001, to January 20, 2002, consistent with Section 5.7.H. of the ULDC, to provide additional time for the petitioner to commence development and implement the approved variances.

The property owner shall comply with all conditions of approval of BA2000-004, unless modified herein:

1. The property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application. **(BLDG PERMIT: BLDG) (COMPLETED JULY 07, 2000, SEE PR00-025480)**
2. By October 20, 2000, the applicant shall obtain DRC certification of the amended site plan to reflect the AT & T lot configuration and building layout. The Board of Adjustment approval of the variance does not approve the proposed layout. The layout shall be reviewed by the DRC for compliance with all property development regulations. The approved Site Plan shall reflect the BA variance approval and conditions. **(DATE: MONITORING-ZONING/DRC) COMPLETED**
3. The applicant shall obtain all necessary approvals (DRC, subdivision), building permits and inspections. The property owner agrees to develop this site consistent with the site plan and to be party to maintaining all common areas, consistent with the intent of the Unity of Control. **(ONGOING)**
4. In granting this approval, the board of adjustment relied upon the oral and written representations of the petitioner both on the record and as part of the application process. Deviations from or violations of these representations shall cause the approval to be presented to the board of adjustment for review under the compliance conditions of this approval. **(ONGOING-MONITORING-ZONING)**

5. In order to vest this variance the applicant will have to obtain DRC certification of the amended site plan for Petition 84-30(A) reflecting the proposed layout of the AT & T use on the 1.7 acre portion of the site by October 20, 2000. (DATE: MONITORING-ZONING/BA) COMPLETED

ENGINEERING COMMENTS

Land Development Division has no record of any subdivision approval being granted to divide the original property included in Petition No. 84-30 into the subject lot and the residual of the original zoning petition property. It appears that the original property was still under single ownership until some time after February 1, 1990, when the basic definition of "subdivision" was amended to be the division of property into two (2) or more lots. Note that in order to subdivide property, all common access and drainage features designed to serve more than one lot must be established in appropriate tracts or easements maintained by a property owners association or by all benefiting lot owners under appropriate joint maintenance and use covenants.

VICE CHAIRMAN KONYK: I'd like to make a motion to approve the consent agenda, items BATE 2001-015, 2001-019, 2001-020, and BOFA 2001-016, BOFA 2001-017 remaining on the consent and approved with the staff report becoming part of the record.

CHAIRMAN BASEHART: Motion by Ms. Konyk.

MR. RICHARDS: Second.

CHAIRMAN BASEHART: Second by Mr. Richards. All those in favor indicate by saying aye?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Okay. Motion carries.

That will get us to the regular agenda. Anyone who is on consent is free to leave at this point. You've been approved.

MR. MacGILLIS: Mr. Chairman, the next item the staff put on the Regular Agenda, even though we're recommending approval of it. We did receive actually two letters that I've actually given to the agent to address. The one was to the property owner to the south who had -- there's a rural subdivision to the south of this project, and she just had concerns of why the shopping center was getting away with not having to put the landscaping in and allowing an FP&L easement to encroach over the landscaping.

Both these situations are existing, and this is the easement along that south property line where the variance is being applied for, and Ms. Lockhart will go over that.

But staff feels that we provided her with staff direction, maybe one of the people in the audience here, to come to the hearing to state her objections to this petition -- staff feels it could have stayed on the Consent Agenda but since there was opposition from the public, we wanted to give the opportunity for them to speak.

CHAIRMAN BASEHART: Okay. Why don't we start out with your presentation?

MS. LOCKHART: Good morning. Sara Lockhart representing Frank Rainer and Ann Throgmorton.

CHAIRMAN BASEHART: You've been sworn in?

MS. LOCKHART: Yes, I have. So what do you want to talk about here? No, just kidding.

Briefly, let me give you the macro before we go down into the micro and what the substance of this variance is. This parcel is located at the southwest corner of Hypoluxo Road and Military Trail. There are actually in the zoning petitions that are going to the Board of County Commissioners four property owners. Frank Rainer owns this piece right here (indicating). It's the westernmost parcel. There is an approval on that property right now for 51,000 square feet. I want you to remember that.

