

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

Thursday, June 21, 2001  
9:00 a.m. - 9:50 a.m.  
100 South Australian Avenue  
West Palm Beach, Florida

Reporting:

Sophie M. (Bunny) Springer  
Notary Public

**ATTENDEES**

Chelle Konyk, Vice Chairman

Mr. Jonathan Gerber

Mr. Joseph J. Jacobs

Mr. Raymond Puzzitiello

Mr. Glenn Wichinsky

Mr. Wayne M. Richards

Ms. Nancy Cardone

David Cuffe, Civil Engineer II, Land Development

Michael Jones, Asst. County Attorney

Jon P. MacGillis, Principal Planner, Zoning

Janet Quinn, Secretary

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**PROCEEDINGS**

VICE-CHAIRMAN KONYK: I'll call the June 21, 2001 Board of Adjustment meeting to order with roll call and the declaration of a quorum.

MS. QUINN: Mr. Bob Basehart.

( N o r e s p o n s e . )

MS. QUINN: Ms. Nancy Cardone.

MS. CARDONE: Here.

MS. QUINN: Mr. Wayne Richards.

(No response.)

MS. QUINN: Ms. Chelle Konyk.

VICE-CHAIRMAN KONYK: Here.

MS. QUINN: Mr. Joseph Jacobs.

MR. JACOBS: Here.

MS. QUINN: Mr. Glenn Wichinsky.

MR. WICHINSKY: Here.

MS. QUINN: Mr. Ray Puzzitiello.

MR. PUZZITIELLO: Here.

MS. QUINN: Mr. Stanley Misroch.

(No response.)

MS. QUINN: Mr. Jonathan Gerber.

MR. GERBER: Here.

VICE-CHAIRMAN KONYK: We have a quorum. I have before me the proof of publication of the meeting in the Palm Beach Post, June 3, 2001.

Do we have a motion for approval?

MR. PUZZITIELLO: So moved.

MR. JACOBS: Second.

VICE-CHAIRMAN KONYK: We have a motion and a second. All those in favor?

BOARD: Aye.

VICE-CHAIRMAN KONYK: Motion carries unanimously.

Remarks of the chairman. For those of you who are not familiar with how the Board conducts its business, the meeting is divided into two parts, the consent and the regular agenda. Items on the consent agenda are items that have been recommended for approval by staff either with or without conditions. The applicant agrees with the conditions. There is no opposition from the public and no board member feels the item warrants a full hearing. If any of those conditions change, the item will be pulled from the consent agenda and re-ordered to the regular agenda.

Items on the regular agenda are items that have either been recommended for denial by staff or the applicant does not agree with the conditions recommended by staff, there's opposition from the public or a board member feels the item warrants a full hearing.

The item will be introduced by staff. The applicant will give their presentation, the staff will give their presentation. At that time we'll hear from the public. After the public hearing is closed, the Board will vote on the item, and that's about it as far as the meeting.

The next item on the agenda is the approval of the minutes. You have received the minutes from the May 17, 2001, meeting. Does anybody have any corrections or additions?

(No response.)  
VICE-CHAIRMAN KONYK: Seeing none, can I have a motion for approval?  
MR. JACOBS: So moved.  
MR. PUZZITIELLO: Second.  
VICE-CHAIRMAN KONYK: Motion by Mr. Jacobs, second by Mr. Puzzitiello. All those in favor?  
BOARD: Aye.  
VICE-CHAIRMAN KONYK: Opposed?  
 (No response.)  
VICE-CHAIRMAN KONYK: Motion carries unanimously.  
 Remarks of the zoning director?  
MR. MacGILLIS: No comments, Madam Chair.  
VICE-CHAIRMAN KONYK: Are there any changes to the agenda?  
MR. MacGILLIS: No.  
VICE-CHAIRMAN KONYK: Everything's the same? Okay.

VICE-CHAIRMAN KONYK: All right. We'll start with the consent agenda then. Item BOFA 2001-028. Danny Ramnarace, agent for Sam and Sunrafee Ramnarace, to allow an existing solid roof screen enclosure to be converted to an enclosed room.

