

PALM BEACH COUNTY
BOARD OF ADJUSTMENT

Thursday, July 19, 2001
9:02 a.m. - 10:30 a.m.
100 South Australian Avenue
West Palm Beach, Florida

Reporting:

Sophie M. (Bunny) Springer
Notary Public

ATTENDEES

Robert E. Basehart, Chairman

Chelle Konyk, Vice Chairman

Mr. Jonathan Gerber

Mr. Raymond Puzzitiello

Mr. Joseph J. Jacobs

Ms. Nancy Cardone

Mr. Stanley Misroch

David Cuffe, Civil Engineer II, Land Development

Michael Jones, Asst. County Attorney

Amy Patrick, Asst. County Attorney

Jon P. MacGillis, Principal Planner, Zoning

Alan Seaman, Senior Planner, Zoning

Brad Dunker, Planner I, Zoning

Joe Sherpitis, Building Department

Janet Quinn, Secretary

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PROCEEDINGS

CHAIRMAN BASEHART: I'd like to welcome everybody to the July 19, 2001 Palm Beach County Board of Adjustment meeting.

The first item on the agenda is roll call.

MS. QUINN: Ms. Nancy Cardone.

MS. CARDONE: Here.

MS. QUINN: Mr. Joseph Jacobs.

MR. JACOBS: Here.

MS. QUINN: Ms. Chelle Konyk.

VICE CHAIRMAN KONYK: Here.

MS. QUINN: Mr. Ray Puzzitiello?

MR. PUZZITIELLO: Here.

MS. QUINN: Mr. Glenn Wichinsky?

(No response.)

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.

Next item is the proof of publication which we have in our file here certifying that the proof was published in the required time. We'll just accept that into the record.

Next item is remarks of the Chairman. The only comments that I have is that for those of you that are not regular participants in this meeting, I'd like to explain how we work the agenda. The agenda is essentially broken into two parts.

The first part is the consent agenda. Those are items where staff has recommended approval and if there are conditions recommended with that approval, the applicant has agreed with them and where there has been no indication of opposition from members of the public. Those items will be brought up one at a time.

If there is no one here to oppose such an application and after having read the staff reports, the Board members agree with the staff report and recommendations, those items will be left on consent. You will not be required to make any presentation. The staff report will become the record of the hearing and the matter will be approved and we'll approve the consent agenda as a whole.

Any item that comes up where the staff or a board member has some concerns or a member of the public is here to oppose, it will be pulled from the consent agenda, moved to the regular agenda. Then a full hearing will be required on those items.

The second group of applications are those that are on the regular agenda, and those are applications recommended for denial in part or in whole or where there's an indication of opposition from the public. And of course, those items will require full presentation by the applicant, justification of the variance or variances under the criteria in the Code and then the Board will make a decision again one at a time.

Other than that, I don't have any comments except I guess we have our workshop, Jon, after the regular meeting. So after the public portion of the meeting closes, we'll convene in our annual meeting.

Next item on the agenda is approval of the minutes. I have a hard copy of the minutes here. I think you've all received them on disk. If everyone is satisfied

with the minutes, we can adopt them.

MR. PUZZITIELLO: Motion to approve.

CHAIRMAN BASEHART: Motion by Mr. Puzzitiello.

MR. JACOBS: Second.

CHAIRMAN BASEHART: Second by Mr. Cohen (phon.) [sic]. All those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: The minutes for June are adopted. I'm sorry, Mr. Jacobs. I'm sorry.

MR. JACOBS: My predecessor.

CHAIRMAN BASEHART: Yes. Okay. Next item is remarks of the Director.

Jon, do you have any comments?

MR. MacGILLIS: I'd just like to introduce some of the new staff. You may see their names as project managers.

Miradieu Aubourg, he's an intern for the Zoning Division from Canada. He'll be here for approximately six months working with us in BOFA section.

And we have Damon Kolb who's worked on some of the BOFA petitions, and Brad Dunker who's going to be presenting one of them here this morning.

CHAIRMAN BASEHART: Good morning.

MR. MacGILLIS: Apparently, we have a new attorney, but --

MR. JONES: Her name is Amy Patrick and I'll let her introduce herself when she gets here.

CHAIRMAN BASEHART: Okay.

MR. MacGILLIS: And as you indicated, Mr. Chairman, the workshop will proceed after this hearing. Hopefully, we can keep it to approximately 45 minutes, whatever discussion we're going to have on it, so. Some of the back-up material was put on your table there, so.

CHAIRMAN BASEHART: Okay. I understand that our new member has resigned?

MR. MacGILLIS: That's true. Mr. Richards has resigned. He's been appointed to the Zoning Commission. The paperwork has gone in, so hopefully Commissioner Greene will reappoint someone fairly soon on that.

CHAIRMAN BASEHART: Okay. So we don't know or we don't actually have a replacement yet?

MR. MacGILLIS: No. Mr. Richards indicated he's spoken with Commissioner Greene. She's asked him to see if he can coordinate getting someone to help her fill that position. She's got the paperwork, so hopefully --

CHAIRMAN BASEHART: Very good. Thank you. Any items for postponement or withdrawal?

MR. MacGILLIS: Actually, we have one item we want to move to the consent agenda. That's the last item on the regular agenda, BOFA 2001-059, petition of Ron Collins, for the Fox Property. I believe we have Russ Scott here.

Do you want to come up Russ, and -- did you get authorization?

MR. SCOTT: Yes.

MR. MacGILLIS: Okay. This item, staff put it on the consent agenda because we were still trying to work out some numbers with what the actual parking variance was for. The site plan that Russ Scott, the landscape architect, prepared was different from what the actual supplement app showed. They've since resolved that in the last couple of days.

Therefore there was no opposition to the petition. Therefore staff would

like to put it on the consent agenda unless the Board has --

CHAIRMAN BASEHART: Okay. Do we have a motion to move this to consent?

MR. PUZZITIELLO: Motion to move to consent.

VICE CHAIRMAN KONYK: Second.

CHAIRMAN BASEHART: Okay. We have a motion by Mr. Puzzitiello, second by Ms. Konyk. All those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: You're on consent for now.

MR. SCOTT: Thank you.

MR. MacGILLIS: He'll call you when your item comes up.

CHAIRMAN BASEHART: Okay. Let's go to the consent agenda then.

The first item is BOFA 2001-053, Jose Valdes. Is the applicant here?

MR. VALDES: Yes.

CHAIRMAN BASEHART: If you could step up to the podium, Mr. Valdes. The staff has recommended approval of your variance with three conditions. Are you familiar with them?

MR. VALDES: Yes.

CHAIRMAN BASEHART: Do you agree with those?

MR. VALDES: Yes.

CHAIRMAN BASEHART: Are there any members of the public here to speak on this item?

(No response.)

CHAIRMAN BASEHART: Seeing none, any letters, Jon?

MR. MacGILLIS: There were no letters.

CHAIRMAN BASEHART: Okay. Any member of the Board have any reason to pull this?

(No response.)

CHAIRMAN BASEHART: Okay. You'll stay on consent.

STAFF RECOMMENDATIONS

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

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

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

YES. Special conditions and circumstances exist that are peculiar to the parcel of land in the same District. The subject property is located at 1027 Jason Way, approximately .4 miles S. from the intersection of Florida Mango Rd and Summit Blvd within the Flamingo Estates subdivision in West Palm Beach. The property has a MR5 land use description with a RS zoning classification. Most of the homes in this residential area were constructed in the late 1970s and early 1980s. The subject lot is a corner lot abutting streets on 2 sides. It supports a 3,551 sq ft family residence which was constructed in 1998 (B97021256) by the applicant. This particular lot is a conforming lot in terms of width, depth and size (100 foot depth and 75 foot width). The main dwelling is constructed at 21.8 feet from the rear property line and has 20 foot drainage maintenance easement in the rear back yard of the property leaving only 1.8 feet of buildable area in the rear yard.

As indicated by the applicant's justification statement, the current property owner purchased the vacant property in 1996 and constructed the single family dwelling under the impression that since they had a large rear yard, they could accommodate a pool in the future. However they later discovered the rear yard's limitation resulting of a 20 foot drainage maintenance easement. The easement prevents any structure from being constructed in the rear yard.

Therefore, the applicant is applying for a side interior setback variance to allow a non-standard 12.6' x 28' pool to be constructed in the side interior setback. This variance is justified since this RS subdivision supports many homes with swimming pool and will allow the applicant the ability to enjoy the limited outdoor yard.

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

NO. Special circumstances and conditions **are not** the result of the applicant. This **is not** a self created hardship. As previously stated the owner purchased this vacant lot in 1996, and constructed the dwelling unaware of the rear yard's constraints due to the existence of the 20' drainage easement. They were under the impression that the rear yard could accommodate a swimming pool. After determining the lot limitation, the applicant explored other design options, however was left with applying to the Board of Adjustment for side interior setback variances for the proposed swimming pool. The applicant did consult with the property owner to the south and received a letter of support for the variance request. Staff is recommending a condition of approval that the applicant install a shadow box fence along the south property line to

mitigate the setback encroachment and reduce the noise associated with the pool.

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

NO. The granting of this 7.5 foot side interior setback for a proposed swimming pool **shall not** 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. This applicant is proposing to construct a swimming pool in the side interior setback. The applicant goal was to construct a proposed standard swimming pool in the rear back yard. Due to the lot's constraints resulting from the 20 foot easement, the applicant had no other option to construct the swimming pool along the south property line. The location of a double french door on the rear of the house leading from the family room and a bathroom door leading from the south side of the house, the pool location will conform to the existing house layout.

Therefore, the granting of this variance will allow the applicant to construct a swimming pool on his lot which is a typical amenity found in south Florida. The amenity will enhance the quality of life for the applicant's family.

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

YES. A literal interpretation and enforcement of the terms and provision of this code will deprive the applicant of rights commonly enjoyed by other parcels of land in the same district, and would work an unnecessary and undue hardship. The subject lot is unique in that it is a corner lot bounded 2 side streets and a 20' drainage easement in the rear back yard. The proposed location will be adequate for the owner since the existing double french doors from the family room and also a bathroom leading to the proposed swimming pool.

If the requested variance is granted with conditions recommended by staff, the variance will be consistent with the code and allow the applicant to construct a reasonable size pool on this lot.

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

YES. The approval of variance is the minimum variance that will allow a reasonable use of the parcel of land, building or structure. The applicant was unaware at they purchase the lot that there was a 20' drainage easement in the rear setback. The survey shows the easement stopping at the south property line, however, after carefully reviewing it is apparent

it runs parallel to the rear lot line. The applicant states in the justification that the swimming pool is needed for their family enjoyment and improving the aesthetics of their home. The applicant is proposed a 12.6' x 28' to be constructed in the side interior setback. A shadow box wood fence will be installed along the south property line to mitigate the impact of the variance.

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

YES. Grant of the variance will be consistent with the purposes, goals, objectives and policies of the Comprehensive Plan and this Code. The general intent of the setbacks for accessory structures is to ensure minimum distance between property lines and the principal structures on the lots. Granting the requested variance will be consistent with the general intent of the setback requirements. The Code establish specific setbacks for residential accessory structures such as pool. The setbacks are typically less than the principal structure because they have less impact on the adjacent property. The proposed 3 foot setback in addition to the recommend fence will mitigate the setback encroachment. Furthermore, the current owner to the south has seen and approves of the pool location. Staff has been provided a letter of support from this property owner by the applicant.

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

NO. Granting this variance **will not be** injurious to the surrounding area. The only property owner affected by the setback encroachment is to the south. The owner has provided the applicant with a letter of support. With the condition, recommended by staff, to install a wood shadow box fence along the south property line the neighbor will not be injured by this variance, if granted.

ENGINEERING COMMENT

The existing drainage easement over the west 20 feet of the subject lot is required to accommodate existing street and lot drainage from development south of the property.
(II)

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 19, 2002, the applicant shall

obtain a building permit for the proposed swimming pool in order to vest the side interior setback granted pursuant to BA2001-053. **(DATE:MONITORING-BLDG PERMIT)**

3. By June 19, 2002, or prior to the final Certificate of Completion on the swimming pool, install a shadow box fence along the south property line to mitigate the pool setback encroachment. **(DATE:MONITORING-BLDG:CO)**

CHAIRMANBASEHART: Next item, BOFA 2001-054, Todd and Cleoann Reeves. Is the applicant here?

MR. REEVES: Yes.

CHAIRMAN BASEHART: Are you Mr. Reeves?

MR. REEVES: Yes.

CHAIRMANBASEHART: Mr. Reeves, staff has recommended approval of your variance with two conditions. Are you familiar with them?

MR. REEVES: Yes, I am.

CHAIRMAN BASEHART: And you agree to those?

MR. REEVES: Yes.

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

(No response.)

CHAIRMAN BASEHART: No letters?

MR. MacGILLIS: No letters.

CHAIRMAN BASEHART: Any member of the Board want to pull this?

(No response.)

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

STAFF RECOMMENDATIONS

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

ANALYSIS OF ARTICLE 5, SECTION 5.7.3 VARIANCE STANDARDS

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

LAND, STRUCTURES OR BUILDINGS IN THE SAME DISTRICT:

YES. The subject property is located at 7560 Ladson Terrace, within the Lake Charleston PUD. The Lake Charleston PUD was approved by the Board of County Commissioner in 1986. The property has LR 3 Land use description with an RTS/SE Zoning classification. The lot supports a 2,965 sq/ft single family residence, which was constructed by the applicant in 1992 (B92014069). The surrounding neighborhood supports single family residential lots which are similar in size and architectural character. There are **special** conditions or circumstances peculiar to this parcel of land. The subject lot is a corner lot with a 45 degree cuts (right of way taking) and 10' utility easement platted along the west and south property line. Adjacent to the south property line is and 5 foot side walk and 50' R/W (Bradham Drive), the west side has also a 5 foot sidewalk and 50' R/W (Ladson Terrace). The existing 7 foot mature ficus hedge, side walk and street along the south will provide the separation and buffer to mitigate the setback encroachment.

The applicant applied for and was granted a pool, spa and deck permit. When the applicant designed the deck, it encroached into the side corner setback, which it is permitted by code since the deck is less than 3 feet in height. However, the applicant later decided to construct a screen enclosure over the entire deck. In order to do this, a side corner setback encroachment will occur. The applicant has informed staff that the in-ground spa cannot be relocated to allow the screen enclosure to be shifted 4' to north to accommodate the screen enclosure.

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

NO. The current property owner purchased the subject lot in 1992 and had improvement to the property. In March 2000, the property owner was issued a building permit (B00009169) to construct a swimming pool, a 8x8 fiberglass spa and paver deck. The pool and accessory spa was constructed according to the building permit plans. In February 200, the applicant submitted an application to construct a screen enclosure over the existing pool and deck. The building plans are currently on hold with the Building Division until the applicant resolves the side corner setback issue. The 4 foot setback encroachment occurs along the south side of the enclosure. In order to maintain a minimum distance between the spa and screen enclosure the it was shifted 4 feet to the south into the setback. The spa is in the deck and therefore cannot be relocated. To bring the deck in 4 feet will result in it being immediately adjacent to the spa. This is not a safe situation in that it could obstruct someone from walk around or leaving the spa. There is an existing ficus hedge along the entire south property line that will mitigate the setback encroachment from the street.