This piece right here is owned by Ann Throgmorton and that's zoned agricultural/residential. The underlying Comprehensive Plan designation is commercial low, so we have to request limiting the zoning to the MUPD.

BP Amoco is this parcel right here (indicating). And what we are going to do is sell to BP Amoco additional land area from this parcel. The reason for that is this is an antiquated kiosk design. They said, you know, we ultimately would like to expand. Well, if we're in the process of building something now, now is the time to talk to everyone and see what their plans are.

By selling them the additional land area, this is what we're going to do for Palm Beach County. They have a driveway connection that's too close to the intersection of Military Trail. We're going to pull that driveway back and put it on the piece that we're selling to them. We're also going to have cross access with the shopping center right here (indicating). They also have a driveway connection on Military Trail. We convinced them that they don't need that anymore. We'll bring them in on the driveway down here to the shopping center.

St. Herman's Orthodox Church was approved in 1978 and came back in in 1997 before the Board of County Commissioners. They also had a Board of Adjustment variance from you people quite some time ago. When they went back through the Board of County Commissioners in 1997, it was discovered that they were illegally using this property for access, and so there's a condition on approval on St. Herman's zoning petition that says they have to have access on Military Trail. That is not a good idea. That is not a good idea.

So what we're going to do is swap land with St. Herman's. We're going to take additional property down here off their southern boundary, give them property up here on the north boundary so that they can come in off of this southernmost access for ingress/egress purposes. They won't have to try and make that turn on Military Trail. So we're taking four driveways off Military Trail and only installing two instead.

Now, what's so unique and unusual about this piece of property is there's a 138 kilovolt line on the south property line that's owned by FP&L. That's really unusual to find that high intensity power line outside of a road corridor or other typical road corridor. Usually you'd find it on Military Trail on Hypoluxo Road. It makes the project look a lot nicer, but now we've got this restriction on the back. That's the purpose of the one variance to be able to overlap the utility easement with a landscape buffer by 100%.

FP&L came back and said, well, we think we need a 50 foot easement to maintain this. So I don't have the final number, but we're kind of in an arm wrestling competition with them right now for what they think they really need.

The other variance then that is requested is a reduction in the buffer width right here (indicating). It would run approximately 280 feet and it basically matches the south property line for St. Herman's. And the reason that we need to do that is to align this driveway with a full median opening and the driveway that exists on Hypoluxo Plaza to the east. So that's a better design, rather than having a little jog in here.

The other thing then, too, is this piece down here actually functions more like a commercial project, and if that really had the correct zoning the buffer would only be five feet. So ten feet is really the

minimum that we can install in here and still make everything work as far as the driveway connections go. So I'll be happy to answer any questions.

MR. PUZZITIELLO: What is that commercial to the south? It sort of looks like it, but what is it?

MS. LOCKHART: It's a nursery and irrigation/sprinkler business and they're parking on this property, but we won't go there.

CHAIRMAN BASEHART: Before we go to the public, why don't we have staff's recommendation.

MR. MacGILLIS: This is Petition BOFA 2001-018, petition of Sara Lockhart with Design Tech International, Inc., the agent of Ann Throgmorton and Frank Rainer. It's to allow for a minor reduction in the width of the required perimeter landscape buffer along the southeast corner of the site and to allow the FP&L easement to encroach the entire width of the south property line buffer.

The site is a vacant parcel located approximately 250 feet west of the intersection of Hypoluxo Road and Military Trail in the Hypoluxo Square MUPD, and the MUPD zoning district. Found on pages 42-57 of your backup material. Staff's findings of recommendation are on -- findings of fact are on page 45.

I think Ms. Lockhart has explained that there are unique circumstances to this piece of property. Primarily the previous approvals on this and what they're trying to come in to do as far as realigning access points, dealing with existing outparcels that are on there that have buildings on them that affects where the new building can be laid out and access points come in. The fact that there's that high powered FP&L easement running along the entire south property line that cannot be relocated by the property owner.

