

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

Thursday, August 16, 2001  
9:00 a.m. - 9:40 a.m.  
100 South Australian Avenue  
West Palm Beach, Florida

Reporting:

Sophie M. (Bunny) Springer  
Notary Public

A T T E N D E E S

Robert E. Basehart, Chairman

Chelle Konyk, Vice Chairman

Mr. Stanley Misroch

Ms. Nancy Cardone

David Cuffe, Civil Engineer II, Land Development

Amy Petrick, Asst. County Attorney

Jon P. MacGillis, Principal Planner, Zoning

Alan Seaman, Senior Planner, Zoning

Janet Quinn, Secretary

**I N D E X**

<b><u>Petition</u></b>		<b><u>Page</u></b>
1	BOFA 2001-060	6
2	BOFA 2001-061	10
3	BOFA 2001-062	15, 24
4	BOFA 2001-064	15
5	BATE 2001-065	20

**CERTIFICATE OF REPORTER:**

P R O C E E D I N G S

CHAIRMAN BASEHART: We'll call the August 16th Palm Beach County Board of Adjustment meeting to order.

The first item of business, Janet, is roll call.

MS. QUINN: Good morning.

CHAIRMAN BASEHART: Good morning.

MS. QUINN: Ms. Nancy Cardone.

MS. CARDONE: Here.

MS. QUINN: Mr. Joseph Jacobs.

MR. JACOBS: (No response.)

MS. QUINN: Ms. Chelle Konyk.

VICE CHAIRMAN KONYK: Here.

MS. QUINN: Mr. Ray Puzzitiello?

MR. PUZZITIELLO: (No response.)

MS. QUINN: Mr. Glenn Wichinsky?

MR. WICHINSKY: (No response.)

MS. QUINN: Mr. Stanley Misroch.

MR. MISROCH: Here.

MS. QUINN: Mr. Jonathan Gerber.

MR. GERBER: (No response.)

MS. QUINN: And Mr. Bob Basehart.

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

Next item on the agenda is the proof of publication and we have that in the file. Do I have a motion to accept it into the minutes for the meeting?

MR. MISROCH: So moved.

VICE-CHAIRMAN KONYK: Second.

CHAIRMAN BASEHART: Okay. We have a motion by Mr. Misroch, second by Ms. Konyk.

All those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Okay. That passes.

The next item on the agenda is remarks of the Chairman. For those of you that aren't familiar with the proceedings of this Board, generally we break the agenda into two sections, the first one being what we call the consent agenda. Those are items where staff has recommended approval, where there's been recommended conditions of approval, the applicant has agreed with those conditions and where there's been no indication of any opposition from members of the public. All right.

The board members have received and read their staff reports. If the Board members all agree with the staff report and if no one is here

to oppose all those items, then they will remain on consent. The applicant will not be required to make a presentation. The staff report becomes a part of the minutes and the record in the meeting and the matter will be approved.

If any board member feels uncomfortable with the staff report or if any member of the public shows up to oppose the application or the applicant doesn't agree with the recommended conditions of approval, then any item that meets that criteria will be pulled and put on the regular agenda or the applicant will have to make a full presentation to justify the variance, and then the Board will vote based on their conclusions.

Today we don't have a regular agenda. Everything is on consent, unless there are any items that members of the Board would like to pull and we'll get to that in a minute when we get to the agenda. But that's the only comments I have to make.

Is there any member of the Board that wishes to add anything?

(No response.)

CHAIRMAN BASEHART: Okay. That being the case, we'll go on to the approval of the minutes. I'm sorry. Oh, we did proof of publication. Okay.

The next item is the approval of the minutes from the July meeting. Has everybody received the minutes? I understand somebody's tape was blank. My minutes were okay. I read them. The tape, not the tape, but the disk that Nancy got was blank.

MS. SPRINGER: I just give the original to Janet, so I don't know what happened with that.

CHAIRMAN BASEHART: Okay. Well, I wasn't accusing you.

Has everybody read the minutes? Okay. Then I guess we're ready for a motion.

VICE-CHAIRMAN KONYK: Motion to approve.

MR. MISROCH: Second.

CHAIRMAN BASEHART: Motion by Ms. Konyk, second by Mr. Misroch.

All those in favor indicate by saying aye?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Motion carries unanimously.

Next item is remarks of the director.

Jon?

MR. MacGILLIS: No comments this morning.

CHAIRMAN BASEHART: No comments? Okay.  
Then let's move on to the regular agenda.  
As I said, all the items at this point at least  
are preliminarily on the consent agenda. We'll  
go through them one at a time. Any items that  
are pulled we're going to have to go through a  
full hearing.

CHAIRMAN BASEHART: The first item is BOFA  
2001-060, George Rodriguez and Ledyia Cobian. Is  
the applicant here?

MS. COBIAN: Yes.

CHAIRMAN BASEHART: Okay. If you could  
step forward. Staff has recommended approval of  
your variance and could you give us your name for  
the record, please?

MS. COBIAN: Ledyia Cobian.

CHAIRMAN BASEHART: Thank you. Staff's  
recommended approval and recommended four  
conditions. Are you familiar with those  
conditions?

MS. COBIAN: Yes.

CHAIRMAN BASEHART: Do you agree with  
them?

MS. COBIAN: Yes.

CHAIRMAN BASEHART: Okay. Is there any  
member of the public here to oppose this item?

(No response.)

CHAIRMAN BASEHART: Seeing none, anything  
in the record, Jon?

MR. MacGILLIS: There was just one letter  
of support from Don and Jeff Brandon at 10897 Bal  
Harbor Drive.

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

(No response.)

CHAIRMAN BASEHART: It will remain 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.** The subject lot is located approximately 1 mile north of Glades Rd. and 0.1 mile west of Cain Blvd., within the Boca Greens PUD in the RTS Zoning Direct. The lot is located on a curve in the right-of-way which makes the lot irregular in shape. The lot supports an existing 3,747 square foot single family residence with a pool. To the rear property line is a 5' landscape buffer easement, a 20' anchor easement, and a 100' utility easement followed by the South County Regional Park. Considering the layout of the site and the irregular lot dimensions there are no alternative design options available to the applicant. The impact of this encroachment of the rear setback would be minimal considering the amount of open space created by the aforementioned easements and county park.

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

**NO.** In this case, the alternative design options for the subject lot are eliminated by the irregular configuration of the lot within the subdivision. Homes within this subdivision are approximately 3,000 square feet in size on lots of similar size as the subject lot. The residence located on the subject lot is 3,747 square feet. This residence is comparable in size to

other homes within the area that enjoy the amenities requested in this case. Therefore, the requested variances are not the result of actions of the applicant, they are rights enjoyed by other parcels of land adjacent to the subject property that do not have the limitations imposed upon them by irregular configurations.

for The applicant was granted a rear setback a room addition several years ago. The proposed screen enclosure rear setback is to allow it to align with the dwelling setbacks. The applicant has minimal outdoor living space and therefore the placement of the screen enclosure is critical to maintaining the area around the pool. The open space to the rear will mitigate the requested rear setback variances.

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 typical homes in Boca Greens are approximately 3,000 to 4,000 square foot gross floor. This home, with the addition approved in BA 1998-044, is consistent in size with the other homes in the neighborhood. Other homes in the area also have screen roof screen enclosures which encapsulate pool and spa areas. In this case, the configuration of the lot and the site layout precludes any alternative design options which might meet setbacks. The open space to the rear can never support a structure and therefore the open space created by the buffer, FPL easement and regional park will mitigate this minor setback encroachment.