Is the applicant present? Could you step forward and give us your name for the record?

MR. RAMSUMAIR: The name that's on here is wrong. My name is Danny Ramsumair.

VICE-CHAIRMAN KONYK: Okay. Can you spell that for the court --

MR. RAMSUMAIR: It's R-A-M-S-U-M-A-I-R.

VICE-CHAIRMAN KONYK: Okay. The staff has recommended six conditions. Do you understand and agree?

MR. RAMSUMAIR: Yes.

VICE-CHAIRMAN KONYK: Okay. Is there any letters?

MR. MacGILLIS: This item was postponed, so the original letters were read into the record before.

VICE-CHAIRMAN KONYK: Okay, but they were all --

MR. MacGILLIS: They were all -- no one in opposition.

VICE-CHAIRMAN KONYK: Okay. Any board member feel this item warrants a full hearing?

(No response.)

VICE-CHAIRMAN KONYK: Any public here to speak on this item?

(No response.)

VICE-CHAIRMAN KONYK: Seeing none, this item will remain on

consent.

### STAFF RECOMMENDATIONS

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

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

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

YES. This is a conforming lot, the original residence (built in the 1950's) has nonconforming setbacks. The side corner setback required at that time was 7 feet, however, under the current ULDC regulations, the required side corner setback is 15 feet. The current location of structures on the lot restrict the property owner from alternative design solutions that would avoid the need for the variance. The existing house is approximately 1,448 square feet and with the new addition (330 square feet) the overall footage will be 1,778. The proposed room north wall will align with the existing house wall that encroaches into the north side corner setback. The granting of the variance will allow the applicant to pull all necessary permits and complete work already started. It will also allow the applicant to improve this property that had been in disrepair for many years by the prior owner.

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

**NO.** The applicant purchased the home in August, 2000, and was unaware that enclosing the existing solid roof screen enclosure would require additional setbacks. A Notice of Violation was issued by the Code Enforcement Division (C0012290016) for converting the existing enclosure room without the proper permits and inspections. Upon receive the Notice of Violation, the applicant **immediately** applied for building permits and was advised that the structure did not meet the required setbacks and that a variance would be needed. The applicant **has made** a good faith effort to abide by the regulations and correct the violations on site. The converted screen room will be used as necessary indoor space for the applicant's family. The proposed setback of the new wall will be consistent with the north setback for the existing house.

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

**NO.** Granting the variance **shall not confer** special privileges upon the applicant. Many other homes in the area have solid roof screen enclosures, utility sheds and carports, which do not comply with current setback regulations. Many of the lots were developed in this neighborhood over the past 60 years and therefore have varying setbacks. If the variance is granted, the applicant will have to obtain permits and inspections. This will ensure the structures comply with Building Codes and are safe for habitation. There is an existing 5 foot wood fence along the north property line that will mitigate the setback encroachment. There is an existing 5 foot wood fence along the north property line that will mitigate the setback encroachment. Staff recommends a condition that this fence be maintained in good repair at all times to mitigate the setback encroachment.

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

**YES.** A literal interpretation of the provisions of the ULDC **would create** an undue hardship on the applicant. The applicant would be required to remove the existing improvements already made at considerable expense and would deprive the applicant of the use of such structure. The space would have to be converted back to a screen room. The applicant states when purchasing the property in a foreclosure auction they were informed that the screen room could be converted. The granting of the variances will ensure the applicant obtains the permits and inspections necessary for the conversion. Also, it will allow the Code Enforcement fines accruing on the property to be finalized and the violation closed.

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

**YES.** Approval of the variance **is the** minimum variance that will allow a reasonable use of the parcel. This is the minimum variance necessary to correct existing setback violations and to allow the reconfiguration of the solid roof screen enclosure. The current location of structures restricts the property owner from alternative design solutions that would avoid the need for the variance. The existing house is approximately 1,448 square feet and with the new addition (330 square feet) the overall square footage will be 1,778. The original house was situated on the north portion of the lot at a 7 foot setback. The existing house is currently encroaching into the side corner setback. The enclosed solid roof screen enclosure cannot be moved to another location on the lot to avoid the need for the requested variance. The applicant states this room is needed to his family.