The use to the south of where the landscape buffer will be reduced as Ms. Lockhart explained is that grandfathered commercial use that if it did have the proper zoning, the buffer that they're proposing of five feet would be consistent with the landscape code.

The situations that exist on this site are not the result of actions taken by the applicant. They're proposing a site going through the zoning process to get the zoning consistent with the land use. The proposal will require all county BCC approvals and permits, they're asking for the minimum amount of variances that will make the site plan presented to you here function properly.

Granting of the variance will meet the general intent of the code. The intent of the code is that you have a 15 foot buffer between incompatible uses, as stated here. The use to the south is a grandfathered commercial use, even though the zoning is showing it as residential and requiring a 15 foot buffer. The code requirement that you do not overlap an easement more than five feet with a utility easement is to insure that the plant material in the easement are not in conflict,

that the trees are allowed to maintain their height and spread to provide the buffering to the use to the south.

In this case, staff is recommending that the plant material planted under these wires are consistent with the Florida proper -- Florida standard trees that we have in our ULDC now that references smaller trees that will not interfere with the function of the lines and still provide the buffering to the south.

And granting this variance will not be injurious to the surrounding area. The proposed landscaping in the remaining five feet will be consistent with what's required for the 15 foot. They're not asking to reduce any of the plant material, and the fact that they're going to select plant material under the overhead wires that are going to be consistent with our current FP&L standards will meet the literal and general intent of the code.

Therefore, staff is recommending approval of this petition with four conditions found on page 48 of your backup material.

CHAIRMAN BASEHART: Thank you. This is a public hearing.

Any member of the public who would like to speak on this item can come forward at this point? Any member of the public that would like to speak?

(No response.)

CHAIRMAN BASEHART: Seeing none, we'll close the public hearing. We're ready for any questions or discussion or a motion from the Board.

VICE CHAIRMAN KONYK: I'd like to go ahead and make a motion unless anybody -- we can have some discussion after I make the motion; how's that?

CHAIRMAN BASEHART: Okay.

VICE CHAIRMAN KONYK: BOFA 2001-018 recommending for approval with the four conditions that the applicant has already acknowledged that they understand and agree with, and with the staff report becoming part of the record, I move to approve.

MR. PUZZITIELLO: Second.

CHAIRMAN BASEHART: We have a motion by Ms. Konyk. Was that Mr. Puzzitiello who made the second? Okay. Anybody need any further discussion?

(No response.)

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

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no?

(No response.)

CHAIRMAN BASEHART: Show the motion carries unanimously.

MS. LOCKHART: 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 vacant 13 acre site is located at the southwest intersection of Hypoluxo Road and Military Trail. The site is currently being rezoned to an MUPD, Petition 2000-091, to support 80,460 sq.ft of retail. The applicant is proposing a grocery store, general retail and fast food restaurant. The main grocery store building will be located towards the south property line while the majority of the parking will be located in the front of the building. The applicant has had to contend with existing easements, ingress/egress and outparcels that restrict design options to avoid the requested variances. The FPL and 50 foot road easement along the south property line as well as the existing SE ingress/egress on Military Trail all place restrictions on design options in order to meet the buffer width along the entire south property line. The applicant is proposing to meet the southern buffer width for 80% of the length, only the 20% or 280 feet of the buffer closest to Military Trail will be reduced from the required 15 feet to 5 feet. The required 5 foot CBS wall and landscaping will be installed in the remaining 5 foot width. Also, the variance to allow the existing FPL easement to overlap the buffer by 100% is not a self-created situation. The easement is existing and cannot be relocated. The applicant cannot land area from the north since there is an existing 50 foot road easement that cannot be reduced. Therefore, considering the existing site constraints outlined above the applicant has proposed a site design layout that meet all code requirements with the exception of the requested variances.

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

NO. The applicant's client purchased the property and is proposing to develop it according to Palm Beach County regulations. The

existing easements, ingress/egress and out parcel locations all present a unique hardship the applicant has been unable to overcome in terms of meeting the landscape buffer width along the entire south property line. The variance was limited to only that necessary to make the final site plan function properly without disrupting services by trying to relocate an existing road easement or overhead FPL wires.