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



**YES.** The requested variance, if granted, will meet the general intent of the rear setback provision. In the rear of the property is a 100' utility easement and then the South County Regional Park. Considering the variance request is to reduce the rear setback, the utility easement and park will mitigate any impacts associated with the variance request. Other lots within the Boca Greens development have similar structures which serve similar purposes as the proposed structures in this case and have a greater impact on surrounding development than the proposed development on the subject property. Therefore, the granting of these variances **would be consistent** with the setback surrounding neighborhood and with the intent of the setback provision.

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

**YES.** The applicant has demonstrated the necessity of these variances to accomplish the desired use of the property. Given the irregular shape of the lot, the fact that there is ample open space to the rear and the variance request is minimal, the requested variances are warranted and justified. The applicant has no other site development options on the lot that would allow a screen enclosure over the existing pool without a variance. Other lots within the Boca Greens development have similar size screen enclosures on the rear of the dwelling. Also, the screen roof screen enclosure would not encroach into the rear setback any farther than the approved addition to the residence by the prior variance. Therefore, the granting of these variances would be consistent with the surrounding neighborhood and with other development on the lot.

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 setback regulations for houses is to mitigate the impacts to adjacent properties associated with the residential use (noise, light, shadows) and to ensure proper separation between structures, thus maintaining property values and aesthetics. The requested variance meets the intent of the Code in that the rear property line of the subject site abuts 125' of easements and the South County Regional Park. The easements and park visually extend the lot so that the requested variance would not be detectable to the surrounding residents. Moreover, the easements and other open space adjacent to the rear of the property mitigate any impacts that the proposed development may have on other adjacent properties.

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

**NO.** The grant of the variance will not be injurious to the area involved or otherwise detrimental to the public welfare. The rear property line of the subject site abuts a 5' landscape buffer easement, a 20' anchor easement, a 100' utility easement followed by a 95 acre park. The proposed addition to the rear of the house will not impact any property owners considering the location of the utility easement.

**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 presented to the Board, simultaneously with the building permit application. (**BLDG PERMIT: BLDG**)

2. By May 16, 2002, the applicant shall have commenced construction on the proposed screen enclosure in order to vest the rear setback variances. **(DATE: MONITORING-BLDG PERMIT)**
3. The proposed screen roof enclosure and above ground spa shall be constructed with the setbacks shown on the Board of Adjustment site plan, Exhibit 9, in the BA2001-060 File. **(BLDG PERMIT)**
4. The structure shall not be enclosed with solid walls or be converted into an enclosed space. **(BLDG PERMIT: BLDG)**

CHAIRMAN BASEHART: Next item is BOFA 2001-061, Mark Lalonde, agent for Marie Langer?

MR. LALONDE: Yes, sir.

CHAIRMAN BASEHART: Your name for the record, please?

MR. LALONDE: Mark Lalonde.

CHAIRMAN BASEHART: Okay. Staff has recommended approval of the variance with three conditions. Are you familiar with them?

MR. LALONDE: No, sir, I'm not.

CHAIRMAN BASEHART: Okay. Jon, do you want to read the conditions --

MR. MacGILLIS: Okay.

CHAIRMAN BASEHART: -- and we'll see if you agree.

MR. LALONDE: Yes, sir.

CHAIRMAN BASEHART: I think while he's looking the first condition was simply that you have to submit a copy of the letter of approval from the Board of Adjustment with your building permit application. Do you have a problem with that?

MR. LALONDE: No, sir.

CHAIRMAN BASEHART: Okay. Jon?

MR. MacGILLIS: Second condition. By June 16, 2002, the applicant shall obtain a building permit for the proposed garage addition or

expansion in order to vest the front setback variance approved pursuant to BOFA 2001-061.

Third condition is prior to the Certificate of Occupancy on the garage addition or by August 16, 2002, whichever occurs first, the applicant shall install landscaping between the garage addition and street to mitigate the setback encroachment. This landscaping shall be consistent with your homeowners association guidelines.

MR. LALONDE: That's fine, no problem.

CHAIRMAN BASEHART: You agree with all those conditions?

MR. LALONDE: Yes, sir. The August 16th?

CHAIRMAN BASEHART: Right. That's next year.

MR. LALONDE: Okay. I was going to say I'm not going to be done by August 16th.

CHAIRMAN BASEHART: And that condition really is kind of meaningless. It pretty much advises you of what the code says, and the code gives an applicant one year to get a building permit after you get the variance to vest it. I think that condition just reflects what the code tells you.

MR. LALONDE: My other question might be when would I be able to obtain this letter from the Board of Adjustment?

CHAIRMAN BASEHART: It'll be ready --

MR. MacGILLIS: Right now. She's going to hand it to you.

MR. LALONDE: Wonderful. Thank you, sir.

CHAIRMAN BASEHART: Okay. Is that fast enough?

MR. LALONDE: Yes, sir.

CHAIRMAN BASEHART: Okay. Very good. Anybody on the board -- well, first of all is there any member of the public here opposed to this application?

(No response.)

CHAIRMAN BASEHART: Seeing none, letters?

MR. MacGILLIS: There were two letters, one for approval, one for denial. Apparently, the owner next door disapproves of the garage addition.

CHAIRMAN BASEHART: The owner is not here. Does the owner give a reason?

MR. MacGILLIS: He just -- the letter, "A second garage on the street side of the current garage would look terrible."

I'm not sure, the project manager spoke to this person. Oh, you're here? Oh, you're the applicant. Are you the owner?

MR. ROGERS: No, I represent Delray Dunes because he's in Chicago.

MR. MacGILLIS: I think they may have been confused because it sounds like they think it's a second garage. It's just an expansion to an existing garage.

MR. LALONDE: We're only encroaching on the setback on four foot six. He thinks we're going out -- I'm sorry?

On the setback itself, you know, the variance that we've applied for, we have according to the code seven feet available to us. We're making the garage extension actually 11 feet, so we're only encroaching by four feet.

I think that what he's thinking is that we're coming out 11 feet from the existing --

CHAIRMAN BASEHART: Okay. Sir, are you here to object?

MR. MacGILLIS: No, he's the agent as well.

MR. ROGERS: I'm the agent for the c u s t o m e r .

CHAIRMAN BASEHART: Okay.

MR. ROGERS: But he's our GC and that gentleman called me and --

MR. MacGILLIS: I'm sorry, you're going to have to put your name on the record.

CHAIRMAN BASEHART: Okay, yeah.

MR. ROGERS: Dick Rogers.

CHAIRMAN BASEHART: Okay.

MR. ROGERS: And as Jon knows, I worked with you in getting it through, but he got very confused when he looked at the design. Where the circle was he thought it was coming out. I said no, it's the box on the design. He said, "Oh, then I don't care." He says I was going to be there, but now I won't.

But I'm just repeating, you wouldn't know that, but that's what it was. He just got confused at it.

CHAIRMAN BASEHART: Okay. Does any member of the Board feel this item needs to be pulled?

VICE-CHAIRMAN KONYK: No.

CHAIRMAN BASEHART: Okay. We'll leave this item on consent then.