Therefore, the applicant is requesting the minimum variance to construct a screen enclosure over the existing pool and deck. If this variance is approved the applicant will be able to receive a final on both the pool and enclosure. The pool is currently not CO due to the fact a enclosure (fence or screen enclosure) is required.

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 this variance **will not** confer a special privilege on the applicant that would be denied to other property owners. The applicant is located on a corner lot which has limitations created by increase setbacks. Also, the applicant useable rear yard is limited to the area where the existing pool and deck is located. The proposed screen enclosure will enhance the applicant's enjoyment of the pool and spa area. A screen enclosure is a typical amenity for homes in PB County. Similar properties in the neighborhood are benefitting from the screen enclosures. If the proposed screen enclosure is modified to meet the side corner setbacks, the screen enclosure would be constructed too close to the spa. There would be no room for someone to walk between the pool and spa. A minimum distance of 2 feet from the spa to the screen enclosure is necessary for safety reason should a person need to exiting the spa or walk around it.

As previously stated, when the original pool/spa design was completed, it did not anticipate a screen enclosure, but rather a fence. When the screen enclosure application was submitted, it was placed on hold due to the fact it was encroaching the setback. The applicant informed staff due to the location of the in ground spa the screen enclosure cannot be modified to comply with setback and at the same time provide the needed separation between the pool and the spa.

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 enforcement of the provision of the Code **will deprive** the applicant of rights commonly enjoyed by other parcels of land in the same district. The setbacks for residential properties establish and maintain continuity of structure from property lines. Considering this is a 4 foot variance and there is an 11 foot separation remaining to the south property line in addition to a mature 7 foot hedge, the code intent can be met. If the requested variance is granted it will allow the applicant to be issued the screen permit and receive a final on both; the pool and screen enclosure.

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

YES. The granting of this variance **is the minimum** variance that would allow a reasonable use of the lot. The lot layout does not allow alternative design options that would eliminate the variance request without creating a unsafe area around the spa and the pool. If the proposed screen enclosure is modified to meet the side corner setbacks,

the screen frame would be too close to the spa and the pool. A minimum distance of 2 feet from the spa to the screen enclosure is necessary for pedestrian circulation between the spa, the pool and the screen enclosure. Therefore, the variance is the minimum variance to allow a reasonable use of the parcel of land and ensure a safe circulation around the spa and the pool.

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

YES. Granting of this variance will be consistent with the intent of the Code. The intent of the setbacks for residential use is to establish consistency and uniformity in appearance from all property lines. The property owner was issued a building permit (B00009169) to construct in ground swimming pool, a 8x8 detached fiberglass spa and a paver deck. In this particular situation, there is no building to the immediate south of the subject lot. There is a mature ficus hedge then the 50' right of way which will mitigate the setback encroachment. If the variance is granted, the general intent of the code will be met.

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

NO. The granting of the variance **will not be** injurious to the neighborhood. The ULDC established setbacks so all structures will be at a consistent distance from property lines. This proposed screen enclosure in side the corner will be screened by the existing mature ficus hedge from the street to the south of the lot.

ENGINEERING COMMENT

No Comments ().

ZONING CONDITIONS

1. By September 19, 2001, the applicant shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a revised survey in order for PR01005173 to be finalized for the screen roof screen enclosure. **(DATE MONITORING-BLDG PERMIT)**
2. The structure shall not be enclosed with solid walls or be converted into an enclosed space. **(ONGOING)**

CHAIRMAN BASEHART: Next consent item is BOFA 2001-056, Kim Juran. Kim, staff has recommended approval with four conditions. Are you familiar with them?

MS. JURAN: I am.

CHAIRMAN BASEHART: Do you agree?

MS. JURAN: We agree with them.

CHAIRMAN BASEHART: Any member of the public here?

(No response.)

CHAIRMAN BASEHART: Oh, for the record, your name?

MS. JURAN: Kim Juran for Kelly Tractor.

CHAIRMAN BASEHART: No letters, Jon?

MR. MacGILLIS: Yes. We received seven letters on this. Most of the letters are concerns from neighbors that came from Century Village which is on the opposite north side of Okeechobee.

Staff -- the project manager reviewed the letters. They're concerned with the increase, the visual, noise, they want more trees on the site, but since this is across Okeechobee which is like a 180-foot thoroughfare, and the variance is related to buffers on the north and east side of this property which there's no impact to this development across the street.

CHAIRMAN BASEHART: All right. And as far as I recall from Century Village, you know, they have their own landscape buffer and then they have a parking lot before you get to any buildings.

MR. MacGILLIS: That's true.

CHAIRMAN BASEHART: Okay. Is there any member of the public here to speak on this matter or did I ask that?

(No response.)

CHAIRMAN BASEHART: Seeing none, any member of the Board have reason to pull this?

(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:

YES. Kelly Tractors has existed on this site for more than 30 years. In 1979, the Board of County Commission (BCC) approved Petition 79-133,

(Resolution 79-924) to allow for a Rezoning from RH to CG and to further allow a Special Exception to allow a commercial, new and used, large scale repair and heavy earth moving equipment sales and services facility and lot including water treat plant. In 1979 the applicant was proposing to rezone the rear portion of the site to accommodate expansion of the existing use on the front 261 feet of the property. The site consisted of two existing buildings along Okeechobee Blvd. The approval permitted the rear 934 feet of the site to support tractor buildings and parking yard. This site has functioned with this layout until 2000 when the applicant purchased the 6.38 acre Gulf Stream Motors site to the east, Petition 83-161. This site was abandoned when Gulf Stream moved to its new location further east on Okeechobee Blvd in 1998.

In July 2000, the applicant applied to the BCC to amend 79-133 to add the 6.38 acre Gulf Stream site to this property. This 14.2683 acre approved MUPD, Multiple Use Planned Development was originally approved by the BCC in 1997 (Petition 97-133) with a subsequent Development Order Amendment in 2000, (R2000-1088). The proper is located at 5460 Okeechobee Boulevard, West Palm Beach. The parcel is located approximately .25 miles west of Haverhill Road and approximately .75 miles East of the Florida Turnpike on the south side of Okeechobee Boulevard. The parcel currently supports Kelly Tractor Company, a tractor sales, rental and repair business. The parcel is approved to support 118,954 square feet of the site limited to the use and site design as approved by the Board of County Commissioners (June 5, 2000) unless the proposed changes are required to meet conditions of approval or are in accordance with the ULDC.

The site plan was developed and approved by the Board of County Commissioners in accordance with MUPD development regulations. However, existing easements have necessitated modifications to the site plan at the request of the LDD and LWDD, not the applicant. The conflict between ULDC requirements and the two agencies can only be mitigated by a Landscape Plan approved by staff.

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

NO. The applicant has an approved Site Plan that complies with all code requirements. However, when the applicant began preparing the Landscape Plan it became evident that a conflict existed between the planting of the buffers and intent of the easements. On limited occasions landscaping can be installed in easements, provided the easement holder provides a release. The Zoning staff informed the applicant at the pre-application meeting for the variance that it was necessary to speak to both PBC Engineering, Land Development and LWDD to ensure the landscaping could not be installed, prior to applying for a variance. The applicant was informed by both easement holders that these easements have existed for many years and the installation of landscaping in them would compromise the overall intent of drainage and maintenance.

Therefore, the applicant is requesting the minimum variance that would

allow the expansion of this use to proceed in accordance with approvals. The condition, recommended by staff, to relocate the landscaping on-site to a location that would help buffer proposed parking and storage can be achieved and will ensure the general intent of perimeter buffer is maintained, if this variance is granted.

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 attempting to improve this existing use and layout under the current ULDC, MUPD provisions. The applicant recently received approval from the Board of County Commissioners to expand the use by adding acreage and constructing new buildings and storage. This approval required the existing approved Special Exception to be rezoned to a MUPD. The ULDC, Article 6.8.4.(5) requires MUPD zoned sites to provide a landscape buffer around the entire perimeter of the site. The approved site plan indicated that the applicant would fulfill this obligation, however, this plan did not anticipate the easement holders not permitting landscaping within the easement. The LDD and LWDD have requested that the applicant not install required plantings within a portion of the east and west buffer where the easements currently exist. The applicant has agreed to a condition of approval to relocate the required trees and hedges on site. In order to meet the agencies requests, Staff has provided the applicant with direction on where to relocate the plant material to help mitigate any negative impacts associated with the variances, if approved.

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 agreed to comply with all of the conditions approved by the Board of County Commissioners on July 27, 2000, associated with the expansion of the Kelly Tractor business. As previously stated, this use has existed for many years without buffers in these areas. However, when the applicant received approval to expand the existing use in 2000, the property was rezoned to a MUPD and perimeter buffers were required. The applicant is willing to install the buffers, however, the agencies responsible for the easements will not allow landscaping within them. Since there are no other alternative site options for placement of the required landscape buffers, denial of this variance request would force the property owners to cease the proposed expansion and site layout approved by the BCC. The existing native vegetation on-site along the rear portion of the site would mitigate the effects of the unplanted buffers, thus creating undue hardship for the property owner if the variance request is denied.

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 landscape buffer removal is the result of a unique situation where a site was approved under a prior code and buffers were not required. The owner is expanding the use and as a result is being required to install buffers to mitigate the expanded use on the site. However, there are existing easements that extend to the property line that the applicant cannot abandon or plant within. The applicant has approached the easement holder regarding planting landscape in the easements and was denied. In order to proceed with the site redevelopment, the applicant is required not to install the required landscaping in the easements. Therefore, the applicant is required to apply for a variance. The applicant is not requesting any additional variances or changes, and will implement the Board of County Commissioners approved site plan upon approval. The applicant has met with Zoning Staff in an effort to minimize the effects of the variance.

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

YES. The rezoning of this parcel to a MUPD classification was approved by the Board of County Commissioners on July 27, 2000. The approved site plan was found to be consistent with the requirements of the Palm Beach County Unified Land Development Code. The BCC did not find that the site development proposal would significantly impact the surrounding area. The approved Site Plan did not account for the LWDD and County LDD requests that landscape buffers not be installed on their respective easements. The variance allows the applicant to remain in compliance with the original plan and meet the requests of the County and LWDD. Due to the existing vegetation on site, the effects on surrounding areas will be minimal. Also, staff is recommending a condition of approval to submit a Landscape Plan that identifies where the plant material in these buffers will be located to on-site. Staff will ensure the landscaping is maintained in close proximity to where it is being deleted to ensure adjacent properties are protected against any negative impacts associated with this use.

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

NO. The applicant received approval from the Board of County Commissioners on July 27, 2000, to proceed with redevelopment of this site. The Board considered the evidence and testimony of interested parties and found that the redevelopment plan was consistent with the Palm Beach County Comprehensive Plan and the ULDC. The surrounding neighborhood concerns are considered by the Board, prior to approving the expanded use and layout. Approving the variance will

allow the applicant to proceed with proposed site modifications, in accordance with the Board approved site plan. It should be noted that two of the requested buffer variances border a vacant municipally owned parcel that has existing vegetation. In addition, the southeast buffer that borders a residential area is separated from the existing residences by a canal and existing vegetation. Zoning Staff has worked with the applicant to relocate landscaping to other portions of the site, in an effort to minimize any effects to surrounding areas.

ENGINEERING COMMENT

The 140 ft. wide drainage easement over the southerly portion of the subject property and the 20 ft. wide drainage easement in the southeast corner of the property were required to accommodate facilities for conveyance, treatment and maintenance of County street drainage from Elmhurst Street, per the approved drainage plans for previous site development of the Kelly Tractor Company site. Since these easements are the minimum necessary to accommodate the drainage system as currently permitted, the Engineering Department will not approve encroachment of the landscape buffer into the noted drainage easements. **(AD)**.

ZONING CONDITIONS

1. By January 21, 2002, 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. The Conceptual Landscape Plan, Exhibit 22, found in the BA2001-56 file in the Zoning Division, locates the relocated landscape material from the buffers associated with this variance. The plant material has been relocated out of the existing easements and planted in such a manner as to enhance existing native trees and understory existing along on the site as well as proposed landscaping. The applicant shall submit a copy of the Conceptual Landscape plan simultaneously with final Landscape Plan approval to the Landscape Section.
(LANDSCAPE)
3. The development order for this landscape variance is valid provided a final Landscape Plan is submitted and approved by the Landscape Section, prior to July 19, 2002, one year from the approval date. The applicant may apply for an extension provided they complete the time extension application, prior to the original Development Order expiring. **(DATE:MONITORING-ZONING)**
4. The landscape variances for BA2001-56 are limited to those buffers shown on Site Plan, Exhibit 9, found in the BA2001-56 file. **(ONGOING)**

South. CHAIRMAN BASEHART: Next item, BOFA 2001-057, Land Design

MS. MORTON: Jennifer Morton with Land Design South.

CHAIRMAN BASEHART: Okay, Jennifer, the staff has recommended approval with four conditions. Do you agree with them?

MS. MORTON: We agree with them.

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

(No response.)

CHAIRMAN BASEHART: Seeing none, any letters, Jon?

MR. MacGILLIS: No letters on this item.

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

(No response.)

CHAIRMAN BASEHART: It stays 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. This particular variance is for a proposed six unit townhouse Building 9, unit 323, in POD B, NYE PUD. The developer has obtain all the necessary approvals to construct the single family and townhouse units within this development. The development is currently under construction. All units comply with the required setback with the exception of building 2 lot 258 (BA2000-055) and 9 lot 323, subject of this variance request which will encroach the side interior setback. Both units encroachment are resulting from modifications to the final plat that do not correspond to the approved Site Plan. During the Platting process the Engineer modified several drainage easement width to accommodate drainage requirement. In doing this several townhouse building footprints shifted. The minor shifts resulted in 3 buildings encroaching into the side interior setbacks. The Board of Adjustment approved one of the variance last year, while staff approved the other through the Administrative Variance process. All encroachments are minor and are mitigated by open space abutting the building.

The applicant is proposing a 10.7 foot setback instead of the required 11.25 for a .55 foot variance. There are no buildings to the north of building 9 that would be impacted by this minor setback encroachment. The open space separation created by the lake to the north will mitigate this diminimus setback encroachment.

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

NO. The developer has obtained all the necessary approvals for this project. Both the Site Plan and final Plat are approved. There are currently buildings under construction within the development. The variance is the result of a minor modification made to the Plat during the platting process. The Engineer modified several drainage easements that resulted in several buildings shifted and ultimately encroaching the setback. Neither the owner of professionals working on the project realized the minor modifications to the plat would result in setback encroachments. The applicant has met with staff to explore other design options that would eliminate the need for a variance, however, none of the alternative solutions discussed were viable. The encroachment is minor and will be mitigated by the remaining open space created by the lake to the north. There are no units immediately to the north of this unit that will be effected by this encroachment.

The applicant has acted in good faith to obtain all necessary permits and approvals for this project. The minor modification on the plat that resulted in the need for this variance was not discovered until the building permit plans for building 9 were ready to be submitted by the developer to the County. The applicant immediately met with staff in order to address the setback encroachment. If the variance is granted, the applicant will be able to construct building 9 consistent with the other 6 unit townhouse buildings in the development.