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 the variance **will be** consistent with the intent of the ULDC and Comprehensive Plan. The ULDC establishes setbacks to provide for consistency of setbacks along the street. As previously stated, many of the structures in this neighborhood were built over the past 60 years or more. The setbacks for the structures differ. The existing house is already encroaching into the required side corner setback. The applicant is simply requesting to align the 22.6 foot wall of the converted screen room to align with the existing house. The intent of the code to ensure adequate separation between structures will be maintained, if this variance is approved. To the north of this property is Wallis Road, therefore no structures will be encroached upon. There is an existing 5 foot wood fence that visually buffers the existing house and converted room from the street. The existing structure and proposed improvements will meet the needs of the applicant and provide a standard of living to which the applicant has become accustomed. The structure provides a reasonable use of the lot.

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

**NO.** Granting of the variance **will not be** injurious to the area involved or otherwise detrimental to the public welfare. The unenclosed solid roof screen enclosure structure has existing for over 10 years without complaints from adjacent property owners. The property owner was cited after he was told by Code Enforcement officer that enclosing the solid roof screen enclosure would require permits and inspections. The proposed enclosure of the solid roof screen enclosure will encroach the side corner setback no more than the existing location of the solid roof screen enclosure. The enclosure is flush with the existing garage and encroaches the side corner setback no more than the garage. The adjacent land to the north is Wallis Road and a 6 foot solid fence exists between the enclosed room and the road. There is, therefore, negligible visual impact on the property to the north.

**ZONING COMMENT**

The survey provided by the applicant indicates an existing concrete patio, 6' fence and two (2) storage sheds which encroach the existing Lake Worth Drainage District, FPL and Bell South easements. The applicant has secured the required Easement Release Agreements from the appropriate utility companies, however, to date has not received a release from the LWDD. The applicant is proposing to appear before the District's Board of Supervisors to petition for permission to leave the concrete patio and fence in the LWDD. Therefore, conditions numbers 4, 5 and 6 address the encroaching structures and the need for permits to relocate the storage sheds.

**SURVEY COMMENT**

Survey shows the existing concrete pad encroaching into the LWDD Canal No. 3. Based on the survey provided and the Legal Description shown, ownership would not



extend beyond the platted lot line of Lots 22 & 23.

#### **ENGINEERING COMMENT**

The requirement that the Base Building Lines for the subject property be thirty (30) feet from the center lines of Wallis Road and Dorothy Drive is hereby waived. Said Base Building Lines are hereby waived. Said Base Building Lines are hereby established at the existing south and west right-of-way lines, respectively, of the above noted streets, being the north and east property lines of the subject property as platted.

#### **ZONING CONDITIONS**

1. By August 14, 2001, the property owner shall present the Building Division with a copy of the Board of Adjustment Letter and copy of the site plan (Exhibit 9) presented to the Board and apply for building permits for the enclosure of a solid roof screen enclosure addition. **(DATE:MONITORING-BLDG PERMIT)**
2. By December 11, 2001, the property owner shall receive the building permits for an enclosed solid roof screen enclosure room addition. **(DATE:MONITORING-BLDG PERMIT)**
3. The property owner shall maintain the 5 foot wood fence along the north property line in good repair at all times. This fence is required to mitigate the side corner setback for the dwelling along the north property line. **(ONGOING)**
4. By September 14, 2001, the property owner shall remove the existing concrete patio and 6' wood fence out of the Lake Worth Drainage District easement **or have received approval from the LWDD Board of Supervisor's** granting permission for the concrete patio and 6' fence to remain within the LWDD easement. A copy of the approving document must also be presented to the Zoning staff by September 14, 2001. Release agreements from Florida Power & Light as well as Bell South have been secured which permit the encroaching 6' fence and concrete patio to remain encroaching the 3' utility easement (See Exhibits 9 & 10). **(DATE:MONITORING-ZONING-BA)**
5. By August 14, 2001, the property owner shall remove the two sheds from the Lake Worth Drainage District easement or relocate the two (2) metal sheds to an area on the applicant's property that will meet ULDC requirements, and secure building permits. **(DATE:MONITORING-BLDG PERMIT)**
6. By October 12, 2001, an as-built survey shall be submitted to the Zoning staff reflecting the relocated concrete patio, fence and two (2) sheds in locations as permitted by the ULDC. **(DATE:MONITORING-ZONING)**