MR. LALONDE: 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.** There are unique circumstances surrounding this lot and existing structure that warrant special consideration when applying the literal intent of the RM Zoning District front setbacks. The proposed garage expansion will be twenty feet from the edge of the property line which necessitates a variance of five feet. However, after expansion the garage will be forty feet from the edge of the roadway, which will mitigate any effects on surrounding homes. This is due to the fact that the property line is twenty feet from the roadway in order to accommodate twenty feet of right-of-way that is used as a swale. The residence is one of only four homes in the development that has a single car garage. Approving the variance will provide the property owner with the same benefits enjoyed by surrounding property owners. The applicant has volunteered to a condition to install landscaping between the garage and street.

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

**NO.** The development does not allow on-street parking, and requires all new homes to have a two car garage. An attached two car garage is a reasonable use in the RM Zoning District, and is consistent with the surrounding area. The variance will allow the owner to expand the existing one car garage to a size that will accommodate two vehicles and a golf cart.

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 existing residence is one of only four homes in the development that has a one car garage. The request is a reasonable use of the property and is consistent with the requirements of the RM Zoning District. The proposed garage expansion will allow the property owner to enjoy the same benefits that are enjoyed by the surrounding neighbors. In addition, the proposed two car garage is the minimum required by the homeowner association for new home construction.

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 owners request for a two car garage is a reasonable request for the RM Zoning District. The property line for this residence is twenty feet from the edge of the roadway. The proposed garage expansion will be twenty feet from the edge of the property line which necessitates a variance of five feet. However, after expansion of the garage it will be forty feet from the edge of the roadway, which will mitigate any effects on surrounding homes. The intent of the code to provide a minimum setback to assure conformity will be upheld. Denying the variance will not allow the owner to enjoy the same amenities that are enjoyed by surrounding neighbors.

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 owner is proposing to expand the single car garage to a two car garage to accommodate two vehicles. The eleven feet needed for expansion is the minimum needed

to increase the size of the garage. The required front setback of twenty-five feet can only be met with a five foot variance. However, after expansion the garage will be forty feet from the edge of the roadway, which will mitigate any effects on surrounding homes. This is due to the fact that the property line is twenty feet from the roadway in order to accommodate twenty feet of right-of-way that is used as a swale.

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 front setback requirement is to assure conformity along property lines. The proposed garage expansion will maintain the street side setback conformity that now exists in the community. The five foot variance will not adversely effect the neighbors, and will maintain the character of the development. The owners desire to accommodate any visitor parking on-site will assist in maintaining the residential character that now exists.

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

**NO.** The expansion of the single car garage to a two car garage will allow the property owner to accommodate two vehicles inside the garage. The five foot variance will not change the front facade significantly and the site will be enhanced with landscaping. The street side setback conformity will remain consistent with the surrounding area. The property owner will be better able to accommodate visitors on-site to the benefit of the adjacent neighbors.

**ENGINEERING COMMENT**

No Comments (**ENG**).



**ZONING CONDITIONS**

1. The applicant shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application. **(BLDG PERMIT:BLDG)**
2. By June 16, 2002, the applicant shall obtain a building permit for the proposed garage expansion in order to vest the front setback variance approved pursuant to BA 2001-061. **(DATE: MONITORING-ZONING-BA)**
3. Prior to Certificate of Occupancy on the garage addition or by August 16, 2002, whichever ever occurs first, the applicant shall install landscape between the garage addition and street to mitigate the setback encroachment. The landscaping shall be consistent with the HOA guidelines. **(DATE: MONITORING-BLDG INSPECTIONS)**

CHAIRMAN BASEHART: Next item is BOFA 2001-062, Kathleen Lonsway, trustee for Roger Lonsway Trust. Is the applicant here?

MS. LONSWAY: Good morning.

CHAIRMAN BASEHART: Okay. Staff has recommended approval of your variance with six conditions. Do you agree with those conditions?

MS. LONSWAY: Yes, I do.

MS. SPRINGER: I'm sorry; would you state your name?

MS. LONSWAY: Kathleen Lonsway.

CHAIRMAN BASEHART: Is there any member of the public here to discuss this matter? You're here to object, sir?

UNIDENTIFIED SPEAKER: Yes, I am.

CHAIRMAN BASEHART: Okay. Then I think we're going to have to pull this item. This item will come off of consent and it will be the first item heard on the regular agenda. Okay?

MS. LONSWAY: Okay.

CHAIRMAN BASEHART: Next item is BOFA 2001-064, Jeff Iravani, PE, agent for Amerada Hess Corporation.

MR. IRAVANI: Thank you, Mr. Chairman. My name is Jeff Iravani. We have read the conditions of approval and we are in agreement with all the conditions.

CHAIRMAN BASEHART: Okay. Is there any member of the public here to oppose this application?

(No response.)

CHAIRMAN BASEHART: Seeing none, any letters?

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

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

(No response.)

CHAIRMAN BASEHART: Seeing none, we'll leave this on consent. Thanks.

MR. IRAVANI: 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.** There are unique circumstances and characteristics related to this property that warrant special consideration. This legal non-conforming .75 acre commercial lot is a corner lot at the north west corner of Okeechobee Blvd. and Haverhill Road. This is a major commercial corridor that supports intense commercial uses. The Land Use Designation is CH with a Zoning classification of CG. The property currently supports a non-conforming use and structure. The use is legal but does not have the property conditional use A to expand. The structure is non-conforming since the canopy encroaches 30 feet into the required front setback along Okeechobee Blvd. This lot like many lots along Okeechobee have become non-conforming with respect to lot size and setbacks due to FDOT right of way taking over the years. The applicant is proposing to demolish the existing building and bring the site up to current code. This will require the applicant to apply for a Conditional Use A for the convenience store and gasoline sales. The applicant is seeking 3 variances that will allow for a reduction in landscape right of way buffer reduction as well as the rear setback for the convenience store. In the CG zoning district the minimum lot size is 1 acres. This lot is .75 while the minimum depth is 200 feet; this property is 188 feet deep.

Therefore, the granting of this variance will bring this property into compliance to the greatest extent possible with current regulations. The BCC will review the use for consistency with the Comp Plan and the ULDC. The granting of the variances will allow the owner to proceed to the Public Hearing process for the conditional use. The redevelopment of this site will be consistent with the trend of development in this area. The Board of Adjustment has approved similar

buffer and setback variances for sites along Okeechobee Blvd., in the past to assist with redevelopment.

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

**NO.** The requested variances **are not** self created. The applicant is proposing to redevelop this site to current code. The redevelopment will ensure several existing non-conformities are eliminated. The applicant will be required to obtain a Conditional Use A for the property for a convenience store and gasoline sales, which the use currently does not have. The proposed development will eliminate non-conformities for setbacks, parking, loading, queuing, etc. The final site plan layout and approval will ensure this use is compatible to the shopping center to the north and the other gas stations along Okeechobee Blvd. that have recently been demolished and reconstructed.

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 requesting 3 variances in order to proceed to the BCC for a Conditional use A approval for a convenience store with gasoline sales. The site currently supports a gas station with repairs. The site is non-conforming with respect to the use, lot size and dimensions as well as setbacks, parking, queuing, landscaping and loading. The redevelopment of this site will result in a new building and canopy. The applicant will comply with all property development regulations to the greatest extent possible. The reduction in the lot size and dimensions is a result of FDOT taking of the right of way over the past 20 years. When the site was originally constructed it complied with county regulations, however, over the years the site became non-conforming as a result of changes to the Zoning regulations.