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 general intent of the side setback **will be** met if this variance is granted; therefore, no special privilege will be granted. The applicant is requesting a minor .55 foot setback encroachment for building 9. The remaining setback of 10.7 feet in addition of the open space created by the lake to the north will all create the openness anticipated by the 15 foot setback. As previously stated, there are no units immediately to the north that will be impacted by this minor setback encroachment. The intent of the variance process is to allow applicants to seek variance relief from a code provision when they can demonstrate compliance with the general intent of the code and a significant hardship exists if the variance is denied. In this case the applicant has justified that to redesign the building to accommodate a .55 foot encroachment will result in costly delays, a building that does not comply with the architectural character of the other buildings in the POD and delays in

delivering the unit to the property owner.

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 obtained all the necessary approvals and permits to move forward with this residential development. The units in POD B was certified and platted. The applicant assumed that the building location were correct and did not know there was in issue with the setback until the time of building permit for building. The applicant explored other options to avoid the delays of having to amend the plat or obtain a variance, the variance is the minimum necessary to allow building 9 to remaining in the setback and a building permit to be applied for by the developer. Considering the fact that this is only a .55 foot variance and there is 10.7 foot setback remaining and there is over 400 foot open space to the north the general intent of the setback can be met. To require the applicant to redesign this particular building 9 to simply accommodate a .55 foot setback variance is not a reasonable request. Therefore, to deny would deprive the applicant of rights enjoyed by other applicants under similar demonstrated hardships and 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 applicant is requesting a variance of .55 feet in order to accommodate building 9, which was shifted as a result of changes to the plat to accommodate drainage easements. When the plat was prepared and modified the engineer failed to impose the footprints of the units on the lots to ensure they would comply with the required setbacks. Therefore, it was not until the time of building permit for building 9 they discovered that it could not comply with code. The remaining 10.7 foot setback and 400 separation to the nearest unit on the other side of the lake will ensure the general intent of the code is met and this is the minimum setback variance required.

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 has obtained the necessary approvals for this PUD and secured all site plan and plat approvals. Permits have been applied for and units are currently being constructed. The general intent of the required 15 foot setback between townhouse units is to ensure a minimum distance and open space between units. In this particular situation there is no building to the immediate north side of building 9. The applicant is proposing a 10.7 foot setback and then the lake will provide a 400 foot separation to the building on the other side of the lake.

This open space will ensure the general intent of the code is met, if this variance is granted.

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

NO. This POD B supports townhouse units which are currently under construction. The applicant is requesting a variance for building 9 which is encroaching into the side interior setback by .55 feet. The granting of the variance **will not be** injurious to the surrounding developments (Winston Trails PUD) or the other townhouse units in POD B. The encroachment is minor and will not be visible to the other property owners once the unit is constructed. The separation created by the lake and the open space along with the proposed 10.77 foot setback will provide the separation needed to mitigate this minor .55 foot setback encroachment.

ENGINEERING COMMENT

No Comment **(E)**.

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 19, 2002, the applicant shall obtain a building permit for Building 9, unit 323, with POD B, NYE PUD. The building permit will vest the side interior setback variance associated with BA2001-057. **(DATE:MONITORING-BLDG PERMIT)**
3. By August 19, 2001, the applicant shall administratively amend the Site Plan to reflect the side setback for building 8, unit 323 and BA conditions of approval. **(DATE:MONITORING-DRC)**
4. This variance is limited to townhouse building 9, unit 323, within the NYE PUD, POD B. The variance is for a .55 foot wide interior setback along the north property line. **(ONGOING)**

CHAIRMAN BASEHART: Next item is BOFA 2001-058, Helen LaValley.

MS. LaVALLEY: Good morning. Helen LaValley.

CHAIRMAN BASEHART: Good morning, Helen. Staff has recommended approval of your request with three conditions. Do you agree with them?

MS. LaVALLEY: Yes.

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

(No response.)

CHAIRMAN BASEHART: Are you rising because you're going to object?

UNIDENTIFIED SPEAKER: No, no.

CHAIRMAN BASEHART: Any letters, Jon?

MR. MacGILLIS: There were just two who apparently had no concerns.

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

(No response.)

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

MS. LaVALLEY: Thank you.

STAFF RECOMMENDATIONS

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

ANALYSIS OF ARTICLE 5, SECTION 5.7.3 VARIANCE STANDARDS

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

YES. This property was platted in 1961, Plat No. 2 of Palm Beach Cabana Colony. The property has a MR-5 land use designation and Residential Multifamily (RM) zoning classification. The existing single family residence was constructed in 1967 in accordance with the 1957 Zoning Code. The residence is typical of the area, and the surrounding homes were also constructed to meet the 1957 Zoning Code setback requirements. However, sometime between 1967 and 1998, the carport was converted to living space without a valid building permit. The current property owner was unaware that the carport area had been converted without the proper permits. After applying for a building permit (re-roofing, 9/27/00, B00027902), it was discovered that modifications (enclosed carport and added room to rear of structure) completed by the previous owner did not comply with current ULDC requirements. A Notice of Violation was issued by the Code Enforcement Division (C0101290023) for the enclosed carport without proper permits and inspections.

If the variance is granted, the applicant will be able to apply for a building permit and obtain inspections to legalize the converted carport to living space. There will be room on the existing driveway to accommodate two vehicles.

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

NO. The applicant is proposing to bring the single family dwelling into compliance for work that was completed by the previous owner. The current property owner was unaware that the construction was completed without the proper permits because he had purchased the property in its current configuration in 1998. Approving the proposed variance will allow the current property owner to comply with current ULDC zoning requirements for side setbacks. If the variance is approved the applicant will be able to apply for a building permit and upon inspection legalize the structure.

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 Comprehensive Plan would permit the construction of a single family residence in the Residential Multifamily (RM) zoning district. The conversion of a garage/carport to living space would be permitted with a valid building permit. The existing setbacks were the required setbacks when this residence was constructed in 1967. The structure would be typical of the surrounding area and would not interfere with the rights of neighboring parcels.

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 variance request is the minimum necessary in order to allow the property owner to correct the violation. A literal interpretation of the Code would require the property owner to demolish a portion of the existing structure and reconstruct it to comply with current Code requirements. This undue hardship would deprive the owner of an existing living area allowed under Zoning Code with proper building permits. Denial of the variance will force the owner into making modifications that reduce the gross square footage of the existing single family residence.

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 was constructed pursuant to the 1957 Zoning Code requirements. However, any modifications to the

structure would have to meet current Zoning Code requirements. The applicant is not physically altering the size of the structure. The variance will allow the applicant to maintain the current setbacks and provides for a reasonable use of the existing single family residence.

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 Code to maintain uniformity along property lines, protect adjacent property owners and maintain property values will not be compromised. The variance request will not negatively impact the adjacent homes since the size of the existing residence has not changed. The existing side setbacks are consistent for the neighborhood. The minimum required side setbacks required by the 1957 Zoning Code will not be changed. The variance will allow the owner to maintain use of the residence in its current configuration without adversely affecting the surrounding neighbors.

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

NO. The granting of the variance **will not be injurious** to the surrounding areas. The existing footprint of the single family residence will not be physically altered. The home was originally constructed at the proposed setbacks of 5.7 feet on the west side and 6.1 feet on the east side. Approval of the variance will not be visually detectable or detrimental to the surrounding neighborhood. The size and configuration of the existing residence is consistent with the surrounding neighborhood.

ENGINEERING COMMENT

No Comment ().

ZONING CONDITIONS

1. By August 19, 2001, the property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan presented to the Board, in order for PR 01-013240 to be issued. **(DATE: MONITORING-BLDG PERMIT)**
2. This variance is granted for the existing structure, no future additions will be permitted at the setbacks shown on the Site Plan submitted with BA2001-58. All future additions to this dwelling shall comply with current setback requirements. **(ONGOING)**
3. By December 19, 2002, the applicant shall obtain a building permit for PR 01-013240. **(DATE: MONITORING-BLDG)**

PERMIT)

CHAIRMAN BASEHART: And the last item was the item we added to consent, BOFA 2001-059, Ron Collins and Russell Scott.

MR. SCOTT: Russell Scott trying to substitute for Mr. Collins representing Fox Property Venture.

CHAIRMAN BASEHART: Okay. Russ, staff has recommended approval subject to four conditions. Do you agree with them?

MR. SCOTT: My client has reviewed those and is in agreement with those conditions.

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

(No response.)

CHAIRMAN BASEHART: Seeing none, Jon, any letters?

MR. MacGILLIS: There was just two letters that were very general in nature, just why do we need another Eckerd's location?

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

(No response.)

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

MR. SCOTT: 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 conditions and circumstances surrounding the DRI approved Master Plan that must be considered when applying the literal intent of the parking code to this parcel. This 1 acre commercial parcel is located within the Fox DRI North MUPD. The

project was approved as a DRI and has conditions limiting the size of the out parcels and types of uses permitted. The site is currently vacant and not site planned. The applicant is proposing a drug store on the westerly 1 acre out parcel. There are a total of 4 out parcels within the North MUPD. The applicant has proposed a site layout that complies with all code requirements with the exception of the offstreet parking. The 1 acre lot limitation imposed by conditions of approval restricts the applicant from adding more land area to accommodate the 8 additional parking spaces needed to comply with code. After meeting on several occasions with staff and modifying the site layout the requested parking variance of 8 spaces is still required. If the overall shopping center to the north of this out parcel had already been constructed the applicant could have shared this parking and not required a variance. However, the shopping center parcel is not site planned or constructed. In order for the applicant to obtain final DRC approval of this site, all required code requirements must be met. The applicant has worked on several design options, however, either the acreage limitation, landscaping or parking become an issue. Staff required the applicant to comply with the acreage condition limitation and suggested upgraded landscaping along Okeechobee Blvd. Considering the proposed parking, two drive-up windows and the future parking that will be constructed on the site to the north, this variance request is reasonable and recognizes the DRI approval and site limitations.

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

NO. The conditions related to this parking variance are not the result of the applicant. The parcel is limited to one acre by condition of approval. The applicant has explored a series of site layouts to comply with all code requirements. The overall gross square footage of the building was reduced by the applicant to reduce the amount of the parking variance as well as to allow for more landscaping on the perimeter. The applicant has attempts to comply with all code provisions. This site would not require a parking variance if the parking lot for the shopping center to the north had been constructed. However, the overall shopping center has not been site planned or constructed. The Board of Adjustment approved in 2000 a similar off street parking variance (BA200022) for an Eckerd's drug store 7534 Lake Worth Road and Ohio Road. The applicant presenting this case justified the drug store does not utilize the number of spaces required by code. Considering the new free standing building has two drive-up windows, many customers can now call ahead for prescription drugs and simply use the drive-thru when picking them up. However, the ULDC has currently no provision to reduce parking for uses that have stacking for drive-up windows that reduce the number of parking spaces to meet user demand.

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

NO. The granting of this variance **will not** grant any special privilege on the applicant. The ULDC establishes minimum parking spaces based on the specific use and square footage. Also, the ULDC recognizes that in a MUPD that parking between the various business will be shared. In this particular situation the applicant is proposing a drug store that requires 1 space per 200 square feet of gross square footage. The applicant is proposing a 12,640 sq/ft building with...parking spaces. The parking will be located to the east and south of the building, while two drive-up windows will be located along the north side of the building. Much of the sales associated with this use are for prescription drugs. The proposed freestanding building will have two drive-up windows for customers to pick up prescription drugs that were ordered. Many of these customers no longer have to get out of their cars, as was traditionally done, to pick up their orders. The ULDC does not address this industry change in terms of allowing for a percentage reduction in off street parking for uses where a certain percentage of the business is done through a drive up window (bank, fast food, drug store).

The applicant **is requesting the minimum parking variance** that will allow these use to move forward to DRC certification and permitting. Once the overall shopping center to the north is constructed this variance will not be necessary, since the shared parking will come into play between the different users.

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 literal intent of the ULDC parking provisions is to ensure each use has adequate on-site parking. In this particular situation this one acre out parcel will eventually function with the overall site plan for the shopping center to the north. The out parcels and overall shopping center will eventually share cross access and parking. The applicant will be required to obtain DRC approval for the final site plan for this use, if the variance is approved. If the variance is denied the applicant would either have to reduce the building square footage further or look for a large site to accommodate the drug store and parking.

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 explored several site design options necessary to meet the DRI and BCC conditions as well as ULDC code requirements. The condition that limits the overall lot size to one acres prevents the applicant from adding additional land area to this parcel to accommodate the extra 8 parking spaces. The applicant has consulted with Eckerds to determine what building and site plan modifications can be made that will still ensure their corporate requirements and standards are met. The building has already been reduced to accommodate more parking. Also, the applicant has increased the landscape buffer along Okeechobee Blvd., and relocated parking along the south side of the

building to comply with staff's request. This variance will only be for a temporary time. Once the shopping center to the north is building the extra parking will be utilized from the overall parking lot. With the proposed parking and two drive-up windows there will be adequate parking for this use to function adequately and comply with the general intent of the parking 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 project has received all the necessary approvals for the project to move forward. The project complies with the CON land use designation and MUPD classification. The intent of the ULDC parking provisions is to ensure the site has adequate off-street parking for the proposed use. This proposed 53 spaces will meet the general intent of the code. As previously stated the stacking lanes for the drive-thru at the drug store is not taken into account when calculating the required parking. Even though many users of the drug store who are picking up prescriptions will not parking but simple go to the drive thru window and leave the site. Also, the storage areas in the drug store do not generate parking, however, the code requires parking to be calculated on the gross square footage and not leasable. Therefore, the applicant's request for consideration of these two factors is reasonable and warrants special consideration when applying the literal intent of the parking provisions.

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 surrounding area. This commercial center when fully constructed will have the required parking for the MUPD. Since this outparcel is being constructed prior to the shopping center this parcel must meet the parking on this site. The shopping center to the north will be eventually constructed and the overall parking will be shared between all the uses on the entire site. Therefore, this variance is a temporary request to allow this use to move forward to DRC and permitting. The parking provided on-site, including the stacking lanes for the drive-up window are adequate to meet the general intent of the code.

ENGINEERING COMMENT

Please note that the subject "Lot" boundaries have not yet been established by approval and recordation of a plat for subdivision of existing Parcel 5 of the Fox Properties Plat (P.B.83, Pg. 65) **(HOU)**.

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 September 19, 2001, the applicant shall apply to DRC to receive final site plan certification of Tract 14 within the Fox DRI North MUPD. The Site Plan shall be consistent with the general layout as shown on the BA Site Plan 21 in BA2001059 BA File. All BA conditions shall be shown on the approved DRC Site Plan. **(DATE:MONITORING-ZONING-DRC)**
3. By May 19, 2002, the applicant shall obtain a building permit for the Eckerds drug store in order to vest the off street parking variance for BA20001-59. **(DATE:MONITORING-BLDG PERMIT)**
4. In the event the proposed 53 parking spaces approved for the Eckerds drug store is not sufficient to meet the user demands the applicant shall construct the 8 parking on the site to the north, as shown on Site Plan, Exhibit 21, in BA file, within 90 days of being notified by Zoning of the parking issues. **(ONGOING)**

CHAIRMAN BASEHART: So that will complete the consent agenda. I guess we're ready for a motion.