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

NO. The applicant has clearly demonstrated there are unique circumstances surrounding the existing easements that preclude the applicant from complying with all county regulations. The overall site meets code with the exception of the southern landscape buffer width and the FPL overlap. The applicant has explored options to comply with code and avoid the need for variances. However, the easements and existing parcels that surround this property place unique demands on the applicant that cannot be resolved without the need for the requested variance. The applicant is only requesting to reduce the buffer from 15 feet to 5 feet for 280 feet of the entire 1080 foot length buffer. The remaining 5 foot width will still accommodate the required 5 foot CBS privacy wall, trees and hedges. With respect to the FPL easement encroaching the southern buffer by 100% cannot be avoided. The ULDC recognizes easements sometimes have to overlap easements, however, it limits it to only a 5 foot overlap. In this case, the easement encroaches the entire 15 foot buffer. Staff is recommending a condition of approval that the applicant, prior to DRC certification, provide a landscape detail of the southern buffer, clearly outlying the landscape material to be installed that will comply with FPL's suggested tree guidelines.

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

YES. The applicant has explored other options with staff to avoid a variance process. However, as previously explained, the easement ingress/egress and surrounding properties all

place undue restrictions on the applicant that cannot be overcome with the need for the two requested variances. If the variances are denied, the applicant would have to either relocate the FPL easement or the 50 foot road easement to allow the buffer width to expand to the north. Both these options are difficult to overcome since these easements are public and provided service and access to surrounding property owners.

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

YES. This 13 acre site will support 80,460 square feet of retail once approved by the BCC. The applicant is currently in the zoning process for a rezoning of this property to an MUPD, Petition 2000-091. The BCC will review the proposal for consistency with the Comp Plan and ULDC. The applicant is complying with all other code requirements with the exception of the two requested variances. Considering the size of the parcel and the existing constraints imposed on the applicant by existing easements and surround parcel layout in proximity to this project, the two requested variances are reasonable and warrant approval.

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

YES. This property has a current Land Use classification of CL/3 and zoning of AR and CS/SE. The Zoning Petition 2000-091, the applicant currently has in the process will ensure this 80,460 sq.ft. retail project complies with all land use and zoning regulations. With respect to the ULDC buffer requirement that is the subject of this variance, the applicant can comply with the general intent, if the variance is granted. The ULDC establishes minimum landscape buffers between incompatible land uses. In this particular situation the applicant is requesting to reduce a 280 foot portion of the 1080 foot southern buffer (or 20%) from 15 feet to 10 feet. This reduction is related to the existing 50 foot road easement, SE ingress/egress and church outparcel that exist along the SE portion of the site. The applicant will be required to install the required CBS wall and landscaping. The plant material will be installed in accordance with the established FPL suggested tree list.

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

NO. The requested variances are related to the buffer along the south property line. The applicant is requesting to reduce the width for only a 280 foot portion of the 1080 foot long buffer. The required 5 foot CBS wall and all required landscaping will be installed. The trees will be planted in accordance with the established FPL suggested tree list to ensure no future conflicts between the vegetation and utility lines. The properties to the south of this development will be visually screened from the proposed development to the greatest extent possible.

ENGINEERING COMMENT

No comment. **(ENG)**

ZONING CONDITIONS

1. The property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the certified Site Plan, simultaneously with the building permit application. **(BLDG PERMIT: BLDG)**
2. Prior to DRC certification, the applicant shall ensure the BOFA conditions are shown on the site plan. **(DRC:ZONING)**
3. Prior to DRC certification of the final Site Plan the applicant shall indicate a cross section and planting detail on the Plan for the south property line buffer. The cross section (elevation) and planting detail shall clearly outline all required plant material, which shall comply with the FPL suggested tree list. The specific plant material shall provide a solid visual buffer to the properties to the south. The final planting plan for this buffer shall be reviewed by the BA Project Manager to ensure compliance with the variance approval and to meet the intent of the code to buffer the properties to the south. **(DRC-BA)**
4. This variance to reduce the width of the buffer is only for 280 feet along the SE corner of the site due to existing easements (FPL and 50 road). The remainder of the total 1080 feet buffer (800 feet) shall be installed consistent with code. **(ONGOING)**

CHAIRMAN BASEHART: One item, I believe, left on the agenda and that's the approval of our attendance record for the month of February.