If the variances are granted with the recommended conditions of approval, the applicant will be granted the opportunity other property owners have been afforded over the years. Many properties along Okeechobee Blvd. and other major roads on PB County have non-conforming properties and uses due to right of way taking. In order to bring these sites up to code, many have had to limit the use or structure size on the site or seek variance relief. The Board of Adjustment has granted similar variances for reduction in landscape buffer width and setbacks. The property to the south, across Okeechobee Blvd., supports a Walgreens drug store that was granted right of way buffer reductions in 2000, similar to this request. This justification was lot size reduction due to the right of way changing and the fact staff was recommending conditions of approval to upgrade the landscaping within the reduced buffer width.

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 met with staff, prior to submitting the variances, in order to ensure the minimum variances were being requested. The site will support a new convenience store with gasoline sales, the existing building which supports repair and gas will be demolished. The overall vehicular and pedestrian circulation will be greatly improved with this proposed site design. Also, many existing non-conformities will be eliminated or decreased such as the setback, landscaping, parking, loading, queuing, loading and signage.

Therefore, the granting of the three requested variances will recognize the limitations of the site due to the right of way changes the fact there is a similar use on the site which is non-conforming

and the requested variances are similar to variances previously granted to other business along Okeechobee Blvd. due to similar circumstances.

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 buffer reduction and rear setback will allow this project to move forward to the public hearing process. The BCC will review this project for compliance with the Comp. Plan and ULDC provisions. The fact that there is a similar use on this site that supports many existing non-conformities will be taken into consideration. The applicant is proposing a site layout that will eliminate a large portion of the existing non conformities. The overall site will function better in terms of vehicular circulation since the building is shifted to the north and the canopy orientated east/west instead of north/south as current exists. Staff is recommending conditions of approval that will ensure the intent of both the rear setback and right of way buffers is met.

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

**YES.** The general purpose of the Comp Plan is to ensure this property is developed to support intense commercial use within the CH designation. The property currently supports a gas station with repairs. The ULDC establishes this use as a Conditional Use A requiring BCC approval. Currently, the site is operating without a conditional use approval and is considered legal non-conforming. The applicant is proposing a Hess gas station on the property and as such is required to meet the Hess Corporation industry standards as well as the County ULDC requirements. The overall site will be significantly improved with the redevelopment in terms

of appearance and functionality.

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

**NO.** The redevelopment of this site to support a new building, canopy and improved circulation, queuing and parking will allow the owner to meet the current industry standards for this type of use while the users of the site will experience improved circulation, parking and queuing, all very important for this type of use.

Therefore, the granting of this variance will allow an outdated gas facility to be demolished and replaced with one that meets current industry and ULDC regulations to the greatest extent possible.

#### **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 presented to the Board, simultaneously with the building permit application. (**BLDG PERMIT:BLDG**)
2. By April 16, 200, the applicant shall o b t a i n a building permit for the convenience store. (**DATE:MONITORING-BLDG PERMIT**)
3. The applicant shall eliminate the 3 parking spaces on the west side of the building in order to preserve the existing 3 native slash pines. All necessary precautions shall be taken during construction to ensure these 3 trees are preserved. (**ONGOING**)
4. Prior to DRC certification, the applicant

shall ensure the BOFA conditions are shown on the site plan. **(DRC-ZONING)**

5. The applicant shall upgrade the buffers along Okeechobee Blvd. and Haverhill Road as follows:
- a) Install a berm along the entire buffer length
  - b) Install a 16 foot native shade tree 20 feet on-center
  - c) Install a 36 inch native hedge at 24 inches on-center. **(LANDSCAPE)**

CHAIRMAN BASEHART: And the last item is BOFA 2001-065, Petitioner Bradley Miller, agent for Dolores Lentin. Mr. Miller -- you are Mr. Miller?

MR. MILLER: Good morning, yes.

CHAIRMAN BASEHART: At least you were the last time I looked.

MR. MILLER: Bradley Miller for the record and we're familiar with the conditions and agree with them.

CHAIRMAN BASEHART: Okay. Any member of the public here to oppose this application?

(No response.)

CHAIRMAN BASEHART: Seeing none, letters?

MR. MacGILLIS: There are just two letters of support that had no concern with the request.

CHAIRMAN BASEHART: Okay. Any member of the Board feel this item needs to be pulled for any reason?

(No response.)

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

MR. MILLER: 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 conforming lot is located within the Woodside residential subdivision. The property is a corner lot with a 5 foot utility easement on the west property line, and a 6 foot utility easement on the north property line. The limited usable yard area required the applicant to utilize a smaller than standard swimming pool (11 x 21) to meet setback requirements. The lot configuration and location of the conforming pool does not allow the property owner an alternative design option. Denying the variance would limit the amount of usable decking surrounding the pool to 3.5 feet.

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

**NO.** The existing home was purchased in its current configuration. The applicant has attempted to configure the site to accommodate a small swimming pool (11 x 21) and screen enclosure. In order to maintain the current pool deck width and continue safe circulation and pool access, the applicant is requesting a variance of 2.5 feet for the side interior setback.

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.** Granting the variance will not confer special privileges to the applicant that would be denied by the ULDC. The swimming pool is a permitted use in the RS Zoning District and was approved by the Building Division (B01006619). The addition of a screen enclosure would be permitted with a building permit and is considered a reasonable use of a residential lot. The requested variance of 2.5 feet is consistent with the ULDC provisions for side interior setbacks.

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 ULDC would deprive the property owner of rights commonly enjoyed by other parcels of land in the same zoning district. The conforming swimming pool (B01006619) is a permitted use in the RS Zoning District. The proposed screen roof screen enclosure would be permitted with the proper building permits. The adjacent property owners have expressed written consent of the setback encroachment. The property owner adjacent to the requested variance has a six foot privacy fence that would mitigate any potential privacy issues. Denying the variance would force the property owner to construct the screen enclosure over a portion of an existing, conforming deck and would leave only 3.5 feet of pool deck for safe circulation.

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 existing single family residence, and newly constructed conforming swimming pool limit the design options for location of a screen enclosure. The 2.5 foot variance is the minimum necessary to allow the applicant safe circulation around a conforming swimming pool. Approving the variance

will allow the property owner to enjoy a typical permitted use of a Florida home.

- 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 requirement for side interior setbacks is to maintain uniformity along property lines, protect the adjacent property owners, and maintain property values. The requested variance of 2.5 feet will be consistent with these provisions. The adjacent property owner has expressed approval of the requested variance and will be impacted minimally due to a 6 foot privacy fence. The screen enclosure will be typical of swimming pool enclosures in the RS Zoning District. The proposed screen enclosure will also meet the standards for barriers as required by the Palm Beach County Swimming Pool and Spa Code.

- 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 considered injurious to the surrounding area. The proposed screen enclosure is a permitted use in the RS Zoning District and will be typical of the surrounding area. The adjacent property owners have expressed their approval for the proposed screen enclosure. A privacy fence separates the proposed variance from the adjacent property owner. The 2.5 foot variance will not encroach on the use or property value of the surrounding homes. The proposed screen enclosure will also meet the standards for barriers as required by the Palm Beach County Swimming Pool and Spa Code to insure public safety.