VICE CHAIRMAN KONYK: I'll make a motion to approve the consent agenda with the staff report becoming part of the record. The items that are on consent are BOFA 2001-053; BOFA 2001-054; BOFA 2001-056; BOFA 2001-057; BOFA 2001-058 and BOFA 2001-059.

CHAIRMAN BASEHART: Okay. We have a motion by Ms. Konyk. Second anyone?

MS. CARDONE: Second.

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

BOARD: Aye.

CHAIRMAN BASEHART: All opposed?

(No response.)

CHAIRMAN BASEHART: Seeing none, the consent agenda is adopted unanimously or approved unanimously. All right.

Anybody that had items on consent is free to go. You're finished, you're approved.

CHAIRMAN BASEHART: That will get us to the regular agenda. There will be two items on the regular agenda.

The first item is BOFA 2001-052, Walter and Suzanne Karpinia. Is the applicant here or represented? Okay.

Jon, will you read this into the record?

MR. MacGILLIS: This is the first item on your regular agenda, BOFA 2001-052, found on pages 56 to 101 of your backup material.

Just for your information, this was postponed 30 days from your last hearing. The applicant's representative, Marty Perry, had a conflict and requested that this be postponed.

The staff report has not changed from what was in your package from last month.

This is the petition of Walter and Suzanne Karpinia to allow a partially constructed accessory structure to remain in the required front setback located at 11406 North 172nd Place, Jupiter, at the western end of 172nd Place North on the south side of 172nd Place in the AR Zoning District.

Staff is recommending denial of this request.

CHAIRMAN BASEHART: Okay. Mr. Perry?

Since Mr. Perry is an attorney, do we still have to swear him in?

VICE CHAIRMAN KONYK: Especially because. I think we've established that at past hearings though.

MR. PERRY: I mean the prevalent thought is they lie anyway, what difference does it make?

CHAIRMAN BASEHART: Anybody else in the audience going to speak on this --

MR. PERRY: Maybe Mrs. Karpinia, I'm not sure yet.

VICE CHAIRMAN KONYK: Well, then let's swear her in, we'll be done.

MR. SHERPITIS: If you need more information, I'm the guy in the Building Division that knows a little bit about it, also.

CHAIRMAN BASEHART: Okay.

MR. SHERPITIS: I will answer questions.

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

CHAIRMAN BASEHART: Okay.

MR. PERRY: Good morning. My name is Marty Perry and I'm here representing Walter & Suzanne Karpinia. I'd like to start really by making sure that we all have a clear picture of the area that we're talking about here, and I'll take the liberty of walking forward here, and you can all have an opportunity to look at the survey that reflects the location of the accessory structure which is the subject of the discussion, which is this building here in front.

These distances that are noted on here are to the property line which lies in the center of an easement of ingress and egress as opposed to a platted public street, their property line being in the center of the 60 foot ingress/egress easement.

And you'll note on this that the closest corner to the property line is reflected as being 113.5 feet from the property line for the center line of the easement for ingress and egress. And you can pass this back and forth.

CHAIRMAN BASEHART: Okay. This is in our staff report, I think.

MR. PERRY: Is it? Okay. I'm not sure what page it is.

CHAIRMAN BASEHART: For the record, it's on page 67 of the staff report.

MR. PERRY: Secondly, I'd like to bring to your attention -- and I think it's reflected in your staff report -- at page 172 should be a site information sheet that shows some photographs and then shows a location sketch as the second item down on the right-hand side. Have I got the correct page on that, 172?

Then you must have a revised staff report. I don't have the page that I'm referring to.

CHAIRMAN BASEHART: That's 67, yeah.

MR. PERRY: I'd like to direct your attention to that zoning map that's reflected there on that page so that I can point out to you that first of all the RESE area which is the large area with a number of several numbers which are zoning application numbers underneath it, that is the site of the elementary school that is located in Jupiter Farms, and is also the lower portion of it closer to the applicant's site is the proposed future middle school for that area out there. So that entire area is essentially a school site.

Immediately to the east of it in the area where you have the large AR is a twin acre site that currently is a nursery that's referred to in the staff report. That property owner has submitted a letter, and if it's not in the file I'll provide it to you today, indicating that he has no objection here.

Of further interest is that if you'll note the road that starts -- you'll note the road on here that's reflected is here. This comes up to Indiantown Road being here. Let me point this out. Indiantown Road is up here. This is the access to the property. If you come from Indiantown down this way across and this is the Karpinia property.

I don't mean to ignore you all, but if you already know what I'm talking about.

This is the road I'm referring to, this one here (indicating). It comes up to Indiantown Road and --

COURT REPORTER: Use one of the mics, Marty. Now I can't hear you.

MR. PERRY: Now you can't? Okay.

At any rate, does everybody have the road that I'm talking about? Okay.

If you look at that road where it comes down from Indiantown and then traverses over to the front of the Karpinias' property, the point that I want to make is that their property as outlined on there is ten acres, and then there's an adjacent ten acres adjacent to the school site that they also own. So they own a total of 20 acres at this point here.

And in fact, their 20 acres is at the end of the road. The road goes no further than their property. In fact, it dead ends basically before their next lot, which I think is an important point.

And I guess without getting into the details of how this all came about, my point here is that I think that it's important to keep in mind the fact that "A", this is a dead end street; there's no one else affected by this other than the nursery owner to the north with the large 20 acre parcel who has a letter that I'll submit of non-objection to the issue that's before you, the Karpinias themselves and the school property.

And in fact, if you look at the reality of this, they are in fact setback more than 100 feet from their property line. If you deduct the 30 feet for the half of the ingress/egress easement that is located in front of them, then you're down to the 83.5 feet which causes us to be here on this issue of a setback of 16.5 feet to meet this hundred foot requirement.

I'm going to suggest to you for discussion, although you might not agree or counsel might not agree from a strictly technical legal standpoint that that solves the issue. But I think it's something that's worthy of consideration.

If you then look at the position of the Karpinias, which is that "A", they fenced their entire property off and they're operating a goat farm. They currently have 10 goats. Goats are hard to come by. They're increasing the number of goats that they have. Their intent is to raise goats and to sell goats over a period of time.

In addition to that, they have a number of fruit trees. When they settled on the site, Walter or Mr. Karpinia, whether he was correct in the way that he went about this, labored under the misunderstanding that because he was operating an agricultural operation on his property that he didn't need a permit, and in fact, there is some state legislation relative to farming that does in fact to some extent limit or exempt agricultural operations from permitting.

Now I'm not going to stand here and tell you that Walter if he had done proper disclosure might have known better, might have gotten more information. There is in fact, and Mrs. Karpinia can testify, that there was some confusion after he had already started and was in the ground, where he spoke to somebody at Zoning who indicated that there was the possibility of some type of an exemption. That employee later corrected himself and said that he had checked and that really wasn't true.

What we're attempting to resolve here is I think what was an honest mistake on the part of Mr. Karpinia. He's gone forward. He does in fact have a legitimate agricultural operation. Mrs. Karpinia can testify to that if that's necessary.

And in fact the justification as he has set forth in his application for the placing of the structure where he placed it was that he was trying to find a location that did not interfere with the proposed agricultural use. He wanted to keep it in the front so he could retain all of the rear of the property for the agricultural purposes and that he was trying to find the location that led to the necessity for the least amount of fill having to be brought in, the least amount of trees having to be removed, which is the whole point of the setback to begin with, is to avoid the necessity of removing trees.

You know, it just seems to me that although you've got a violation here that it's a very technical strict violation. I'm not excusing anything, but it seems to me that there is some justification for consideration of the fact that in this particular area, he is in fact setback more than 100 feet from his property line. He's setback less than 100 feet if you consider the easement, but no one else traverses the easement other than him. He owns all the property at the end of the easement.

It seems to me that that in itself is justification that this is different than other circumstances that exist out in that area. And I would urge your favorable consideration.

The alternative is really a substantial economic loss, as you can see from what's been constructed there, and I think that some consideration needs to be given to, you know, how grievous is this error that's occurred as opposed to granting the relief that's requested.

I'll be happy to answer any questions.

CHAIRMAN BASEHART: I have an item or an issue here. Basically what the situation here is that if it were not for the base building line requirement, then there wouldn't be a setback violation, is that right?

MR. PERRY: That's correct.

CHAIRMAN BASEHART: Because it's a road easement, it's not a right-of-way, and so the -- but the setback has to be measured from the base building line.

MR. PERRY: That's correct.

CHAIRMAN BASEHART: And that's why he can't meet the 100 foot setback.

MR. PERRY: That's correct and I had a momentary feeling of exuberance that was corrected by Mr. MacGillis this morning because if you look at the setback requirements there's a reference to a street setback of 80 feet, which if that were the case here and you allowed for the 30 feet, he still meets the 80 foot setback requirement.

But Mr. MacGillis has pointed out to me that the 80 foot setback is really a side yard setback if you have a corner lot. You still have 100 feet from the front street, but 80 feet from the side street.

You know, setbacks are important. I don't mean to minimize the importance of setbacks, but I think that there are circumstances in which there is a basis for, you know, having some kind of a reasonable approach, particularly when you're talking about such a large setback in an area where no one is really impacted, other than the property owner himself.

CHAIRMAN BASEHART: I was going to say if the road easement were abandoned, except for the required front -- what is the frontage of this property? Oh, yeah, you got the property across the street.

If you ended the road easement shy -- let's say in the middle of the property, that would solve the problem, too. But you can't abandon it because there's a property across the street.

MR. PERRY: If he were to consent and join in, I mean, the potential is there for that occurring. We've not explored that nor is he objecting.

CHAIRMAN BASEHART: Right.

MR. JACOBS: Have you attempted to quantify the cost of compliance?

MR. PERRY: An honest answer, no. No, I haven't -- they may have and I haven't asked, no. But I would expect it would be substantial. I mean, as you can see from the photographs, I mean, a substantial portion of the building has been built.

And in fact, the purpose of the building is a feed and grain storage facility, as well as for other purposes, storage of tools and things.

MR. JACOBS: And this would result in a severe economic hardship for the --

MR. PERRY: I don't think there's any question about that.

I mean, if I were in a position to solve this thing, you know, if somebody said Marty, you're Solomon for a day, I mean, I think I might consider fining them, you know, but I don't know whether that's an option that's within your jurisdiction. But I think that on the one hand, you know, there ought to be some consideration of somebody not having taken the care that they needed to take. On the other hand, I think that the insistence on the rule really is a harsh measure.

And again, I say it's really kind of almost a no harm/no foul kind of thing. I mean, if this were something where the public truly were being harmed by this, you know, then I would say, well, there's a rationale.

And obviously you don't want people flaunting the requirements of the law, but at the same time I think there was to some degree an honest error here where there was a mistaken belief that there was not a need because of the agricultural operation.

And I know in the past couple of years there's been a great deal of confusion over this that was created by Mr. Vavares up in Palm Beach Gardens who's been fighting with the City of Palm Beach Gardens over this farming issue.

CHAIRMAN BASEHART: Okay. Why don't we go to the staff for a staff report?

MR. MacGILLIS: If you turn to page 64 of your back-up material, it's the staff's findings. The applicants -- review of this application has found out that it has

not met the seven criteria necessary in order to grant this front setback variance. There's nothing really unique about this lot. It's a 10 acre parcel and the applicant owns the additional 10 acre parcel to the west. It meets all the minimum 10 acre requirement depth and width.

It supports a single family home that the applicant constructed and complied with the required setbacks. It's staff's opinion after reviewing the facts of the case that this is a self-created variance. The applicant was well aware of the permitting requirements.

There was permits pulled by the applicant prior to applying for this permit. When the applicant did apply for this permit, he applied for it as an accessory structure as a garage, and when it was placed in the setback the applicant came back and I don't know how much detail the Board wants to get into, but we have Mr. Joe Sherpitis here who's familiar with what transpired as far as between the applicant and County staff as far as what information he was given up front and how the structure got to the point it is as it sits there. It's fairly completed with respect to the outside, not as much to the inside of the structure.

If you need more information on that as far as the self-created hardship, I refer that to Mr. Sherpitis.

MR. PUZZITIELLO: Did he have a legitimate permit before he started construction?

MR. MacGILLIS: He had a permit. If you check on your backup material, staff has provided like a print screen of the mainframe. When he applied for the building permit, he applied -- on page 58 of your backup material is a print screen from our mainframe computer screen which shows that first box that the permit was for a garage accessory to a residential use. It was applied for in December 13, '99, and was issued in March.

If you turn -- at the bottom of that screen you can see that the building tech was concerned when the survey came in that the actual structure that was already under construction was concerned that it wasn't meeting setback. So she put a note on there and she called, according to this note, she contacted Mrs. Karpinia, who indicated that the structure that had already begun was in the setbacks and they needed a new survey.

And it was indicated to the technician at that time, don't worry about it. At the time we do the final tie-in survey it will meet the setback. So the building division issued the permit, the building had already been under construction. So they went on the applicant's word that actually when the final survey was done it would comply with setbacks.

MR. PUZZITIELLO: On the permit did they mark 100 foot minimum?

MR. MacGILLIS: Yes. The tech made a note that she made the call and she also marked it on the survey that it would need 100 feet at the time of the tie-in survey. And Mr. Sherpitis can talk to this.

His inspector went out to the site. Of course, the building didn't meet setbacks. So I think this is where Mr. Karpinia then indicated to the building staff that since this is an agricultural building it's exempt from the building permitting requirements because under the agricultural State statute requirement, the Building Division indicated to him if he wanted to withdraw his building permit then the building division wouldn't come out and do inspections on this.

But they indicated to him that he had a setback problem which is not exempt from this agricultural State statute.

The permit was left dormant for several months in the system. Code enforcement was sent out to check to see what was going on. He was taken to the code enforcement division and found in violation of the required setbacks and was given several months to come in here to correct it, which would be to come and get

a variance.

Nothing was done. He went in front of the master. The master actually fined him a \$50 fine until this is corrected. There is a fine accruing on this property now until this violation is corrected. Then they applied for the variance about two months ago to correct this thing.

So if this variance is granted here today, the applicants -- when they came in to apply for the variance, staff asked them to apply for a zoning confirmation letter to confirm in writing what this building was to be used for because the applicant had a deadline for the BOFA.

We didn't know exactly what he was applying for because he indicated maybe an accessory apartment for his mother-in-law; it may be used for maybe part of his office or it may be used for animals. So we said there's different setbacks whether it's a pole barn or an accessory apartment, so we requested him to have it in writing so there would be no confusion later on when he went to revise his building permit that's on record now, what exactly he was applying for.

So at this point it's considered an accessory garage to a residential unit. And we put a condition, if the Board chooses to approve this we do have some conditions limiting what it can be used for.

MR. PUZZITIELLO: How far along is the construction?

MR. MacGILLIS: The pictures --

MR. PERRY: I think you can see from these photographs. It's pretty far along. It's not completed on the inside and there's some additional work on the outside, but it's pretty far along.

MR. PUZZITIELLO: So the survey was caught at the slab?

MR. MacGILLIS: Yes. Maybe, I don't know, but at this point if you want me to finish this report and then maybe have the --

VICE CHAIRMAN KONYK: Yeah.