Ms. Cardone was not here because she had not yet been reappointed. Has she been reappointed at this point?

MR. MacGILLIS: Yes, as of -- we were notified yesterday. She was appointed on Tuesday, reappointed.

CHAIRMAN BASEHART: Okay. And the same for Ms. Konyk, although she was here, but you wouldn't let her in the room.

VICE CHAIRMAN KONYK: That wasn't him. We'll talk about that in a minute.

CHAIRMAN BASEHART: Okay. Mr. Wichinsky was not here because he was sick. And Ms. Stumberger was not reappointed and she's been actually replaced now, so she is not on the Board anymore. And Mr. Misroch the same thing. The appointments from the County Commission had not happened. So the only absentee that we need to approve would be Mr. Wichinsky.

VICE CHAIRMAN KONYK: Ask them to take their discussion outside.

MR. PUZZITIELLO: Motion to approve.

CHAIRMAN BASEHART: Sara?

VICE CHAIRMAN KONYK: Could you all take your discussion outside since your portion of the meeting is over? Thanks.

CHAIRMAN BASEHART: Okay. Ray, did you say something?

MR. PUZZITIELLO: Motion to approve.

CHAIRMAN BASEHART: Okay. Motion to grant an excused absence to Glen.

VICE CHAIRMAN KONYK: I'll second it.

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

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: That's an excused absence.

VICE CHAIRMAN KONYK: I have a couple of things. Steve Rubin who used to serve on this Board, you all remember Steve?

CHAIRMAN BASEHART: I remember Steve.

VICE CHAIRMAN KONYK: His father passed away. That's why Glenn's not here today because Glenn went to his dad's funeral, so I thought you all might want to know that.

That's all I'm going to say.

CHAIRMAN BASEHART: You're going to bite your tongue, aren't you?

VICE CHAIRMAN KONYK: Well, if you want me to say it?

CHAIRMAN BASEHART: Go ahead.

VICE CHAIRMAN KONYK: All right. First of all, every board member here has an appointment that goes for a certain number of years and then they're reappointed. My commissioner did not get the paperwork on the fact that I needed to be reappointed until after the term had expired.

So that was a mistake and I don't know who made that mistake, but I think you all need to put it on a tickler file, maybe back in November, and I'll do the same for myself. But fortunately for you all, Carol Roberts was a little bit more on the ball and she realized his appointment was up and got him reappointed or you wouldn't have even had a quorum at the last meeting which wouldn't have been a good idea.

And just so you know, I ended up getting just a little bit angry at the last meeting, and the reason for my anger was the County Attorney's attitude when I came into this meeting. She totally had a condescending air. She approached me in an unprofessional manner and she was just unbelievable, and I was not upset with the staff. I understood you guys made a mistake, but as I told Mr. Berger when I called him was the fact that we are volunteers. We serve on this Board on our own time; we're not paid for this. And when I come into a meeting such as this, I'm giving up my own time. And as most of you are aware, my husband had a serious accident and I really didn't need to be here if I didn't need to be here.

The reason that I made the point to come was that I had spoken to Mr. Wichinsky and he told me he was not feeling well and that they had mentioned to him that they were in danger of not having a quorum, so I made an effort to be here based on a discussion that I had with Commissioner Newell's assistant who said that in the past the -- as Bob reiterated at the beginning of the meeting, a board member normally served until they were actively replaced or reappointed. As the County Attorney just served until recently, her contract must have had an extension cause; I guess ours doesn't.

But anyway, the point was that I wasn't upset with staff. I was really upset with the County Attorney's demeanor. I don't think it's appropriate for someone to come into this meeting totally unknowing any of us and come with such an attitude, and that was really why I got upset.

So I don't want any of you to think that I was upset with any of you, although I think you should have gotten the paperwork there earlier. I think we need to make an effort to do that.