**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 presented to the Board, simultaneously with the building permit application. (**BLDG PERMIT:BLDG**)
2. By May 16, 2002, the applicant shall obtain a building permit for the screen roof screen enclosure in order to vest the side interior setback variance approved pursuant to BA2001-065. (**DATE:MONITORING-BLDG PERMIT**)
3. The screen enclosure shall not be enclosed with solid walls (glass or wood) at a future date. (**ONGOING**)

VICE-CHAIRMAN KONYK : Okay. I'd like to make a motion to approve BOFA 2001-060, BOFA 2001-061, BOFA 2001-064, BOFA 2001-065 to be approved on the consent and the staff report becoming part of the record.

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

MR. MISROCH: Second.

CHAIRMAN BASEHART: Motion by Ms. Konyk, second by Mr. Misroch.

All those in favor indicate by saying aye?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no?

(No response.)

CHAIRMAN BASEHART: Motion carries unanimously.

VICE-CHAIRMAN KONYK: Okay. BOFA 2001-62 reordered to the regular agenda.

CHAIRMAN BASEHART: That's right. So anyone who has had an item approved on consent is free to go. You're approved.

CHAIRMAN BASEHART: Okay. That leaves us with one item on the regular agenda, BOFA 2001-062. Jon, do you want to introduce this into the record?

First of all, since there's only one item why don't we do this now. Anybody who intends to speak on any remaining item on the agenda today, please rise to be sworn in.

VICE-CHAIRMAN KONYK: Including the applicant.

CHAIRMAN BASEHART: Including the applicant.  
(Whereupon, the speakers were sworn in by Ms. Springer.)

CHAIRMAN BASEHART: Okay. Jon?

MR. MacGILLIS: This is BOFA 2001-062, the Petition of Kathleen Lonsway, Trustee for Roger Lonsway Trust. It's to allow an existing pole barn and potting shed to remain in the front setback.

The property is located at 13882 153rd Road North, approximately 1,300 feet to the west of 136th Terrace within the Jupiter Farms subdivision in the AR zoning district found on pages 23 to 33 of your backup material.

CHAIRMAN BASEHART: Okay. If the applicant could step forward. You've requested two variances. The first one would be from the front setback requirement. You requested it to be setback 28.9 feet rather than the required 63 for a variance of 34.1 feet. Then also another front setback to 40.8 feet, as opposed to the code requirement of 63, and that variance would then be a 22.2 foot variance.

Under the rules for the Board of Adjustment, it's necessary for an applicant in order to justify a variance to be able to address the seven criteria in the code and in Florida

Statutes for the criteria for approving variances, you had to do that as a part of your application. It will be necessary for you to put that information on the public record here today.

MS. LONSWAY: The whole reason behind the pole barn is I did call for a permit when I was going to put up the pole barn. I was told by the County that I did not need a permit. Then a neighbor called about a trash pile in front of my house which is what got the County out there to look at my property.

The one building was built in 1986 with the house and that's the one, the potting shed that was at 40 feet. There's an area in the code that says that it's a gray area within the County, that says if I'm under an acre-and-a-half that I can meet a 25 foot setback.

So I'm happy to meet all the requirements that you're -- for the variance.

Where do we go from here?

CHAIRMAN BASEHART: Okay. Jon, do you want to provide the staff analysis and recommendation?

MR. MacGILLIS: The staff findings are found on page 27 of your back-up material. Staff's analysis of this petition has found the applicant to have met the seven criteria necessary to grant this variance.

This is not a self-created hardship in the sense that, as the applicant has stated, in good due diligence they've come to the County to get the permit information regarding the pole barn and was given incorrect information. Once again, this goes back to the agricultural exemption status of structures.

We've spoken to the building technician who indicated that she really didn't remember doing it, but I questioned her again. She said she might have given this information out at the front counter when she was new and the applicant came down actually twice when she was cited by Code Enforcement to get a permit and was told because you're a bona fide agricultural use it's a -- she operates a landscape business which really not in my opinion under the agricultural exemption would even be exempt.

It's just a home occupational license. There's no nursery on the property. But she was given the information that she didn't need a permit and proceeded to build the structure.

Code Enforcement cited her and said you do need a permit, so she came down here then to get

the permit and then was told to go to the Zoning Division, that maybe now since it was already built and she got the wrong information, Zoning could allow the 25 foot setback for non-conforming lot provision for lots less than an acre-and-a-half.

She came to me. I said no, because we would have never given you that 25 foot setback if you had come in here before, so I'm not going to do it now. Unfortunately, you're going to have to go through the public hearing process.

The applicant came in and further met with the Zoning Director to see if the Zoning Director would approve the 25 foot setback because the code is not really clear when the 25 can be applied. It's a standard policy. But at the zoning division we do not apply the 25 foot setback on AR non-conforming lots unless the person cannot meet the percentage setbacks.

And our thing was, well, you could have met the percentage if you had done it correctly in the first place. Then she goes back, well, I would have done it right in the first place if I was given the correct information by your building staff.

Mr. Whiteford, after a long discussion with the applicant, in discussing with the Board of Adjustment staff if there was numerous Board of Adjustment conditions placed on this petition, could they meet the seven criteria. It was our opinion that, especially with the pole barn, because the fact that the potting shed was there prior to the applicant purchasing the property in January, 2000.

The potting shed in some of the pictures you can see here, there's considerable native saw palmettos, the under-story trees, plus the slash pines along 153rd Way that blocks most of the views of that potting shed which has been there for --from the looks of it many years. And we couldn't find any -- there's no permit on it in the system, so it apparently was done without a permit by the prior owner.

The pole barn, which is located in the front setback in front of the driveway where it comes in there, staff is recommending mitigation through treatment to the building itself. The applicant has been going back and forth with staff. We're concerned with the part of the structure that you're going to be seeing over the top of the fence.

We are recommending that she shingle that peak of the roof with a material that would blend

in with the natural character of the lot. She's indicated this morning she's willing to put a siding on that portion of that peak that faces the street that's consistent with the material on her house, so it would all tie the structures together.

Staff is also recommending that that fence that you can see in that picture on the right-hand corner on the board, on the exhibit board in front of you be in -- that the slats be filled in to give it a total opaque visual barrier, so when someone is driving down the street really the only thing they're going to see is the top of that roof of the pole barn.

And in addition, Mr. Whiteford requested the applicant to put some elements on the structure to make it look more equestrian-type look, rather than a pole barn, such as a weather vane or something on the roof and some type of ornamentation on that peak part there to lessen the impact of it from the street.

And the final thing would be to install additional landscaping along the side of the fence. Where there's still views inward, the under-story plant material is not mature enough to block those visual views when somebody's driving down the street. So with those conditions recommended by staff, staff feels that the applicant can meet the general intent of the code which is to maintain setbacks for consistency along the street.

Other cases we've had before for similar types of situations like this, staff could not recommend conditions that would mitigate the thing, either the building was too large, too close to the street or the driveway was aligning up in front of it.

There was a carport here several months ago where there was no way staff could mitigate it, and in both those other cases the applicants clearly knew there was permitting requirements and totally ignored the permitting requirements. Both were in the profession, either an engineer or in the contracting business and were well aware of them.