MR. PUZZITIELLO: Finish your report.

CHAIRMAN BASEHART: Yeah, I think we'd like to hear from Mr. Sherpitis.

MR. MacGILLIS: Okay. Let me just -- granting this variance under number four on page 64, the criteria will not meet either the general or literal intent of the code. This is an AR large lot. Staff did a site inspection on this area.

There's really only two lots that are developed on this stretch. I think there are about ten lots to be built out here. Most of the lots on the north side of this street are not even built out yet. The lot immediately to the east does support an active nursery that does have structures closer to the street, but they were permitted that way because they're pole barns that are all completely open to allow air and light to pass through them, but they're legally permitted in the setbacks.

Granting this variance would grant a special privilege on the applicant. As previously indicated this is a self-created situation, that the applicant is an engineer by profession and had applied for prior permits for this property as an owner/builder, therefore should be quite aware of the permitting requirements before you go ahead and start constructing a building.

Therefore, staff is recommending denial of this request.

CHAIRMAN BASEHART: Okay. Mr. Sherpitis, I think some of the board members have a few questions.

MR. SHERPITIS: Sure. Hi, there.

CHAIRMAN BASEHART: Go ahead, Ray.

VICE CHAIRMAN KONYK: Pull your mic down, Ray.

MR. PUZZITIELLO: I guess I'm just trying to get sort of a timeline on what happened. This was found at the slab inspection?

MR. SHERPITIS: No. Actually this was found after the foundation had

been poured and we had gone out and red-tagged this thing.

At the time that we first discovered this, I believe the wall was up about three or four courses of block.

MR. PUZZITIELLO: So they did a slab survey and submitted the survey?

MR. SHERPITIS: As far as I know, no inspections were performed on this. My office performed no inspections. The job was commenced without bothering to call for inspections.

I might also add that Mr. Karpinia is a professional engineer. He's also maintained special inspector status. He's also licensed with the Department of Business and Professional Regulations as a building inspector.

MR. PUZZITIELLO: But there's also some problem about inspecting your own work, too.

MR. SHERPITIS: Well, at times in the past Mr. Karpinia has had discussions with myself and different staff members, and we have explained to him that special inspectors are not allowed to go ahead and start construction without the prior consent of the Building Division to allow the job to function under a special inspector.

I know this for a fact because those words left my lips and went to Walter's ears on several occasions.

MR. PUZZITIELLO: So this permit, was it actually issued before construction or was it -- were they building while it was in for permit?

MR. SHERPITIS: I do not know when the foundation was actually poured, so I can't speak to that.

We did discover the job as I said, I believe it was three or four courses of wall were already up.

MR. PUZZITIELLO: And obviously he just kept continuing the work without a permit?

MR. SHERPITIS: Yeah. I can't speak of exactly where the job was when it was red-tagged, okay, but I do know that pretty much when it started getting hot and heavy the job did stop and it didn't continue on.

CHAIRMAN BASEHART: When you red-tagged it, when you stopped work, was it to this level or --

MR. SHERPITIS: I believe he had already gotten the tie beam poured by the time it was actually red-tagged because I know there was some discussion about the use of an ag building. As a matter of fact, Mr. Karpinia did come in and speak to me about that.

And I explained to him that's fine, I don't have a problem with it. I did mention to him that the ag exemption did not exempt him from the zoning regulations. It's just that we wouldn't bother him any more as far as building goes.

I do also know that Walter tried to submit to us a certification form on the foundation from another engineer which we basically refused to take, wanting to get the whole thing settled out first since it was in the setbacks. We don't necessarily want to start okaying everything until we know whether or not zoning is going to allow the building to be there.

So under our normal operating procedures, we said no, get the other thing resolved first and then we'll start dealing with the construction that nobody inspected.

CHAIRMAN BASEHART: Okay. Chelle, you have some questions?

VICE CHAIRMAN KONYK: I just wondered -- no, I'm not going to ask any questions.

CHAIRMAN BASEHART: Anybody?

MR. PUZZITIELLO: I guess I have a question for Mr. MacGillis.

How does this vary from the application last month with Mr. and Mrs. Cox

where we made them tear out the carport after it was built, and that was done without a permit blatantly and it was the end of the road, I believe it was in the setback.

Can you sort of give us -- is there any --

VICE CHAIRMAN KONYK: Comparison between these two?

MR. PUZZITIELLO: -- comparison between the two?

MR. MacGILLIS: Do you want me to -- that one, staff was opposed to that one, as well. On that case there actually was a carport that was open.

The applicant had no knowledge of -- I mean, they did pull a couple of sub-permits, but they weren't in the building industry or a professional which I think staff had taken --

MR. PUZZITIELLO: He was a carpenter, I believe?

MR. MacGILLIS: Right. I think her husband was, but in this case, I mean, the applicant with his credentials and all the permits he's pulled on the site, he should have been well aware of requiring a permit before starting construction.

I mean, I think this is in a rural area. The other one was in a subdivision. I think the same thing was evident that by granting the variance you were creating inconsistencies in the setbacks in the neighborhood.

In this case, as I indicated, there are other lots that are not built yet, and as the applicant has indicated, we did get a letter from the one property owner across the street from this who's Mr. Ronald Steedly (ph). He's on lot 504.

He's indicated, "I own the parcel across from the Karpinia property and do not object to an accessory building encroaching into the front setback."

MR. PUZZITIELLO: That's the AR district, the one that says AR, right?

MR. MacGILLIS: Yeah, right across to the north of this property.

MR. PERRY: That's the 20 acre lot that had the AR designation on it that I mentioned to you before.

MR. GERBER: Mr. Perry, why isn't Mr. Karpinia here today?

MR. PERRY: Mr. Karpinia wasn't able to be here today and that's why Mrs. Karpinia is here. He had a business appointment that kept him away.

MR. MISROCH: Jon, would you repeat what you said a while ago about if they gave it in writing about the use of this building or a limited use that would have some bearing on your consideration?

MR. MacGILLIS: With respect to if you approved this?

MR. MISROCH: Mm-hmm.

MR. MacGILLIS: The only condition what I was saying on the record was that how you classified its use could change the setbacks because certain accessory structures have different setbacks, like a pole barn or a shed, which this is not or a habitable structure such as a guest cottage or accessory apartment, which still would have to meet a 100 foot setback, but since Mr. Karpinia indicated on two meetings to me he was very unclear what the use was, and I asked him several times what is this used for.

I said I've seen pictures of it and I've visited the site, but tell me exactly, is it used for feed, what is upstairs? And he said, well, I may put my office in there or if I can use it for an accessory apartment, I'll do that.

I said, well, accessory apartments have a limitation on the square footage which you exceed. I said you need a variance for that, too. I said I don't even know how to take your variance in.

So I said you need to clarify that in a letter to the Zoning Director asking what this is used for because he kept saying it was an agricultural use, and I said if that's what it's used for, I need it on the record so there's no confusion when you apply for a building permit that you didn't get another variance that you should have gotten.

So that was my only indication that if this thing is approved, I don't want

Mr. Karpinia under the assumption he can go out there and use this for an accessory apartment or guest cottage 'cause he can't, because it doesn't meet other code requirements.

MR. MISROCH: Thank you.

MR. PERRY: To the extent that it would be of assistance, I mean, I'm trying to find some reasonable solution to this thing that makes some meaningful sense.

I mean, the Karpinias, and I've just spoken with Mrs. Karpinia, are prepared to agree that they will limit the use of the facility to strictly agricultural. And if that provides a means for a solution to the problem, I would like to offer that as an agreeable condition to the granting of the variance.

CHAIRMAN BASEHART: Jon, what does that do?

MR. MacGILLIS: I mean, that doesn't change staff's opinion. We were just -- I mean, I shouldn't have even probably brought that up. It was just -- I was just saying that because of the use that they were going back and forth, that if the Board chooses to approve this variance, staff would recommend a condition, clarifying what the use of this structure is going to be so there's confusion.

But I mean, as far as the seven criteria, us limiting the use of this is not going to change our evaluation of him complying with the seven criteria.

MR. PERRY: Well, without arguing that point, Jon, what I'm suggesting is a possible solution, that we would agree to a condition that strictly limits its use to agricultural.

MR. MacGILLIS: But I mean, it's coming in as an accessory garage now. That's the way he presented it to us. In the final letter he got back from the Zoning Director, it was to be used as a garage for vehicles because you could see where in its proximity to the house and the garage doors and the upstairs and stuff, it's in my opinion a garage and that's what he was classified after he requested the zoning confirmation letter from the Zoning Director, it's to be used as a single family accessory garage.

MR. PERRY: Let me ask Mrs. Karpinia just to tell you what they're using it for so that we've got that part clear.

MRS. KARPINIA: I feel like a criminal up here. It's like, after reading the staff report, I mean, I know everyone has their own perception when you read something and you believe whatever.

From day one my husband has always wanted to have an agricultural building, accessory building, if that's what you want to call it. I don't know if it's the right opinion or not, but he always believed he never had to have a permit for an agricultural support building.

He started the building, to my memory, started the building and the way the building was built is with a styrofoam block system where you have to have all the styrofoam -- I don't know if you're familiar with that, but you have to have all the styrofoam in place before it's all poured with concrete. So there weren't three courses, you know, built up before the inspector saw it, but that's basically -- it was all -- all the walls are solid concrete. That's when it was red-tagged.

At that point he was not going to get a building permit because it was -- this is a husband and wife talking -- he was not going to get a building permit because he wanted -- he said this is agricultural, we do not need a building permit. I said just get a building permit so we don't have any problems. And that's why he applied for a building permit.

And the only classification that I was told that they had was garage accessory. He never intended it to be a garage. We've got three cars that have never been in a garage ever since we've been married 13 years. We've had tractors in the past. We had a backhoe. We don't have anything right now because we sold them.

We bought ten acres and then we bought the additional ten acres for our family -- we have three young children -- to use for agricultural. You know, we don't have a huge nursery business or anything like that right now because we're a young family and we bought this for retirement.

Right now we have goats. It's the easiest thing to have while you're working full time with three young children to be able to get the agricultural exemption. The goats are easy. We breed them. You know, it took four months for us to get a male goat because the other ones were neutered. It sounds stupid, but they're hard to come by getting certain kinds of goats. And this is really not my -- this is his deal as far as the agricultural. I'd be happy living in town on an acre and a quarter with a pool and everything else, but this is something we're doing for the future.

And that's why, you know, you read this report. It sounds like he's not coming in with the right answers, they're vague, they're this or that. Well, coming up with the right answers right now may change in two years because we're just trying to get -- do you have a question?

VICE CHAIRMAN ROBERTS: Yeah, I do. Go ahead.

MR. MISROCH: What are you using the structure for?

MRS. KARPINIA: Right now we're using the structure for grain feed and some building supply storage because we're trying to finish the building because it still won't get rained on. I mean, but right now it's used for the grain and the feed and things like that for the goats. And goats don't need very much, but we're talking long term down the road.

VICE CHAIRMAN KONYK: Okay. I don't think the issue here is whether or not you had a permit. I think the issue here is that you're on a setback and the fact is that even if you didn't need a permit, you still can't be in the setback.

Am I understanding that correctly? It doesn't matter if you need a permit or not; you still have to meet the 100 foot setback. So I don't think that we're concerned that there was a permit or not. We're concerned with the fact that you're not meeting the setback, and it's 100 feet. And with your husband's experience and knowledge, it should have been quite obvious to him that there was a 100 foot setback. He certainly should have been able to determine that before the building was started. Had he not been in the setback, you wouldn't be here.

MRS. KARPINIA: Right. I understand that.

VICE CHAIRMAN KONYK: That's the only issue that we have is the setback.

And I think Ray was referring to the case that we had last month because it's somewhat similar. We had a person who built a carport in the setback. It was a 100 foot setback and I think the Code is very clear. It's a 100 foot setback and if you'd met the setback, we wouldn't even be talking about this today.

MRS. KARPINIA: That's exactly why we're here.

VICE CHAIRMAN KONYK: So why didn't you meet the setback?

MRS. KARPINIA: Because we made a mistake. I mean, that's -- really there's no other answer for it. Because in his -- he classified setbacks with permitting. You don't need a permit for agricultural --

VICE CHAIRMAN KONYK: It has nothing to do with the permit. The setback is still there.

MRS. KARPINIA: I understand that.

VICE CHAIRMAN KONYK: Okay.

MRS. KARPINIA: I mean, I guess when you're in the field of knowing all the zoning laws and everything like that, and I guess maybe you give him too much credit for knowing all the laws and all the things that --

VICE CHAIRMAN KONYK: Well, he was savvy enough to know that he

didn't need a permit.

MRS. KARPINIA: He never thought -- he would never have gone to get a permit unless I urged him to because he, in his mind it was an agricultural building and --

VICE CHAIRMAN KONYK: He was aware that he could build an agricultural -- I'm not aware of that. I wasn't aware that you could build an agricultural building on a piece of property without a permit. I never knew that till today. So obviously he was familiar with the codes, et cetera. He knew how to find the information.

Everybody knows there's a setback on property. Although I'm not familiar with every intricacy of the Code, I'm well aware that if I'm going to build something there's a certain setback on the piece of property that I own and that's the first thing that I have to meet. I enclosed a Florida room and had to worry about meeting setbacks. You know, it's just a very simple thing to be aware of.

MRS. KARPINIA: I understand, I understand. We made a mistake.

VICE CHAIRMAN KONYK: And we're complicating this by confusing it with the fact that you needed a permit or you didn't need a permit. This has nothing to do with the permitting issue. It's a setback issue.

MRS. KARPINIA: I was trying to --

VICE CHAIRMAN KONYK: No, I'm not criticizing you at all. I'm just saying that's where our problem is.

Our position here on this Board is to either approve it or deny a variance based on the fact if it meets the seven criteria. If it doesn't meet the seven criteria, it's pretty clear, we have to deny the variance.

If it does meet the seven criteria, then we can approve the variance. So the permitting issue has nothing really to do with the seven criteria. It's the setback issue.

CHAIRMAN BASEHART: Okay. Any other board member have questions?

MR. PUZZITIELLO: One thing for Jon. Bob suggested earlier that if they removed the ingress/egress easement for a portion of their property, whatever it be, between them and the one across the street consented to it that this issue would go away, correct?

MR. MacGILLIS: Technically it probably would abandon that part of the end of the street.

VICE CHAIRMAN KONYK: It's a street?

MR. MacGILLIS: Past the building --

MR. PUZZITIELLO: It's an easement.

CHAIRMAN BASEHART: It's an easement road.

VICE CHAIRMAN KONYK: Okay. But do people travel on it?

MR. PUZZITIELLO: Only this property owner and the one across the street.

CHAIRMAN BASEHART: It ends at the end of this property, so it can't go any further because it butts into other property.

MR. PUZZITIELLO: If they cut it short by half the property depth, width, it should --

MR. MacGILLIS: Well, they's something they'd have to discuss with Engineering. I mean, if they abandon it to the point that it was beyond the building and the street just came to half, then we'd have to look at whether or not they would be able to meet legal frontage on that lot then, because you start taking the right-of-way out of the -- the only way you can get it is to abandon part of it.

MR. PUZZITIELLO: Right.