VICE-CHAIRMAN KONYK: Next item on the consent is BOFA 2001-040, Chip Bryan, agent for Centerline Homes, to allow four proposed zero lot line homes to have a 10 foot setback. Your name for the record?

MR. BRYAN: Chip Bryan.

VICE-CHAIRMAN KONYK: Staff has recommended four conditions. Do you understand and agree with those conditions?

MR. BRYAN: Yes, we do.

VICE-CHAIRMAN KONYK: Is there any letters?

MR. MacGILLIS: No letters.

VICE-CHAIRMAN KONYK: Any opposition from the public?

(No response.)

VICE-CHAIRMAN KONYK: Any board member feels this item warrants a full hearing?

(No response.)

VICE-CHAIRMAN KONYK: Seeing none, BOFA 2001-040 will remain on consent.

**STAFF RECOMMENDATIONS**

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

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

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

YES. There **are conditions** that are unique to these lots that warrant special consideration when applying the literal intent of the code. The variance is limited to only four lots located on a cul-de-sac and abutting onto a golf course. None of the lots currently have units on them. The applicant's goal is to maximize the views from these units onto the golf course. The unique depth and configuration of the lots in addition to the fact they abut onto the golf course warrants special consideration. The ULDC does not have a provision that allows flexibility to the zero lot line setback when the unit abuts onto open space or preserve.

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

**NO.** The variance request **is not self created**. The applicant is requesting a variance for only 4 units that would improve the future buyers enjoyment of the views of the golf course from many vantage points inside the unit. The ULDC has no provision that would allow this alternative design solution with a variance. The intent of the zero lot line

zero setback is to provide at least 10 feet of open space on the opposite side of the unit. The zero lot line is typically 4,500 square feet and can support a house that is as large as 3,000 square feet. Therefore, the minimum property development regulations in terms of lot size, setbacks and privacy walls to the rear of the unit all work to ensure the property owner has a minimum outdoor living area. These lots are unique in that the lots are large and have adequate room to support a 7.5 foot setback on each side. Since the lots are clustered together on the cul-de-sac and on the golf course their impact will not be noticeable to the neighborhood.

The applicant also states that another justification for the variance is that when the site plan was prepared, it established lots 342 and 343 with radical side lot line and concentric rear lot lines, which is typical for cul-de-sac lots. The property was purchased subject to that approved plan and homes were designed and a lot fit study prepared. However, when the plat was prepared and recorded for the subdivision, it used a different rear lot line configuration for the two of the lots. As a result the homes do not fit on the lots as originally planned. Therefore, the variance request is being applied to allow the same separation between all the homes on these four lots and correct the platting modification.

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 recognize the unique location of the lots on the cul-de-sac and the fact that they abut onto a golf course to the rear. The applicant is limiting the variance to four undeveloped lots located at the end of the cul-de-sac. The request is partially the result of the fact that the site plan and plat for these lots were slightly modified during platting. The plat is now recorded and the lots sold for a specific unit type. It would be costly and timely to revise the plat to modify the configuration of the lots to accommodate the zero lot line unit. The variance would allow the 4 units on these specific lots to be shifted off the zero lot line by 7.5 feet. This would also eliminate the need for the rear zero lot line walls since the yards are open to the rear and situated off the zero so the 10 foot long privacy wall would not serve the intended privacy function. Also, the privacy wall, if installed, would obstruct views onto the golf course for these four units.