In this case the applicant clearly intended to pull the permits, was told by staff that they didn't require them and that's part of the reason why under the second criteria that she's here.

So it's staff's opinion by granting the setback variance it will meet the general intent of the code. Granting the variance will not be



injurious to the area if the Board approves this variance with the recommended staff conditions and staff is recommending approval.

CHAIRMAN BASEHART: Can you just for my own clarification and make sure I understand it, I know that under Florida law there are exemptions from permitting for bona fide agricultural buildings, but those exemptions don't exempt you from zoning requirements; is that correct?

MR. MacGILLIS: That's correct.

CHAIRMAN BASEHART: In other words, you may not have to get a building permit to build it, but you have to meet the setback requirements anyway.

MR. MacGILLIS: Right. And the use, still if somebody's trying to put a use on a site for that structure and the use is not permitted in that zoning district, they wouldn't be able to do it.

I think -- there's been a lot of confusion in the last six months in the Building Division and not so much in the Zoning Division, but between the industry, property owners and the information that's getting out, it wasn't clear, but I think it's getting more now, but there was a point that anyone who comes to the front counter and says they're an agricultural use, staff was unclear to clarify what it was because the policy wasn't clear.

But now there is an actual form that you're going to have to fill out to see if you even qualify, and if you don't you're going to have to get a building permit.

MS. LONSWAY: I understand.

MR. MacGILLIS: But before she could even get -- one way or the other she needs this variance or this structure will have to be torn down or moved.

CHAIRMAN BASEHART: Right. Okay. And this is the same kind of issue that Code Enforcement Board has been all over the papers about as well.

Okay. Before we go to the public, does any member of the Board have any questions of the applicant or of Jon?

(No response.)

CHAIRMAN BASEHART: Okay. This is a public hearing, so anyone that's here to speak either in favor or in opposition of this application, step forward.

MR. MILES: Good morning.

CHAIRMAN BASEHART: Morning. Your name

for the record, please?

MR. MILES: Donald Miles.

CHAIRMAN BASEHART: And you've been sworn in?

MR. MILES: Yes, I have. I live just past her house on a dead-end street. We have concerns about the front of the house, the pole barn mostly. I'm not too concerned about the potting shed. That's really not visible from the street, but the pole barn is very visible at this point in time. Now I haven't seen -- this is the first I've heard of the changes that she's expected to be making to keep the pole barn where it is.

We're worried about property values. We're worried about precedent on the street, you know, other people doing the same thing, which I would like to do the same thing with my own situation. But the way it's set up, we don't have any options other than to go by the 63 foot setbacks, no matter how large your property is, even though we're, you know, acreage or better, an acre or more.

CHAIRMAN BASEHART: Right.

MR. MILES: I've seen a lot of -- well, I don't want to say a lot. I know she's got a couple of trailers that she runs in and out of there with the lawn business, and I'm concerned that that's going to drop my values on my property because if I go to sell my house and people see lawn trailers going in and out of the house two houses down, I'm shot; I'm not going to be able to sell my home.

CHAIRMAN BASEHART: I think it's important to keep in mind here that there's nothing that this Board can do about her operating her business as a home occupation and about the lawn trailers going in and out.

The only thing that this Board is empowered to consider is whether or not the setbacks that were established for the two buildings should be allowed to remain. We can't do anything about the lawn business.

I mean, if the variances were denied and these buildings had to be moved further back, you know, as long as they could meet that setback requirement they could reestablish the buildings, but in any circumstance the lawn business is not an issue here.

MR. MILES: Fair enough.

VICE-CHAIRMAN KONYK: Okay. Let me just explain something, too, and a lot of times when members of the public come forward and it gets redundant for us over and over, but we do this,

you know, a considerable amount of time.

There's seven criteria that have to be met in order to even qualify for a variance, and even though everything was on the consent agenda it may look like it's easy for the applicant to meet the seven criteria, but it's an unusual situation that we have a whole agenda that ends up on the consent.

So when we're looking at the seven criteria and whether or not the applicant has met that criteria, that's how we determine whether or not we can grant a variance. If somebody's objecting to the variance, they have to also go back to that same seven criteria and you would have to be able to demonstrate how they didn't meet the seven criteria, and that's really the basis for our approval or denial for a variance.

So if there's some way that you could show us that the applicant, although staff has felt that she meets the seven criteria, she's obviously demonstrated it to them or whatever. If there's some way that you could show us that you found an area where she doesn't meet the seven criteria, that's really all we can address here.

MR. MILES: Well, like I said, this is the first I've heard of these seven criteria and that was to be changed. You know, I wasn't aware of what constitutes --

VICE-CHAIRMAN KONYK: Well, any time you object to a variance and you call down here, they're going to give you -- you know, you can get the package and find out what's going on ahead of time. That's why it's advertised.

MR. MILES: Well, maybe that should be more listed in the letter that you send out, you know, that you can find out --

VICE-CHAIRMAN KONYK: Well, did you call?

MR. MILES: We've spoken with the Code Enforcement inspector and the County about this variance --

VICE-CHAIRMAN KONYK: How about the Board of Adjustment?

MR. MILES: -- because I have a Ted's Shed that's basically in the same location as hers.

MR. MacGILLIS: I did speak to someone who's in violation. It was your wife who called. I did speak to her --

MR. MILES: Yes, my wife.

MR. MacGILLIS: -- for 30 minutes on the phone and went through all the criteria with her clearly and she said, "I understand. I may not

necessarily agree, but I understand your position." So I did speak to her.

CHAIRMAN BASEHART: So are you saying that we may see this gentleman with his own variance application?

MR. MILES: You may.

MR. MacGILLIS: Well, you may. I went through the whole criteria knowing what their situation was and explained what I felt the difference was, and she said, "Well, I may not necessarily agree with you but I understand your position."

CHAIRMAN BASEHART: Okay. Question, sir. I don't know if you've had a chance to read -- I know Alan gave you a copy of the staff's recommended approval conditions.

Do you feel that the conditions that they're recommending will be sufficient to mitigate whatever impact you feel that the granting may have on you?

MR. MILES: Is this going to be a solid fence in the front or just a --

MR. MacGILLIS: Solid fence.

MR. MILES: A solid fence. So basically the only thing you are going to see is the peak of the roof?

MR. MacGILLIS: Correct.

MR. MILES: And that's going to be adjusted as well?

MR. MacGILLIS: Yes. She's going -- the material that's on the house -- could you bring that picture up that you had of your house, the material? It's a siding.

MR. MILES: It's a T-111 siding is what it is. I'm aware of what it is.

MS. LONSWAY: I'll either use the siding or the shingles, whichever you prefer.

MR. MacGILLIS: Would you submit it to the chairman just so he has it?

CHAIRMAN BASEHART: Okay. Thank you.

MR. MacGILLIS: The picture she has submitted to you is a picture of the front facade of her existing house and that's the T-111 siding.

MR. MILES: T-111.

MR. MacGILLIS: Staff was recommending more shingle-type things on that thing, and then she said she'd prefer painting it and I said I don't know how the painting will adhere to that material. So I said I'd rather a more natural material.

So this morning she indicated she spoke to her contractor, and he indicated that they would

prefer to do that to tie all the house and the pole barn in as one.

CHAIRMAN BASEHART: Okay.

MR. MacGILLIS: Staff has no problem with that.