MR. MacGILLIS: And if you abandon it, then it becomes a side interior

property line, and the side interior on AR is 50 feet.

CHAIRMAN BASEHART: And they meet that.

MR. MacGILLIS: If you do that, you need 300 feet of frontage on an AR lot. So if you take away the legal right-of-way by abandoning part of it, you may not have enough left. You need a variance then for the frontage.

CHAIRMAN BASEHART: But they've got basically two lots here.

MR. MacGILLIS: You have to tie it together with a Unity of Title.

CHAIRMAN BASEHART: You'd have to --

MR. MacGILLIS: I think the other lot, it sort of stubs out on to it. They're not --

MR. PUZZITIELLO: What is the frontage of that lot, Marty?

MR. PERRY: 328 feet.

MR. PUZZITIELLO: Twenty-eight feet is not going to do it.

CHAIRMAN BASEHART: Well, no, but he owns the next lot down.

MR. PERRY: We have a total of about 660.

VICE CHAIRMAN KONYK: It's not one title, though.

MR. PUZZITIELLO: It's the frontage.

CHAIRMAN BASEHART: Pardon?

MR. PERRY: We have a total of about 660 feet.

MR. PUZZITIELLO: Yeah, but if he cuts it off you're still not going to have your 300 foot frontage. It's the 300 foot frontage that catches them because you're only going to be able to cut 27 feet off that and you're still -- that's not where that -- well, it might be where the point of measurement goes, but I don't think so. No.

CHAIRMAN BASEHART: That may or may not be a possibility.

MR. PERRY: The reality is if you look at what we're really talking about, the actual road itself, it's probably about 18 feet of pavement down the dirt road that exists that's the frontage access road. It's 18 feet of pavement, so the reality is we're still not talking about anything.

The whole problem here is the issue of whether or not the easement gets included in the building setback. That's the only problem here. The reality is in truth that they are setback from their property line more than 100 feet. It's just that 30 foot of easement that creates the problem. And if you break that down to actual practical practicality, we've got 18 feet which is nine feet on either side of the property line, so you're really not talking about anything.

It's technical -- it's a question of technical violation, but that's where I get back to you. I'm not going to mince words with you and try to manufacture something. The reality is that you've got a technical violation, but what is the real practical result of it?

You know, in real terms they're 100 feet back from it. They don't give or take a couple of feet. We're really not talking about much here, and the end result, I mean, I'm not going to make any excuses for Mr. Karpinia. We could stand here all day long and talk about should he or shouldn't he.

Ms. Konyk is absolutely correct. The issue is the setback issue. I mean, that's what I've been trying to get you to focus on, is strictly the setback.

I mean, is there really a significant problem here in terms of this when you look at what we're actually physically talking about, and when you consider all the factors and notwithstanding your issue last week that it was in a suburban area, when you consider all the factors here, that this is the end of the road, that they own this land, this easement, and they're not getting credit for it, there's only two property owners that use this road.

No one's objecting to it and the reality is is that, you know, you can break it down to the point where I don't think you're really even talking about a setback violation when you look at the real numbers that are out there.

You know, I mean, I'm not going to beat it to death for you. I think that -- I don't excuse or condone it. I think the best solution here is something that is restrictive, where they can only use it for agricultural use. I think if there were a way to impose a fine, you know, I mean, I would say impose the fine.

But I think the alternative of taking the structure that's already up, and I think that the reality is, and I'm not going to argue with the Building official, I mean, he went out there I think to probably -- based on what she's telling me and knowing that type of construction, it wasn't three courses, I mean, the walls were up. Whether the tie beam was up, I don't know.

But I mean now you're talking about moving the whole damn building. Maybe it can be jacked up and moved, I don't know. But we're talking probably -- to jack it up and move it, you're probably talking twenty or \$30,000 to jack this slab up and move it back 13.5 feet, assuming that it doesn't get into a drainfield and you've got to move it somewhere else.

It seems to me that the law really requires some meaningful resolution of a problem. And a restriction here may clearly be the economic punishment that ought to be achieved in order to have a fair result.

CHAIRMAN BASEHART: Okay. Any other questions? Comments? I think we're ready for a motion.

VICE CHAIRMAN KONYK: I have a question for Jon. He refers to this easement not being part of the setback. Is the easement ever used as part of the setback in any circumstance?

MR. MacGILLIS: If Engineering waives the base building line.

MR. CUFFE: The Zoning Code with regard to setbacks defines a setback as being measured from the base building line. For a local street the base building line by code is 30 feet from the center line of the legally established strip of land, whether it be in the easement or a separate right-of-way.

So the base building line is where the setback is measured from. If you take that chart of setbacks and read the text of the Code, the setback is measured from the base building line.

In the case of an easement in this case, it's a 60 foot total easement centered on the common property line, so the base building line or the interior easement line for this property was already 30 feet from the center line of the easement and the base building line was then -- would be the interior easement line. There would be no base building line waiver available because you can't waive any more than what the existing easement is already. You couldn't move the base building line further into the street.

VICE CHAIRMAN KONYK: Then let me rephrase my question. Are easements that people own treated any differently than easements that people don't own?

MR. CUFFE: No, because an easement is not actually -- the fact that it is an easement -- an easement is a right for a non-owner to use a piece of a particular portion of the property. So the easement is created over --

VICE CHAIRMAN KONYK: Okay, okay, but we do have easements where, for instance, I'm going to refer back to my community because that's what I'm most familiar with. On our interior lakes our homeowners own -- their property line ends at the lake even though there's a 20 foot lake maintenance easement.

On our exterior lakes the property line stops at the easement. That's where their property line is, and then the easement begins. They don't own the property. You know, my lake, I own the easement and --

MR. CUFFE: That's because of the way the property lines were established. In that case the maintenance easement beyond the property line would mean that it's over common area, that the easement was created over common area

outside of the property.

VICE CHAIRMAN KONYK: Okay. But I mean, are they treated any differently when there are setbacks?

MR. MacGILLIS: Yes, they are. For zoning the easement on an AR lot, what the zoning staff does is we subtract that if they're going to dedicate that land area from the actual property depth. So if they were less than 300 feet, their setback would then become a percentage setback and would become 20% of the depth of the lot. So they do get a benefit for it.

In this case, the lot is so deep, it's 1,300 feet deep, by taking the 30 feet off to calculate a setback percentage it doesn't do any good for them.

VICE CHAIRMAN KONYK: Right.

MR. MacGILLIS: So they do, yes, get credit towards the setback.

VICE CHAIRMAN KONYK: Okay. That was my question.

CHAIRMAN BASEHART: I think the rest of the answer is, you know, easements are credited towards setbacks for everything but a road easement. You know, if you have a five foot utility easement along the side of your property, and the code requires a 7-1/2 foot setback, you only have to be 2-1/2 feet off the easement. You get credit for that. The thing that messes it up in terms of access easements is not the easement itself, it's the base building line provision in the Code.

The Code just says that the base building line is 60 feet or actually 30 feet from the center line of a road, whether it be a private right-of-way, a public right-of-way or an easement road, and you measure -- the Code says you measure your setbacks from the base building line. Now, engineering can and often does give base building line waivers.

But you're saying that in the case where -- that's in the cases where the easement isn't as wide as the base building line would provide.

MR. CUFFE: Correct.

CHAIRMAN BASEHART: You can grant it. If it's a 50 foot easement, 25 feet on each side of the center line, then you could grant a five foot base building line waiver because it doesn't encroach into the roadway easement. Is that what you're saying?

MR. CUFFE: Correct.

CHAIRMAN BASEHART: Okay.

VICE CHAIRMAN KONYK: So the real key here is that this is a road easement, not a utility easement. If it was a utility easement, then it would be considered -- that's the difference?

CHAIRMAN BASEHART: Yes.

VICE CHAIRMAN KONYK: Okay.

MR. PUZZITIELLO: Yes, not base building line.

VICE CHAIRMAN KONYK: I know the base building line thing, but if it was a utility easement then they could use it. But if it's a road easement, they can't.

CHAIRMAN BASEHART: Yeah, they could count it toward the setback.

VICE CHAIRMAN KONYK: Right.

CHAIRMAN BASEHART: I mean, one other alternative is --

VICE CHAIRMAN KONYK: It's kind of more obvious a road easement than a utility easement, though. I mean, everybody would know there's a road easement there, but they're not necessarily going to be aware that there's a utility easement-- as aware.

CHAIRMAN BASEHART: 'Til you look at a survey.

VICE CHAIRMAN KONYK: Right.

MR. JACOBS: I guess I'm troubled by the fact that nobody uses the

easement except the owner and the adjoining property owner of the nursery, who doesn't care. So essentially the easement is almost a non-easement because the applicant is the only possible user of the easement.

VICE CHAIRMAN KONYK: I don't think that's how the Code looks at it, though.

MR. JACOBS: I understand that, but the function of this Board is from time to time to look at the reality of the situation, and this may be a situation at least in my thinking where it might be appropriate to grant a waiver.

VICE CHAIRMAN KONYK: Well, the seven criteria is what the Board has to use in order to establish that, and if the applicant has met the seven criteria, then we can grant the variance, and if the applicant hasn't met the seven criteria, then we can't. It's pretty clear.

MS. CARDONE: Mr. Chairman.

CHAIRMAN BASEHART: Ms. Cardone.

MS. CARDONE: I would like to make a motion.

CHAIRMAN BASEHART: Okay.

MS. CARDONE: Let's go somewhere at least and see where we are. I'm going to make the motion that we uphold staff's recommendation for denial of request BOFA 2001-052.

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

MR. MISROCH: Second.

CHAIRMAN BASEHART: Okay. We have a motion and a second. Is there any comments? Any more questions or issues?

(No response.)

CHAIRMAN BASEHART: Okay. Then we're ready for a vote.

All those in favor of the motion, indicate by saying aye.

MR. PUZZITIELLO: Aye.

VICE CHAIRMAN KONYK: Aye.

MR. MISROCH: Aye.

MR. GERBER: Aye.

MS. CARDONE: Aye.

CHAIRMAN BASEHART: Opposed?

MR. JACOBS: No.

CHAIRMAN BASEHART: Show me voting no. I guess there's no need for any further explanation. The motion carries 5-2.

MR. PERRY: I'd just like to take a moment to thank you for your patience in hearing this matter. I guess I've taken the liberty of treating you a little bit like a court of equity, which unfortunately we don't have a vehicle of that nature for a problem such as this.

But I do want to thank you for your patience. Thank you.

CHAIRMAN BASEHART: Thank you.

STAFF RECOMMENDATIONS

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

ANALYSIS OF ARTICLE 5, SECTION 5.7.3 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. There is **nothing unique** about this lot that would warrant special consideration when applying the front setback. This 10 acre conforming AR lot is located 11406 N 172nd Place North in Jupiter Farms subdivision. The lot complies with all minimum property development regulations. The existing single family dwelling constructed by the applicant as owner/builder also complies with the AR setbacks. The partially completed accessory structure, subject of this variance, was constructed in the front setbacks by the applicant. The applicant states there was confusion as to what permitting requirements were necessary for the structure which led to the error. The setback encroachment is not consistent with the established setbacks. The applicant notes in the justification that the lot to the east has accessory structure in the front setback, however, the property owner has a valid permit and did comply with the established setbacks.

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

YES. This is a self created variance. The applicant was aware of the County permitting procedures, having obtained an owner builder permit for the house in 1996. The applicant is in a profession where one would be aware of county regulations prior to construction. The applicant decided to begin construction without a valid permit and then when he did apply for a permit he kept changing the ultimate use of the structure. The Building and Code Enforcement Divisions have given the applicant adequate notice, guidance and time to correct the violation. The applicant has not been forthcoming with the proposed use of the structure and has used the agriculture exemption provision to circumvent the need for a permit for a building that should not be exempt. Once the applicant became aware that the agriculture building permit exemption would not relieve him from comply with the AR setback the applicant continued to argue the case rather than look for avenues to correct the setback issue.

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

YES. The ULDC establishes minimum setbacks for principal and accessory structures in the various Zoning Districts. In the AR Zoning District the ULDC allows accessory structures in the front yard provide the front AR 100 foot setback is met. The applicant began construction of the structure claiming it was exempt from permitting requirements under Agricultural buildings. However, the applicant was clearly informed by staff that in order to qualify for this exemption he would have to fill out the applicable paperwork necessary for Building Division to exempt the structure (See Attachment A). The applicant then changed the

classification of the use to accessory garage and applied for a building permit. The applicant was made aware by the Building Technician and time of processing the permit that it did not comply with the front setback. The applicant informed the Building Technician it would at time of final inspection. When the initial inspection was made the Building Inspector informed the applicant the setback encroachment would have to be dealt with prior to any further construction. The applicant later informed Building that this was an Agricultural building, therefore, exempt from permitting and inspections. The Code Enforcement Division issued the applicant a Notice to Correct the violation. The applicant failed to meet the correction notice deadline and went to Code Enforcement. The Special Master gave the applicant 120 days to correct the violation or fines of 50 a day would result. There are fines in the amount of approximately \$4,500 on the property. The applicant is now applying for an accessory structure front setback.

Granting this setback variance would not be consistent with the code or established permitting procedures. The applicant has not justified any unique reason why if this variance would be granted a special privilege would not be granted on him. Many property owners construct accessory structures in the front yard but comply with codes and permitting procedures. Granting this variance will therefore grant a special privilege on the applicant that would be denied to others in typical situations.

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

NO. Had the applicant complied with the same regulations and permitting procedures as he did in 1996 for the single family dwelling he constructed on this lot this variance would not be required. The applicant began constructing and ignored the AR front setback. The applicant claimed exemption status for an Agriculture structure that would avoid the need for a permit. However, the applicant was made aware that the AG structures are not exempt from setbacks. Had the applicant done the necessary research prior to starting construction he would have been provided the necessary information and forms. The Building Division would have provided the applicant with the PPM MD-RI-002 which clearly states in order to qualify for an exemption from the AG building state requirements one must clearly demonstrate this is a AG building. The information also clearly states setbacks must be met. The applicant would request the Board believe his argument he was unaware of the specific requirements and was simply a uninformed property owner.

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

NO. The applicant could clearly have constructed this 1,700 square foot accessory structure on the property without the need for a setback variance. The structure was constructed prior to obtaining or inquiring as

to what permits would be required. The Building Division Inspector noticed the structure being constructed and informed the applicant a permit would be required. The applicant applied for a garage permit. The garage by this time was already in the front setbacks. The Building Division contacted the applicant during the permit review process to inform him the structure was in the setbacks. The applicant informed the Building staff it would be taken care of prior to final inspection. The applicant continued over the next year and half to construct even though realizing the structure was in the setbacks and any further improvements were at his own risk without first receiving BA approval for a front setback.

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

NO. The granting of this variance **will not meet the literal or general intent** of the code. The ULDC establishes setbacks to ensure consistency in the community, maintain property values and ensure the openness one expects in the AR zoning district.

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

YES. The established setbacks are to protect the residents of Palm Beach County and more specifically local residents. The other adjoining residents have obtained all the necessary permits for their structures. There are still vacant lots along this street that when structures are constructed will have to comply with the AR setbacks. The applicant's failure to obtain the correct permit information is a self imposed hardship and would encourage other residents to begin construction and requesting variances after the fact for an encroachment. **Granting this variance will grant a special privilege** to this applicant and establish a precedent in this area for a variance that currently does not exist. Other residents have been required to obtain all necessary permits and inspections for all principal and accessory structures.