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 an approved site plan and plat for a zero lot line community. All other lots within this development will be constructed to comply with code. However, the four lots, subject to this variance, were platted differently than site planned. The minor change made to the lot lines during the platting phase makes it difficult to accommodate the

standard zero lot line units being constructed in this development. The unit would have to be situated on the lots in such a way that would not take advantage of the golf course views and restrict the useable outdoor area. The variance will simply allow these four units not to have a zero lot line setback and eliminate the need for a zero lot line privacy wall at the end of each unit. Considering the units are clustered at the end of the cul-de-sac their impact on the neighborhood will be minimal considering they will not be the standard zero lot line unit.

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

**YES.** The granting of the requested variance will allow the applicant to utilize the 4 lots to the best advantage to he future homeowners. The lots are larger than the typical zero lot line and can accommodate the single family detached setbacks. The error created during the platting stage of the lots places a hardship on the applicant in terms of being able to construct the home for the owner while resolving how to locate the unit on the reconfigured lot layout.

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

**YES.** Granting the variance **will comply with the general intent of the code.** The ULDC established minimum side setback for a zero lot line home. The intent was to maximize land by placing the unit on the lot line and maintaining a 10 foot setback on the opposite property line. However, the ULDC cannot anticipate unique lot configurations or orientations that could allow an owner to shift the unit to maximize views. In this case since the variance is limited to only 4 lots the placement of the unit 7.5 feet into the lot is acceptable and will maximize the owner's enjoyment of the views.

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. Many of the homes are currently not constructed or under construction in this development. Therefore, future buyers will be made aware the 4 units at the end of the cul-de-sac are single family detached and not zero lot lines. Considering the units are clustered in one area the visual effect will be minimal to the overall development.

#### ENGINEERING COMMENT

Please note that a lot development plan based on a proposed lot configuration shown on any document other than the final plat is considered to "at risk" since the lot boundaries and configuration are not actually established until the plat is recorded.

**(ENG)**

### ZONING CONDITIONS

1. The property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application. **(BLDG PERMIT: BLDG)**
2. By March 21, 2002, the applicant shall apply for a building permit on one of the lots: 341, 342, 343, 344, within the Polo Trace II subdivision in order to vest the variance for these lots granted pursuant to BA2001-040. **(DATE: MONITORING-BLDG PERMIT)**
3. This variance, BA2001-040, is limited to only lots 341, 342, 343, 344, Plat No. 4, within the Polo Trace PUD. The variance is to allow the zero lot units to be setback 7.5 feet off the zero setback line and eliminate the required zero lot line privacy wall for these four units. **(ONGOING)**
4. By August 21, 2001, the applicant shall administratively amend the certified site plan for the Polo Trace II, Pod A, Petition 93-057, to reflect the variance on lots 242, 242, 243, 244 and BA conditions of approval. **(DATE: MONITORING-ZONING-BA)**

VICE-CHAIRMAN KONYK: Next item on the consent is 2001-041, E. J. Clelland, Jr., agent for Market Place of Delray, Ltd.

Name for the record?

MR. CLELLAND: E. J. Clelland, Jr.

VICE-CHAIRMAN KONYK: Staff has recommended four conditions. Do you understand and agree with those conditions?

MR. CLELLAND: Yes, I do.

VICE-CHAIRMAN KONYK: Any letters?

MR. MacGILLIS: No letters.

VICE-CHAIRMAN KONYK: Any opposition from the public?

(No response.)

VICE-CHAIRMAN KONYK: Any board member feel this item warrants a full hearing?

(No response.)

VICE-CHAIRMAN KONYK: Seeing none, this item will remain on consent. Okay. You can sit down.

MR. CLELLAND: I'm the next one, too.

VICE-CHAIRMAN KONYK: Oh, you're the next one, too? Sorry.