CHAIRMAN BASEHART: One thing. I just would like to add one thing to that. I don't know how the language is in some of the other board membership in the

code, but I know historically it's always been -- the way it's been done is that whenever a board member's term is up for reappointment and no action is taken by the appointing commissioner or commissioners either to replace that member or reappoint that member, the member just continues to serve until an action is taken.

The County Attorney last month indicated that, well, that's the way the language reads on most of the boards but for the Board of Adjustment it says, you know, you serve until your appointment has expired --

VICE CHAIRMAN KONYK: Until a certain day, yeah.

CHAIRMAN BASEHART: -- and if you're not reappointed, you're not -- you don't continue to serve. I think it might be -- in the event that events like this take place in the future, oversights occur and appointments don't get sent to the commissioners on time, maybe we ought to look at a code amendment to make this like other boards and let a serving member continue to serve until an action is taken by the Commission. Maybe you could look into that.

MR. MacGILLIS: Just for the record, just so the Board understands what happened, there is a policy on PZB on Board appointments. Apparently, the policy went around about two years ago and never got finalized. It was the Board of Adjustment, my staff's understanding that it all went through our PZB administration. We have a woman just like you're indicating has a tickler file. Her tickler file only includes at large positions, not the commissioners' direct appointments. That apparently was her understanding it was left up to each one of the sections that chairs one of these boards.

So we were under the clear understanding when Mary checked the records, we thought everything had been sent downtown like it had been two years ago.

Three years ago we were pro-active. We sent all the letters out to the commissioners and got blasted because everybody was confused because two sets of paperwork went down. The commissioners were getting paperwork from my staff, plus they were getting it from our administration staff.

So that's when the policy came out; it never got finalized. We didn't do the paperwork this year because we were staying out of it, only to find out when Mary opened the records and found out that no one contacted us, we assumed all the paperwork went downtown and we immediately drafted up the letters, called the commissioners' aides, told them to get it on the first agenda they could. Some of them got it right on that Tuesday agenda.

Unfortunately, some of them said they couldn't; they had to wait until the next meeting or their commissioner wasn't going to be at the hearing, and they couldn't do it. But the ones that -- Carol Roberts when we called down she goes I can stick it on tomorrow's meeting, the aide said; I don't have a problem with it. Some of the other ones said Karen Marcus is not in town

or she wants to look it over again; it's not going to be on until another meeting.

VICE CHAIRMAN KONYK: I think that meeting was February 7th, if I remember correctly, and Newell's office didn't even get the paperwork until February 9th. So he didn't even get it till after that meeting.

MR. MacGILLIS: Right. Cause I personally called all the aides and explained to them and sent them an e-mail and said you're going to be getting a letter sent to you today immediately, and we apologize for -- I apologized for the confusion. It was not our intent to, you know --

VICE CHAIRMAN KONYK: Right, I understand that. The other thing is if she's only doing, the other person is only doing the at-large, you need to tell her to check her tickler file because Mr. Misroch is an at-large appointment and he wasn't reappointed, either, so you may even want to double check and make sure she's even doing the at large ones. Maybe you need to do them all.

MR. MacGILLIS: We're on top of it now.

CHAIRMAN BASEHART: Okay. Is there any other --

MR. PUZZITIELLO: Motion to adjourn.

CHAIRMAN BASEHART: We have a motion to adjourn.

VICE CHAIRMAN KONYK: Second.

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

BOARD: Aye.

VICE CHAIRMAN KONYK: Indicate by leaving.

CHAIRMAN BASEHART: Okay. We are adjourned.

(Whereupon, the meeting was adjourned at 9:35 a.m.)

* * * * *

C E R T I F I C A T E

THE STATE OF FLORIDA)

COUNTY OF PALM BEACH)

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

DO HEREBY CERTIFY that the above-entitled and numbered cause was heard as hereinabove set out; that I was authorized to and did report the proceedings and evidence adduced and offered in said hearing and that the foregoing and annexed pages, numbered 4 through 35, inclusive, comprise a true and correct transcription of the Board of Adjustment hearing.

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

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 30th day of March, 2001.

Sophie M. Springer