ENGINEERING COMMENT

No Comment ().

ZONING CONDITIONS

None, staff is recommending denial of this request.

CHAIRMAN BASEHART: Next item on the agenda is BOFA 2001-055, Troy A. Rainbolt. The applicant's here?

MR. MacGILLIS: Just for your information, the staff has provided you with a new page 102 which reflects -- there was actually two variances on this site. The fact sheet that went into the staff report was not reflecting the rear setback.

CHAIRMAN BASEHART: Okay.

MR. MacGILLIS: Which is why this item is not on the consent agenda. Staff is supporting one of the variances. The first variance, which is an accessory structure cannot take up more than 25% off the area located between the two property lines.

CHAIRMAN BASEHART: Okay.

MR. MacGILLIS: Does everybody follow that? So the dimension off your accessory structure can only take up 25% of the width off your -- between your two property lines, so you don't end up having somebody meeting setbacks but having an accessory structure that goes almost from property line to property line.

CHAIRMAN BASEHART: Okay.

MR. MacGILLIS: So that variance the staff is supporting. Staff is not supporting the proposed garage to encroach into the rear setback because --

MR. PUZZITIELLO: So if it's a 100 foot wide property, you can only have

--

MR. MacGILLIS: Twenty-five foot wide structure.

MR. PUZZITIELLO: Okay.

MR. MacGILLIS: And Brad will read the legal description on this, and as I said, the only reason this is not on consent agenda is because staff is recommending denial of the rear setback.

There are other options on the site that we feel that we've asked the applicant -- I hope he's brought some drawings here this morning because several times we spoke to him and he apparently has a boat that's going to be going into this garage and the main concern is there's a well that we required the survey to be revised because it wasn't showing on the original drawing that came in here and we told him that we were denying the rear setback.

He says, well, I have a well that I can't maneuver my boat around and he's got a large truck to get it back in there. So we told him you need to bring us drawings because it's not staff's responsibility to analyze this unless we have something. So at this point we did not receive anything.

And I know staff has put together a board just to show where the building would go to meet setbacks because the neighbor to the rear did call and objected to the rear setback variance. They didn't have a problem on the other one, but they do have one to the rear setback.

So with that, Brad, do you want to read the legal?

CHAIRMAN BASEHART: And for the court reporter, give us your name?

MR. DUNKER: Brad Dunker, Planner 1.

This is BOFA Petition 2001-055. It's found on pages 102 through 112 of the supplemental material, and the description is Troy A. Rainbolt, owner, to allow a proposed accessory garage to encroach into the rear setback and to allow it to occupy more than 25% of the distance between property lines.

Location of the property is the east side of 1st Road, approximately .66

miles east of the Florida Turnpike and .66 miles north of Lantana Road in the AR Zoning District within the Palm Beach Farms Plat No. 3.

CHAIRMAN BASEHART: Okay. This is a public hearing. Would anyone who intends to speak on this matter, either for or against, please rise to be sworn in.

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

CHAIRMAN BASEHART: Why don't we start by having the applicant provide us with his version of the justification for the requested variances?

MR. RAINBOLT: All right. The house that he was talking about with the neighbor that had objected is behind me and owns like three acres of land back there. He, I figured, wasn't going to be the one that was going to be most affected by it. The neighbor who is right next door to me is probably the closest to where the garage is going to be located.

And I was trying to get the variance so that I could have a little better accessibility to the garage because I am constructing it for use of storage for a boat and an RV. Because the property is so narrow, it's hard for me to come in and turn around and be able to back things in and out of the garage, and eventually I was hoping to, you know, have some future development by putting a swimming pool in and patio, and that really limits how much room I have between the pool and the house and the garage for turning vehicles around and, you know, using the garage.

The only other things that I was noticing was that he suggested, you know, like some vegetation that I have planted on the back of the property, you know, with the setback being setback a little bit further, it was kind of going to, you know, affect the vegetation there. The side setback is 15 feet and I have a 6 foot privacy fence there. As far as, you know, making changes for vegetation it would be the same type of setback, you know, from the side or to the rear. And just pretty much, you know, trying to make the best use out of it that I can.

CHAIRMAN BASEHART: Okay. Before we go to the public, which there isn't any because nobody rose to be sworn in, you want to give us the staff report and recommendation?

MR. DUNKER: Okay. Staff is recommending -- there's two separate issues here that we're dealing with. Number one is the variance to allow the structure to occupy more than 25% of the distance between property lines, and staff has recommended approval of this variance based on the -- prior to -- or during the purchase of the property the applicant did not have a garage on the property to allow him to store his lawn equipment, his boat and other items that he had indicated in his application.

Also is the variance to encroach into the rear setback, and that variance staff has recommended denial based on the fact that it does not meet the seven criteria and there are other site development options available to eliminate the need for the setback.

MR. RAINBOLT: As far as some of the options that they had given was, you know, to move the garage over to the side a little bit which doesn't increase my turning radius at all. The garage is still, you know, in the way of me bringing the vehicle around and turning around and backing up. Even if I moved it over to the side like they suggested, to move it over 12 feet, I still have the same turning radius. It doesn't change me being able to, you know, maneuver the vehicle in any different direction to back up.

MR. PUZZITIELLO: You're saying moving it forward doesn't give you the room to turn?

MR. RAINBOLT: Yeah, pretty much. That's what it's coming down to. I've got to come in one side, come towards the garage and then turn and then back

it into the garage.

MR. PUZZITIELLO: You'll get real good at backing up and going straight.

MR. RAINBOLT: Yeah. The boat is -- it gets hard to handle.

VICE CHAIRMAN KONYK: Is the boat the issue? Because of the boat that's why you need the turning radius and that's why you need to place the garage the way it is?

MR. RAINBOLT: That's one of the main issues. Also, I have an RV as well.

VICE CHAIRMAN KONYK: You have an RV as well?

MR. RAINBOLT: Yes, and it's a good size, too.

VICE CHAIRMAN KONYK: And that will fit in that structure?

MR. RAINBOLT: Yes, yes. The only other thing, too, was like I was hoping the neighbor next door to me, their house is like right next door to mine. So moving it back a little bit would keep it away from their house some, but obviously the guy who complained is the one that's behind me, which his house is further away than my neighbor's, but he also has a couple of accessory buildings out back there, too, so that's the only reason I could think that he would say anything about it.

CHAIRMAN BASEHART: Okay.

MR. RAINBOLT: Also, they said that they had used a similar piece of property in the neighborhood that met setbacks back in '84, and the setbacks were smaller during that time. I know the property that we're talking about, they were only 15 foot then, so it kind of isn't going to change anything with the variance.

I wouldn't be getting any special privilege, you know, by it being 15 foot because theirs is the same even though the codes have changed over the times. If it didn't change, I wouldn't be here for the variance.

MR. PUZZITIELLO: This sheet that you handed out, is that incorrect? You're saying proposed is 10 feet with a variance of 15? Shouldn't that be the other way around, for the rear yard setback?

CHAIRMAN BASEHART: Yeah, the drawing we have shows the building being 15 feet off the property line.

VICE CHAIRMAN KONYK: Yeah, that's correct.

MR. PUZZITIELLO: This says proposed 10.

CHAIRMAN BASEHART: Yeah, actually what we're talking about is the building's 15 and it would be a 10 foot variance; isn't that correct?

MR. DUNKER: Correct.

VICE CHAIRMAN KONYK: So that's incorrect here?

CHAIRMAN BASEHART: Right.

VICE CHAIRMAN KONYK: So we gave him a 10 foot variance for the first thing, right? That one's correct? The one that you're recommending for approval is a 10 foot variance?

MR. MacGILLIS: Yeah, on page 102.

VICE CHAIRMAN KONYK: But the second item is not a 15 foot variance, it's a 10 foot variance?

CHAIRMAN BASEHART: Right.

VICE CHAIRMAN KONYK: Okay.

MR. DUNKER: That's correct.

CHAIRMAN BASEHART: Okay. We've had the applicant's presentation, we've had the staff's presentation. Any member of the board have any questions?

VICE CHAIRMAN KONYK: What is the size of this? This must be larger than a normal garage, a standard size garage?

MR. RAINBOLT: Yeah, it's 28 by 46 and that neighborhood has similar buildings, you know, and--

VICE CHAIRMAN KONYK: But what's a standard garage? What would

a standard garage be?

MR. RAINBOLT: It would probably be like --

MR. PUZZITIELLO: 22 by 22.

MR. RAINBOLT: Yeah. I was going to say about --

VICE CHAIRMAN KONYK: 22 by 22?

MR. PUZZITIELLO: Right.

VICE CHAIRMAN KONYK: And if you did build a standard garage, would you be able to meet the setbacks?

MR. RAINBOLT: Yeah, but then I wouldn't be able to use the garage in the way I want to use it, where I store my boat and RV and supplies.

MR. MacGILLIS: It should be noted that the applicant owns the other lot

--

COURT REPORTER: Jon, move a microphone over, please.

MR. MacGILLIS: The owner purchased both of the lots. That lot to the north where you can see the line where the yellow line stops, that's a lot line. He also owns that lot to the north. He bought them; he has concurrency on it, so he can build on that lot.

Cause when he first came in, staff said why don't you just push the garage over there across that property line because you own it? And he said, no, I want to sell that lot off in the future.

MR. DUNKER: You can see it's indicated here by parcel 1 and parcel 2 on the plan, so the actual dotted line in the middle of the property here is the applicant's property that he is planning on building.

VICE CHAIRMAN KONYK: They're titled separately, though, right? They're not one piece of property; they're two pieces of property?

MR. MacGILLIS: Right. They have individual PCM numbers because we checked on that, because when he came in we thought -- because of concurrency went into effect in 1989, we thought cause they were one lot of record -- one owner owned both those lots at one time, by concurrency they would have had to have been tied together to meet the acreage requirement, and we checked concurrency that at the time they were under different ownership, or somebody was sophisticated enough to figure that out that they better put them under different names to keep concurrency for both of them.

Our only main concern with this is that the applicant -- we've asked him several times to provide us with the turning radius so we could analyze if the truck or boat couldn't back out over the boat, I mean, was that a hard enough hardship. And to my knowledge, I've asked Brad several times if the stuff had come in because --

MR. RAINBOLT: I didn't have a chance to get that stuff together between working and everything. The only --

MR. MacGILLIS: But it's difficult for us to analyze it because the justification of your whole hardship is the fact that you can't back the boat up and get it in there, and staff has nothing to analyze as far as where your driveway is going and what your turning radius is.

MR. RAINBOLT: What I come up with is, you know, between the rear porch and the front of the garage is 85 feet, and if I was to put like a pool and patio, it would probably be like 30 feet. It leaves me 55 feet between the patio and the garage.

MR. MacGILLIS: But there's no pool or patio there.

MR. RAINBOLT: I know, but in the criteria it was making suggestions, you know, for future development, you know, of the property.

So, you know, kind of pushing the garage back would kind of leave me room to do something else with the property. It leaves me the 55 feet with the truck and the boat. The truck's 20 and the boat with the trailer is 35. That whole thing is 55 feet.

MR. MacGILLIS: Just for the record, that's what staff indicated for you to do to make it easier for staff to analyze your variance because your hardship you say is the future amenities you want to put on this lot, the pool and stuff, and you did revise the survey to show the well on it because you said that was part of your hardship. The well was located -- I mean, I don't know if that well is out of the ground or why a vehicle can't drive over it.

MR. RAINBOLT: That's what we had talked about earlier is that the well sticks up about a couple of feet and then a PVC pipe runs over and it goes back to the house, that it probably could be buried. But when it comes down to the turning radius, it's going to take pretty much every bit of the yard.

I took the boat and the trailer and pulled it around and it took almost every piece of the yard for me just to turn it around and back it up. I'm sorry for not providing you with the information.

MS. CARDONE: Jon, can I ask you a question? How do we define hardships? I'm hearing the hardship here is --

MR. MacGILLIS: There's the physical hardship of the lot. There's constraints presented by a lot just because of its configuration. Existing structures on the site, there's any natural amenities, preserves, overhead utility lines that you didn't want somebody to build underneath, a building that was already built by somebody else in a location on a lot that would preclude them or make it very difficult to redesign the site to accommodate the proposed building into setbacks.

MS. CARDONE: So do you often take into consideration the radius of something? I'm just -- this is the first time I've been hearing about these kinds of --

MR. MacGILLIS: Oh, yeah, I asked staff to actually look down at that, but I don't know the length of his boat. If somebody came in here, that's what we would want to show. Like if a gas station comes in, if something doesn't work out, we have all established criteria for gas stations because they come in all the time, and if Hess or one of the big companies comes in with an odd design we make their engineer go back and show us that all the trucks are going to be able to turn and not hit the pumps or interfere with vehicular traffic.

In this case, we said if your hardship is -- if the whole basis of your argument is that you have to orientate the building exactly where it is to get your vehicle in, you need to show us that on the record so the findings are clear that if someone else comes in for a similar variance for a building like this, we can grant it.

I mean, the analysis we can do for the actual percentage of the building, taking up the lot, I mean, because the lot configuration is there. That's the constraint. I mean, he's not doing an over-large garage. He's doing a reasonable size garage.

It's taking up, you know, not very much more over what a minimum code is, but on the other one we didn't have anything to -- I mean, to base the whole seven criteria on something that he's telling us without a truck or a dimension for a boat, I mean, I'm not an expert on judging something that I don't see on a piece of paper.

MS. CARDONE: Well, I mean, I can understand with a gas station. Trucks are a certain size. You know, whatever the industry standard is, those trucks are a standard size and so they must accommodate that or they wouldn't be able to get gas and sell gas.

But if this criteria would change dependent upon the size of a boat, you know, I'm not trying to make judgments about somebody's extracurricular activities, but I'm thinking that -- I don't even know how you would possibly accommodate all these kinds of requests. I'm just trying to --

MR. MacGILLIS: Well, usually somebody, like in this case, they come in and ask, and we say we're just not supporting it, and that's why when the gentleman came in, it was not presented to us in the beginning that the problem for

his rear setback was because of a boat maneuvering. That became evident after we started reviewing the application.

And then staff indicated revise the site plan and show us the configuration of the driveway and the maneuvering, so then staff will take that into account and we'll review the seven criteria. But unfortunately, as the applicant has indicated, he didn't provide us that stuff and I was asking for it up until the reports were ready to be published so we could take that into consideration.

So I don't know if -- I don't know where the Board is going with this, but I mean, if you want him to take 30 days or if you don't see it as a problem, but --

CHAIRMAN BASEHART: I'd like a little clarification on exactly how you access that, what you're proposing. You've got some structures in front of where you want to put this.

MR. RAINBOLT: These are going to be removed. This is a portable shed and this right here is just a concrete path that used to be a dog kennel. All this is going to be removed.

CHAIRMAN BASEHART: And you come in by your main driveway?