### STAFF RECOMMENDATIONS

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

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

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

YES. There **are unique circumstances** surrounding this shopping center, Winn Dixie store and the sign code that must be taken into consideration when applying the literal intent to the code. This shopping center was approved in the late 1970s and supports 7 out parcels and an in-line retail with two anchor stores. The in line retail stores were recently renovated as well as the parking lot and landscaping in the late 1990s. The Winn Dixie store applied for and was issued sign permits in 1996 for the store. The 5 wall signs were all legal and within the total 316 square feet permitted for this structure. The January 2002 amendments to the Sign Code made many business in PBC non-conforming with respect to wall signs. The currently regulations allow only 1 sign per business. The prior code language permitted signage based on 1.5 times the area of the facade. The new code language places a significant hardship on the applicant since the existing sign that was recently removed cannot be replaced.

Therefore, what is unique to this site and business is the fact 5 legally permitted wall signs exist. The simple replacement of one sign, which is 15 square feet smaller than the existing sign, will provide the proposed bank with needed identification in this shopping center.

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

**NO.** The Winn Dixie store was issued a sign permit (B96007416) in 1996 for 5 wall signs. The wall signs are typical to the Winn Dixie store all across Florida. Many stores have been modernized in the past 5 to 10 years with the new facades, color and signage scheme. This store was updated in the late 1990s. The signage permitted totaled 305 square feet. The ULDC, until 2001, permitted the number of walls signage based on the square footage of the wall. In this particular case the 210 square feet of facade multiplied by 1.5 would allow a total of 316 square feet of wall sign. The permits issues in 1996 totaled 305 square feet. The current sign code only allows one sign per business. ULDC Article 1.5, non-conforming structure, allows existing structures to be improved by 20% of their value. However, in this case the existing Food Pavilion sign was removed by the applicant, anticipating the new bank sign could be installed in its place. However, staff informed the applicant

that the replacement could not occur because of the current sign code language.

The applicant is simply requesting to install a 38 square foot sign to replace the existing 53 square foot sign. The overall signage for this store is still within the allotted wall signage square footage that was permitted in 1996. The bank needs signage for those users who would not typically visit the Winn Dixie store and realize there was a bank in the food store.

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

**NO.** The applicant is requesting to replace a legally permitted sign with a smaller sign. The proposed sign is needed for the bank that is leasing space within the Winn Dixie food store. The bank is independent of the food store and therefore a wall sign on the outside of the store is critical to identify the use to those people who would otherwise not realize a bank was located inside. There is currently an Office Depot in this shopping center that has five signs on the facade, similar to the Winn Dixie store. The January, 2001, amended to the sign code has no provision for replacement of existing legally permitted wall signs.

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

**YES.** As previously stated, the Winn Dixie store was legally permitted to have five wall signs. The signs were permitted and installed in 1996 when the ULDC limited walls signs based on the size of the facade; however, the amendments to the sign code in January 2001, limits wall signs to one per tenant. This results in 4 of the five signs on this store being legal non-conforming. It also places a hardship on the applicant since only minor modifications can be made to these signs consistent with Article 1.5, non-conforming structures. In this particular situation the applicant removed one of the existing Winn Dixie store signs anticipating installing a new bank sign in its place. When applying for the replacement permit, the applicant was informed by staff that the replacement sign could not be installed. The bank is leasing space within the food store and therefore needs its own signage to attract customers not visiting the Winn Dixie store.

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

**YES.** Granting the variance **is the minimum** variance necessary to make a reasonable use of the property. This shopping center was recently renovated in the late 1990s. At that time

new facades, signage, landscaping and stripping of parking lot was done. The overall shopping center supports 7 out parcels along Military Trail and Atlantic Boulevard, and in line retail stores along the north portion of the site. The in line retail supports two large anchor stores, Winn Dixie and Office Depot. Both these stores made changes to their wall signs pursuant to the 1992 ULDC sign code. The Office Depot store also obtained a variance in 2000 for the number of wall signs. The applicant is simply requesting to replace one of the 5 legally permitted wall signs with a new bank sign. The existing sign is 53 square feet in the proposed bank sign will be 38 square feet for a 20 square foot reduction. The sign will provide the new bank being located in the Winn Dixie the identification it needs for its customers not typically