CHAIRMAN BASEHART: Is it okay that we -- I mean, we need to keep this for the record if it was considered?

MR. MacGILLIS: We can make a copy of it.

CHAIRMAN BASEHART: Can you make a copy of that?

MR. MacGILLIS: We'll make a copy.

CHAIRMAN BASEHART: Okay. Give it to Jon. Have you --

MR. MILES: That's all my concerns as far as that goes.

CHAIRMAN BASEHART: Okay. With the implementation of these conditions, do you still object?

MR. MILES: No, I don't think so.

CHAIRMAN BASEHART: Okay. Very good. Thank you.

Ms. Cardone?

MS. CARDONE: If I may, I do have a few remarks regarding this.

CHAIRMAN BASEHART: Okay.

MS. CARDONE: I disagree with some of staff's findings regarding the seven criteria. I understand that this woman came here and was given bad information, and obviously that's something we don't ever, ever like to see happen. However, I don't find that being given wrong information is one of the seven criteria that then allows somebody to get a variance.

Certainly we want to mitigate when someone is injured due to receiving bad information, but to hand out variances that other people may not get because of that, I do have a problem with.

I understand that the woman bought the property in its condition. I also am under the belief and Amy, please correct me if I'm wrong, that permitting and those building permits are a matter of public record. And so anyone purchasing a property does have the opportunity to see if the property was correctly permitted. And so anyone would really doing their due diligence have the opportunity to see whether their property was in compliance or out of compliance.

I do also think that granting this would give the applicant a benefit that other people would not necessarily be entitled to because this is clearly within the setbacks. I am very

familiar with the area and, you know, I can tell you that people in the area go there because they don't like things very close to them. That's why they like to be in an area that has larger property than most neighborhoods, and we're getting an influx of these requests whereby structures, ancillary structures, are being placed extremely close to lot lines and therefore infringing upon the very characteristics of the neighborhood that people go there for.

Again, you know, I don't mean to be penalizing somebody who got bad information, you know. I feel very sorry for somebody who did something based upon information that the County gave her that was incorrect.

But I'm very concerned about setting a precedent and granting something that other people would not have the right. I believe that does grant a benefit to somebody that would not be granted to anyone else.

CHAIRMAN BASEHART: Okay. Thank you. Any other members of the Board have any comments?

VICE-CHAIRMAN KONYK: Well, let me just ask a question. I don't think that the whole basis for her getting the variance is the fact that she was given bad information. The other six criteria were met, correct?

MR. MacGILLIS: Right. With the conditions of approval and that's part of the variance process, if you can mitigate one of the criteria through a condition of approval to meet the intent. And I think that's -- we have setbacks to maintain uniformity and consistency. The fact that you can put a lot of landscaping in the front and no one can see the structure visually and tell that it's closer to the street, well, then that's part of the condition of approval which would mitigate what they're applying for the variance, which is a setback.

The same as the architectural, the fact that you got a building closer to the street, if you can treat it more that it blends in, then that's part of mitigating the setback encroachment.

CHAIRMAN BASEHART: Okay. Any other comments?

(No response.)

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

MR. MacGILLIS: Could I just make that amendment to condition number two then to reflect a change in --

MS. LONSWAY: Could I make a little

comment?

MR. MacGILLIS: Yes.

MS. LONSWAY: I'm not trying to beat this issue to death, but my key issue here is that in black and white in the code it says lots 1-1/2 acres or smaller that cannot accommodate current percentage setbacks for a particular yard may meet a 25 foot setback. That's black and white, that's in the code, and the whole thing has been a gray area. But this is in black and white and I believe this should hold precedence. I mean, it's written right here.

CHAIRMAN BASEHART: Well, I wouldn't go there if I were you because the problem is that what the code says is where it can be demonstrated that you can't meet the percentage setbacks, then you're entitled to a 25 foot setback.

If you look at your survey, there are plenty of places that could meet the percentage setback that you could have put those buildings. The fact is is that one of them was already there when you bought and you were given bad information by the staff that, you know, resulted in you putting the other structure where you did.

But had you known, had you not gotten bad information and came in for a permit, the staff has indicated they wouldn't have accepted the 25 foot because it's clear from your survey that there are plenty of places that those buildings could have gone and met the percentage setbacks. So you wouldn't have been entitled to the 25 feet.

MS. LONSWAY: Okay.

CHAIRMAN BASEHART: Okay?

MR. MacGILLIS: Condition number two, it's the second sentence I want to revise. "The applicant shall install siding on the north facade of the pole barn that is similar to the material on the existing dwelling...", and the rest of the sentence shall remain as originally proposed. So we'd only be substituting that sentence.

CHAIRMAN BASEHART: Okay. With that said, is there a motion?

MR. MISROCH: Yes, I'll make a motion. On BOFA 2001-062, I make a motion that we approve the variance and make the staff's report part of the record.

CHAIRMAN BASEHART: Okay. We have a motion.

VICE-CHAIRMAN KONYK: I'm going to second

it with a comment that I do understand the position that Nancy's taken, but I also understand the position that the staff has taken.

And when the staff has demonstrated to the best of their ability that the seven criteria has been met, then I'm likely to agree with the staff on that. So I will second the motion.

CHAIRMAN BASEHART: Okay. We have a motion by Mr. Misroch, a second by Ms. Konyk.

Before we vote, I'd like to say I think the only reason that I'm willing to support this variance is because of the mitigating conditions. I think with the conditions that you've recommended and the applicant's willingness to accept them and a comment from the next door neighbor that he feels that with the implementation of these conditions, his objection would be removed, I can support the variance.

So all those in favor indicate by saying aye?

VICE-CHAIRMAN KONYK: Aye.

MR. MISROCH: Aye.

CHAIRMAN BASEHART: Aye.

All opposed?

MS. CARDONE: No.

CHAIRMAN BASEHART: Okay. The motion carries 3 to 1. Thank you.

#### **STAFF RECOMMENDATIONS**

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

#### **ANALYSIS OF ARTICLE 5, SECTION 5.7.3 VARIANCE STANDARDS**

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

**YES.** The subject property is located at 13882 153 RD N. approximately 1,300 feet to the west of 136th Terrace within Jupiter Farms. The property has RR10 Land



use designation with a AR zoning classification. The surrounding neighborhood supports single family residential lots approximately 1.15 acres in size. The majority of the lots support residences constructed between 1986 and 1996. This lot is non-conforming lot with respect to lot size, depth and width. The lot supports a legally permitted single family residence constructed in 1998 and pond. The lot also supports two illegally constructed accessory structures in the front yard. The pole barn was recently constructed by the applicant while the potting shed existing when the applicant purchased the property in 2000. The applicant constructed the pole barn, pursuant to information she received from the Building Division staff that the "agricultural use" was exempted from permitting requirements. However, the applicant was not clearly informed that the AR setbacks apply to this property even though the permitting requirements may not.

The applicant is currently in violation with Code Enforcement for structures within the front setback. The required front setback for the property is 100 feet (lot does not comply with 300 depth) so the setback reduction of 30% applies: (209.00 x .30%-63 feet). Along the front property line is a 30' road easement as well as mature slash pines and under story saw palmettos which create a substantial buffer to mitigate the impact associated with the requested setback encroachment. Furthermore, staff is recommending conditions of approval to reduce the impact of the structure from the street.