MR. RAINBOLT: The main drive down the side here. And also, I'm not a professional on turning radiuses, either. I couldn't -- you know like he was talking about calculate exactly what the turning radius would be on a piece of property. You know, all I can do is just give him the size of the truck and the size of the boat and, you know, and about approximately how much room I would need to turn.

And as far as, you know, the other things that will meet the criteria were, you know, for future development of the property as well, a swimming pool and stuff like that.

But the turning radius for the vehicle, I was explaining, you know, this is 85 feet with a 25 foot setback. It would be 85 feet. The boat is 55 feet long with the truck, so the turning radius, you know, pretty much has to go all the way around and then pull the boat in where it's angled enough to back it into the garage.

VICE CHAIRMAN KONYK: Jon, question. Two items here. One of them you're recommending for approval, one you're recommending for denial. Can we split those items and maybe take a motion on the first one and get that one out of the way and then continue to discuss or --

MR. MacGILLIS: Yes. I mean, if you do grant the first one, I mean, he can still go forward. He just has to meet the setbacks.

VICE CHAIRMAN KONYK: Okay. So why don't I under BOFA 2001-055, item number 6.5.G.2.A., which is the 18 feet required, 28 feet proposed, a 10 foot variance, I would recommend that we approve that portion of the variance with the staff report becoming part of the record.

MR. PUZZITIELLO: Second.

CHAIRMAN BASEHART: We have --

VICE CHAIRMAN KONYK: Before you second it, let me just add that we're considering 6.5.A. separately.

CHAIRMAN BASEHART: Okay. So this motion is only on the first variance. Motion by Ms. Konyk, second by Mr. Puzzitiello. Any discussion?

(No response.)

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

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no?

(No response.)

CHAIRMAN BASEHART: Motion carries unanimously.

So you've got the variance on the percentage of --

MR. RAINBOLT: The most important one.

VICE CHAIRMAN KONYK: On the second part, again I have to go back

to the seven criteria.

In my opinion, I don't think it would have made much of a difference if we did have the turning radiuses, et cetera, because who knows what size boat he's going to have next year and he may get a smaller one, he may get a bigger one, he may get a truck with a better turning radius, he may get a truck with a worse turning radius. I think that there's too many variables there. He may build a pool, he may not build a pool.

Based on the way the seven criteria commands us to treat these items, I would make a motion to deny the second portion of his variance under BOFA 2001-055, 6.5.A., accessory structure required 25 feet, proposed 15, variance 10. I would recommend denial of that portion of the variance with the staff report becoming part of the record.

MR. PUZZITIELLO: Second.

CHAIRMAN BASEHART: We have a motion and a second by the same two parties. Any discussion?

(No response.)

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

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no?

(No response.)

CHAIRMAN BASEHART: Motion carries unanimously.

STAFF RECOMMENDATIONS

Approval in part for the variance to allow the proposed structure to exceed 25 percent of the distance between property lines and **denial** of the rear setback variance 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:

Variance to exceed 25 percent of the distance between property lines: YES.

There are unique circumstances surrounding this property and request that warrant special consideration. This legal non-conforming .51 acre lot is located at 5174 1st Road North of Lantana Road within the AR zoning district. The property has 305 feet of depth and 73 feet of frontage along 1st Road. The lot currently supports a 1,422 square foot single family residence and two small storage sheds. The applicant purchased the property in November of 1999, at which time a garage did not exist on the property. Other properties within the same AR zoning district have constructed large accessory structures for intended uses

similar to those of the proposed garage on the subject property. Specifically, the adjacent property to the north supports an accessory storage structure of 1,504 square feet (47 feet of depth and 32 feet of width) in 1984. This structure meets the required side interior and rear setbacks on a property with the same 305 feet of depth and 73 feet of width as the subject property. This structure occupies more than 25 percent of the distance between the property lines on a lot with the same dimensions as the subject lot and is located on the same side of the same street located within the AR zoning district, thus established precedence for that particular road. The structure measures 47 feet in depth and 32 feet in width. This lot has the same rear property line measurement of 73 feet. Thus, the proposed structure on the applicant's lot, although still exceeding the 25 percent of the distance between property lines, will occupy less area between property lines than the adjacent lot and structure.

Rear Setback Variance: NO.

There are no unique circumstances surrounding this property and request that warrant special consideration. There exists other site development alternatives that would eliminate the necessity for the granting of this variance. As proposed, the garage structure would be constructed in the southeast corner of Parcel 2 of the property. As a condition of building the proposed structure, the applicant has indicated that he has intends to remove two existing small storage structures located in the middle of the property, or approximately 12 feet in front of the proposed structure location, in accordance with the submitted site plan. With the removal of the two existing storage structures, the proposed building could be constructed approximately 12 feet further towards the center of the property, thus eliminating the necessity for the requested variance. Moreover, the relocation of the proposed structure would not infringe upon other potential future developments on the property such as a pool or patio extending from the residence. The front of the proposed building would be located at the same distance from the residence as the existing storage structures are presently located. In essence, the property owner would be granted the reasonable and desired use of his property requested in the application for the two variances as well as retain the potential for future development of the property pursuant to the requirements outlined in the ULDC.

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

Variance to exceed 25 percent of the distance between property lines: NO.

The special circumstances and conditions are not the result of the actions of the applicant. When the applicant purchased the property in November 1999, a garage did not exist on the property. The applicant requests the variance for the exceeding of the 25 percent of the distance between the property lines in order to provide a storage area for a recreational vehicle, a large boat, motorcycles and lawn equipment. The

proposed garage would allow the applicant to store vehicles out of view of the surrounding neighbors. The storage area would provide an added measure of security in order to avoid unwarranted tampering with the property, specifically with the lawn equipment and motorcycles, which may cause damage to the property or cause other injury. The storage of this property would also minimize the possibility of those objects becoming airborne during hurricanes and other natural disasters. Also, the addition of the storage area would allow the applicant to store his property out of sight of the adjacent properties and the general public, which will improve the aesthetical value of the property and other surrounding properties.

Rear Setback Variances: YES.

The special circumstances and conditions are the result of actions of the applicant. As indicated in part 1 of this section, there exist other site development alternatives that would allow the applicant the reasonable and desired uses of his property that are requested while simultaneously eliminate the necessity for this variance. The relocation of the proposed structure 12 feet towards the center of the property from the proposed location would achieve the indicated site development alternative. Thus, the hardship is self-created by the applicant.

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

Variance to exceed 25 percent of the distance between property lines: 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, buildings or structures in the same district. The applicant purchased the property in November 1999 at which time a garage did not exist on the property. Other properties in the area have existing garage structures on the property including the property adjacent to Parcel 1 as indicated on the site plan. This property has an existing structure that has a depth of 47 feet and a width of 32 feet on a property that has the same dimensions as the subject property, which are 305 feet in depth and 73 feet in width. This structure was constructed in 1984 and was constructed pursuant to the 1973 Zoning Code requirements.

Rear Setback Variances: YES.

Granting the variance shall confer upon the applicant special privileges denied by the comprehensive plan and this code to other parcels of land, buildings or structures, in the same district. Although there are similar structures located on adjacent parcels of land, those structures were constructed in accordance with the setbacks required at the time of their construction. Other site design options exist including, but not limited to, the relocation of the proposed garage 12 feet to the center of the

property from the proposed location. This would eliminate the need for the rear setback variance.

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:

Variance to exceed 25 percent of the distance between property lines: YES.

A literal interpretation and enforcement of the terms and provisions of this code would deprive the applicant of rights commonly enjoyed by other parcels of land in the same zoning district, and would work an unnecessary and undue hardship. The applicant purchased the property in November of 1999, at which time a garage did not exist on the property. Other properties in the area have existing garage structures on the property including the property adjacent to Parcel 1 as indicated on the site plan. This property has an existing structure that has a depth of 47 feet and width of 32 feet on a property that has the same dimensions as the subject property, which are 305 feet in depth and 73 feet in width. This structure was built in 1984 and was constructed pursuant to the 1973 Zoning Code requirements. The principal residence located on the subject property is a 1,433 square foot, single floor residence. The proposed structure will be approximately 1,288 square feet and be located in the rear of the property. Other structures exist in the neighborhood that have comparable proportions. The rear property line is vegetated and a privacy fence surrounds the property providing screening for the proposed structure.

Rear Setback Variance: NO.

A literal interpretation and enforcement of the terms and provisions of this code would not deprive the applicant of rights commonly enjoyed by other parcels of land in the same zoning district, and would work an unnecessary and undue hardship. Although there are similar structures located on adjacent parcels of land, those structures were constructed in accordance with the setbacks required at the time of their construction. In the case of the structure constructed on the adjacent property to the north of Parcel 1, as indicated on the site plan, this structure, although occupying more than 25 percent of the distance between property lines meets the required setbacks of a 5-foot side interior setback and a minimum rear setback of 25 feet. The existing structure on this property has a depth of 47 feet and a width of 32 feet on a property that has the same dimensions as the subject property, which are 305 feet in depth and 73 feet in width. The structure was built in 1984 and was constructed pursuant to the Land Development Code requirements applicable during that construction period. This building and its host parcel have established precedence in the zoning district for lots of comparable size and shape, specifically in regards to adjacent properties.

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

Variance to exceed 25 percent of the distance between property lines: YES.

The approval of variance is the minimum variance that will allow a reasonable use of the parcel of land, building or structure. The storage of the applicant's property within the proposed structure would keep the property out of view by the neighborhood and minimize the possibility of those objects becoming airborne during hurricanes and other natural disasters. Also, the addition of the storage area would allow the applicant to store his property out of sight of the adjacent properties and the general public, which will improve the aesthetical value of the property and other surrounding properties. This variance would be the minimum variance required to achieve the reasonable desired uses of the property while maintaining the general intent of the ULDC.

Rear Setback Variance: NO.

The approval of variance is not the minimum variance that will allow a reasonable use of the parcel of land, building or structure. There exist other site development alternatives that would eliminate the necessity for the granting of this variance. As proposed, the garage structure would be constructed in the southeast corner of Parcel 2 of the property. As a condition of building the proposed structure, the applicant has indicated that he intends to remove two existing small storage structures located in the middle of the property, or approximately 12 feet in front of the proposed structure location, in accordance with the submitted site plan. With the removal of the two existing storage structures, the proposed building could be constructed approximately 12 feet further towards the center of the property, thus eliminating the necessity for the requested variance. Moreover, the relocation of the proposed structure would not infringe upon other potential future developments on the property such as a pool or patio extending from the residence. The front of the proposed building would be located at the same distance from the residence as the existing storage structures are presently located. In essence, the property owner would be granted the reasonable and desired use of his property requested in the application for the two variances as well as retain the potential for further develop of the property pursuant to the requirements outlined in the ULDC.

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

Variance to exceed 25 percent of the distance between property lines: YES.

Granting of this variance would be consistent with the goals and

objectives of the Comprehensive Plan and the ULDC by supporting the reasonable use of the land without causing injury to the land, property values or the general public welfare. The construction of this proposed garage would allow the applicant to increase the use and enjoyment of his property while maintaining the scale, uniformity and character of the neighborhood.

Rear Setback Variance: NO.

Granting of this variance would not be consistent with the goals and objectives of the Comprehensive Plan and the ULDC because there exist alternative site development options that would eliminate the necessity for granting this variance. Other such structures of comparable size were constructed with respect to the rear setbacks on similar sized lots. Granting this variance would be injurious to the vegetation along the rear property line, which serves as a privacy buffer between properties that otherwise would be separated only by split rail fence.

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

Variance to exceed 25 percent of the distance between property lines: NO.

When the applicant purchased the property in November 1999, a garage did not exist on the property. The applicant requests the variance for the size of the garage in order to provide a storage area for a recreational vehicle, a large boat, motorcycles and lawn equipment. The indoor storage of the said property would improve the safety, aesthetics, and general welfare of the property and neighborhood. This variance would also allow the applicant to further his enjoyment and make reasonable use of his property. This variance would be the minimum variance required to achieve the reasonable desired uses of the property while maintaining the general intent of the ULDC.

Rear Setback Variances: YES.

As indicated in the criteria for Variance #1, the construction of the proposed garage would have a positive impact on the applicant's use of the lot and the neighborhood. The construction of the garage within the rear setback area of the property would be injurious to the area if constructed as proposed. The general intent of the ULDC is to protect land values and ensure a minimum separation between lot lines and structures. The encroachment of this proposed structure would not be consistent with the general intent of the ULDC regarding the aforementioned separation. Moreover, the variance requested is not the minimum variance necessary to achieve reasonable use of the property due to the existence of alternative site design options eliminating the necessity for the rear setback variance. Precedence was established with the construction of a storage structure on an adjacent property in 1984 in which that property owner constructed a structure with 47 feet of

depth and 32 feet of width on a property with the same dimensions of 305 feet depth and 73 feet of width as the subject property. In this case the structure occupies more than 25 percent of the distance between property lines while observing the required setbacks from those property lines. This established precedence in the zoning district, and more specifically, on the block in which both properties are located, to maintain the setbacks from the property lines while exceeding 25 percent of the distance between property lines.

ENGINEERING COMMENT

No Comment **(E'S)**.

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. If the variance is approved the applicant shall obtain a building permit for the accessory building by January 19, 2001, in order to vest the setback variances. **(DATE:MONITORING-BLDG PERMIT)**
3. Prior to submitting for a building permit the applicant shall amend the site plan to relocate the proposed building out of the required rear setback. **(BLDG PERMIT)**.
4. This variance application, BA2001-055, is limited to the variance for the accessory structure to occupy more than 25% distance between property lines, the rear setback variance was denied. **(ONGOING)**

CHAIRMAN BASEHART: That gets us to the end of the variance applications for today. As everyone is aware, we have our annual workshop. So why don't we have a motion to --

MR. MacGILLIS: Why don't we do the attendance if you want to do that? Get that out of the way, so.

CHAIRMAN BASEHART: Oh, yeah. Where did that go?

VICE CHAIRMAN KONYK: I'll do it because you weren't here.

CHAIRMAN BASEHART: This is true. Where did it go? Here it is. Do you want to do it? Here, you do it.

VICE CHAIRMAN KONYK: I'll just do it so there's no indication of you giving us a strong-arm.

Mr. Basehart was absent last month because of business, and I would like to know if you recommend that as an excused absence. Motion by --

MS. CARDONE: Yes.

VICE CHAIRMAN KONYK: -- Nancy.

MR. PUZZITIELLO: Second.

VICE CHAIRMAN KONYK: Second by Ray. All those in favor?

BOARD: Aye.

VICE CHAIRMAN KONYK: Motion carries unanimously, so Mr. Basehart's absence is excused.

CHAIRMAN BASEHART: Okay. Thank you. Now we need to have a motion to adjourn the regular meeting.

VICE CHAIRMAN KONYK: So moved.

MR. MISROCH: Second.

VICE CHAIRMAN KONYK: Second by Mr. Misroch.

CHAIRMAN BASEHART: Okay. Motion by Ms. Konyk, second by Stan to adjourn the regular meeting.

All those in favor indicate by saying aye?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no?

(No response.)

CHAIRMAN BASEHART: Motion carries. The meeting is adjourned. (Whereupon, the meeting was adjourned at 10:30 a.m.)

* * * * *

CERTIFICATE

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 76, 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 8th day of August, 2001.

Sophie M. Springer, Notary Public.