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

**YES.** The property complies with all the county codes when it was originally constructed and more recently renovated. When current wall signs for the Winn Dixie were installed they were legally permitted and within the square footage allowed. When the ULDC sign code was amended in January 2001, the total number of wall signs was limited to one per business. Since Winn Dixie is only one business, it is entitled to only one wall sign. Therefore, only one of the existing legally permitted wall signs is conforming; the other four are legal non-conforming. The recently adopted sign changes were intended to apply to new business. However, there was no provision added to the code to address existing business that had signage exceed the new requirements. Therefore, modifications to these non-conforming structures is governed pursuant to Article 1.5, non-conforming structures. This limits the amount of modifications to the sign to 20% of its value. In this particular situation the sign company removed one of the existing Winn Dixie signs without the knowledge of the newly adopted code language. Only after submitting a building permit for the sign replacement was he made aware that the sign that was removed could not be replaced.

The applicant's variance **request is reasonable** when reviewed under the context of the site and recent code adoption. The signage for this overall site was in compliance when erected and consistent with the code language in effect. The recent amendments to the sign code place a significant burden on the property owner in that all the existing wall signs with the exception of one are now legal non-conforming. The proposed bank sign is 15 square feet smaller than the sign recently removed and will provide the users of the bank with directional information.

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

**NO.** The granting of this variance **will not be injurious** to the surrounding area. The Winn Dixie store currently has 5 legally permitted



wall signs. These signs were installed in 1996 when the center was renovated. The other large in line tenant store, Office Depot also has 5 wall signs identifying services offered by the business. The simple replacement of the Food Pavilion sign with the bank sign will not be injurious to anyone visiting this site. The bank sign is needed for identification of the use for people who are not using the Winn Dixie to shop.

#### ENGINEERING COMMENT

No comment **(ENG)**

#### ZONING CONDITIONS

1. The property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application. **(BLDG PERMIT: BLDG)**
2. By August 21, 2001, the applicant shall apply to the Building Division for a sign permit for the wall sign for the Marketplace bank wall sign. The sign shall not exceed 38 feet as outlined in the BA2001-041 variance application. **(DATE: MONITORING-BLDG PERMIT)**
3. The applicant shall administratively amend the approved Site Plan for the Marketplace at Delray shopping center. Petitioner 81-058, to reflect the BA variance for the Winn Dixie Marketplace Bank sign by July 21, 2001. **(DATE: MONITORING-DRC)**
4. The sign variance is limited to the replacement of the existing Winn Dixie "Food Pavilion" sign with a proposed 38 square foot Marketplace Bank sign. **(ONGOING)**

VICE-CHAIRMAN KONYK: Okay. BOFA 2001-042. Your name for the record?

MR. CLELLAND: E. J. Clelland, Jr.

VICE-CHAIRMAN KONYK: Okay. Staff has recommended five conditions. Do you understand and agree with those?

MR. CLELLAND: Yes, I do.

VICE-CHAIRMAN KONYK: Any letters?

MR. MacGILLIS: No letters.

VICE-CHAIRMAN KONYK: Let the record reflect that Mr. Richards has arrived.

No opposition from the public?  
(No response.)

VICE-CHAIRMAN KONYK: Any board member feels this item warrants a full hearing?

(No response.)

VICE-CHAIRMAN KONYK: Seeing none, this item will remain on consent.

### STAFF RECOMMENDATIONS

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

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

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

**YES.** There **are unique circumstances** surrounding this shopping center, Winn Dixie store and the sign code that must be taken into consideration when applying the literal intent of the code. This shopping center was approved in the early 1970s and supports 6 out parcels and several in line retail stores. The out parcels have their own point of purchase and wall signs, as well as the inline stores. Only the Winn Dixie store has more than one wall sign. The 5 signs that exist were legally permitted in 1995. The applicant wants to keep the existing signage and place a 6th sign on the facade to Marketplace Bank. This sign cannot be permitted without a variance. The sign code that was amended in January 2001, only permits 1 wall sign per business. Staff recognizes the recent code changes place a limitation on the applicant; however, staff recommends that the applicant remove one of the existing wall signs in order for the total signs for the store not to exceed 5 signs.