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. This is not a self created hardship. As previously indicated, the applicant was unaware that the previous owner had erected the potting shed without the required building permits. Furthermore, the applicant stated that

before he constructed the pole barn, they contacted the Building Division and were informed that no permit was required for pole barn for this agricultural use. The applicant has made a good faith effort to get the applicant building information prior to constructing the pole barn. The applicant has met with staff to correct the setback violation and has applied for the variance. Staff is recommending conditions of approval to mitigate the setback encroachments such as improvements to the pole barn to make it more compatible to surrounding buildings, place straps on the existing metal fence to obstruct views from the street to the pole barn and to supplement the existing native under story vegetation to obstruct views of the pole barn from the street.

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.** Granting the variance shall not confer upon the applicant special privileges denied by the comprehensive plan and this code to other parcels of land, building or structures, in the same district. The applicant is requesting the Board of Adjustment to grant a variance to allow an existing (24 x 24) pole barn and an existing (15 x 15) shed to remain in the front setback. Based on the unique circumstances surrounding the construction of the structures and the fact conditions of approval can mitigate the encroachment, no special privilege will be conferred upon the applicant if the variance is granted. The potting shed was constructed by the prior owner while the pole barn was constructed in the existing location by the applicant for easy access for her landscape equipment from the street. The applicant consulted with Building staff as to what type of permit would be required for the pole barn. The applicant indicated to zoning staff that she was informed that no building permit would be required for this use. Proceeding on this information the applicant constructed the

pole barn in front of the house within the circular driveway. The pole barn was located in the driveway to allow easy access for the landscape equipment the applicant pulls behind her vehicle.

With the existing buffering and recommending conditions of approval the setback encroachments 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.** The applicant assumed that the location of the existing shed and pole barn were correct and did not realize that there was an issue with the setbacks until receiving the Notice of Violation. The variance request is the minimum necessary in order to allow the applicant to correct the violation. To require the applicant to demolish the existing structures and reconstruct these structures to comply with the code is not a reasonable solution. With recommended conditions of approval the general intent of the front setback can be met.

Therefore, denial of the variance would deprive the applicant of rights enjoyed by other applicants and would work an unnecessary and undue hardship. If the variance is granted the applicant would have to submitted for building permits or seek an exemption under the Bon Fide Agricultural Use.

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

**YES.** The applicant is requesting a variance to allow an existing (24x24) pole barn and an existing (15x15) shed to remain in the front setback. The existing pole barn is setback at 28.9 feet and the

shed at 40.8 feet. The requested variance for the pole barn is 34.1' and 22.2' for the shed. The variance for both of pole barn and shed are considered minimal due to the fact that there is a 30' road easement and mature slash pines and under story saw palmetto, which serves as an adequate separation and buffer to mitigate the impact of the variance.

The general intent of the Code **will be** met if the variance is granted.

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 Comp Plan designates this rural residential subdivision for single family residential dwellings. The required lot size in RR-10 is ten acres, however, many of the lots within the Jupiter Farms subdivision are 1.5 acres or larger. The ULDC establishes setbacks to establish uniformity of buildings from property lines, protect the adjacent property owners, and maintain property values. Granting the requested variances **will be consistent** with the general intent of the setbacks requirements. According to the aerial map, the dwelling on the lot to the north is located at approximately 200 feet from the nearest variance request (pole barn). Mature trees and shrubs from both properties in addition of the 30' road easement serves adequate separation and buffer to mitigate the front setback encroachment.

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

**NO.** Granting this variance will not be

injurious to the surrounding neighborhood. The applicant is requesting a variance for both structures, (the pole barn and shed) to remain in their present location. The ULDC establishes setbacks so all structures will be at consistent distance from property lines. The separation created by the road easement and the trees will provide privacy and buffer between the subject and the property to the north.

#### 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 presented to the Board if a building permit is required for the pole barn and potting shed. (**BLDG PERMIT: BLDG**)
2. pole The applicant shall modify the existing barn facade facing the 153rd Road North to make it more architectural compatible with surrounding buildings and lessen the impact of this structure from the street. The applicant shall paint the structure a natural color, place shingles on the facade, install equestrian type elements on facade and roof (weather vane). The following improvements shall be implemented by November 16, 2001. The applicant shall contact the Zoning Division for an inspection to ensure compliance with these conditions. (**DATE:MONITORING-ZONING-BA**)
3. By October 16, 2001, the applicant shall either submit for a building permit for the potting shed and pole barn or receive approval from the Building Division for the Bona Fide Agricultural building exemption. If the exemption is granted, a copy shall be provided to the Zoning Division in order to vest the two front setback variances. (**DATE:MONITORING-BLDG PERMIT**)

4. By November 16, 2001, the applicant shall supplement the existing native saw palmetto under story material with plants as to the views of the pole barn and potting shed from 153rd North are mitigated and obscured. **(DATE:MONITORING-ZONING-LANDSCAPE)**
5. By November 16, 2001, the applicant shall install slats in the existing metal gate in the driveway to obstruct views into the lot and of the pole barn. With the recommended improvements to the south facade and roof line of the pole barn the encroachment will be mitigated. **(DATE:MONITORING-ZONING-BA)**
6. The pole barn shall not be enclosed with wall at a future date. The structure shall remain open on all sides. **(ONGOING)**

CHAIRMAN BASEHART: That concludes the business for the Board for the regular agenda for the Board of Adjustment for this month.

We have one other item and that's the approval of the attendance chart for last month. The chart shows that we had -- well, Mr. Richards wasn't here because he resigned and I suppose that's a good enough excuse. And Glenn Wichinsky was absent and the reason for that is because he was on vacation.

So I guess we have only one to deal with. Is everyone willing to accept Mr. Wichinsky's absence as an excused absence last month?

MS. CARDONE: Yes.

CHAIRMAN BASEHART: Okay. He deserves a vacation and he did call in ahead of time.

VICE CHAIRMAN KONYK: It seems he had quite a few.

CHAIRMAN BASEHART: So then we'll approve the --

VICE CHAIRMAN KONYK: Motion to approve the excused absence.

CHAIRMAN BASEHART: We have a motion by Ms. Konyk.

MS. CARDONE: Second.

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

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Okay. Glenn's excused for last month.

We're ready for a motion to adjourn.

MS. CARDONE: Well, then I would move to adjourn. There are after we adjourn, there were just a couple of things I wanted to share with the Board. So if we have a minute --

CHAIRMAN BASEHART: Okay.

MS. CARDONE: -- before we all run out.

CHAIRMAN BASEHART: Absolutely.

MS. CARDONE: I move to adjourn.

CHAIRMAN BASEHART: We have a motion by Ms. Cardone to adjourn.

VICE-CHAIRMAN KONYK: Second.

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

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: We're adjourned. Okay. Now we're off the record.

(Whereupon, the meeting was adjourned at 9:40 a.m.)

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C E R T I F I C A T E

THE STATE OF FLORIDA )  
COUNTY OF PALM BEACH )

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

DO HEREBY CERTIFY that the above-entitled and numbered cause was heard as hereinabove set out; that I was authorized to and did report the proceedings and evidence adduced and offered in said hearing and that the foregoing and annexed pages, numbered 4 through 39, inclusive, comprise a true and correct transcription of the Board of Adjustment hearing.

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

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

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