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

**NO.** The requested variance **is not a self-created hardship.** The applicant was permitted to have 5 wall signs for the Winn Dixie store. A building permit was issued in 1995 for the 5 signs which totaled 305 square feet. The sign code in effect at the time permitted a total of 314 square feet based on the 260 square feet of facade x 1.5. The signs have existed for 8 years and now are all legal non-conforming due to the recent amendment to the ULDC wall sign provisions. The applicant is requesting to place one additional sign on the facade of the Winn Dixie

wall to accommodate the new bank that is being located in the store. When the applicant applied for a building permit he was informed the sign could not be replaced based on the changes to the sign code. The proposed bank in the Winn Dixie store needs the identification on the facade to identify the use. The bank is independent of the store and is leasing the space. Staff recommends approval of a total of 5 signs which will require the applicant to remove an existing wall sign similar to the BA2001-040.

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

**NO.** The applicant is requesting to install a new wall sign on the Winn Dixie store. The proposed sign is needed for the bank that is leasing space within the Winn Dixie store. The bank is independent of the food store and therefore a wall sign on the outside of the store is critical to identify the use to those people who would otherwise not realize a bank was located inside. Staff supports this variance request if the applicant agrees to a condition to remove one of the 5 existing legal non-conforming signs. This would allow the proposed sign to be located where one of the existing signs is currently located. It would also result in no increase in the total number of signs for this store. The applicant is currently requesting to keep the existing five wall signs and add a sixth. This would be inconsistent with the ULDC and confer a special privilege on the applicant. In the applicant similar variance application on this agenda, BA2001-41, the applicant volunteered to remove one of the signs so there was no overall increase in the total number of wall signs. The applicant argues that even with the 6th wall sign, the signage will be within the total wall sign square footage permitted under the prior sign code provisions.

If the applicant agrees to a condition to remove one of the existing signs to accommodate the additional sign need to identify the bank, this variance request would not confer a special privilege on the applicant.

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

**YES.** As previously stated, the Winn Dixie store was legally permitted to have five wall signs. The signs were permitted and installed in 1995 when the ULDC limited wall signs based on the size of the facade, however, the amendments to the sign code in January 2001, limits wall signs to one per tenant. This results in 4 of the five signs on this store being legal non-conforming. It also places a hardship on the applicant since only minor modifications can be made to these signs consistent with Article 1.5, non-conforming structures. In this particular situation the applicant needs identification for the bank that is located within the Winn Dixie store. When applying for the wall sign permit, the applicant

was informed by staff that the new wall sign would not meet code. The bank is leasing space within the food store and therefore needs its own signage to attract customers not visiting the Winn Dixie store.

Provided the applicant is willing to remove one of the existing five signs to accommodate the bank sign this variance request, if granted, would allow the applicant to enjoy the rights they previously had when the signs were originally permitted for this store. However, to request a 6th sign would not meet the literal or general intent of the sign code. The applicant needs to remove one of the wall signs to meet the sign code provisions to the greatest extent possible. The compromise would ensure the overall numbers of signs is consistent with what was legally permitted under the 1995 sign permit.

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

**YES.** With the recommended modification to the request by staff for the applicant to remove one of the existing wall signs this request would be the minimum variance necessary to provide advertising for the new independent bank to be located within the food store. Granting the variance **is the minimum** variance necessary to make a reasonable use of the property. The overall shopping center supports 7 out parcels along Jog Road and Lake Worth Road and in line retail stores along the east portion of the site. The inline retail supports several large stores with other smaller retail bays. Only the Winn Dixie store has more than one wall sign. The Winn Dixie signage was permitted under the 1992 zoning code in effect with the 1995 permit. The applicant's request is to allow an additional sign to advertise the bank. Staff recognizes the recent amendments to the code affects this use; however, to request an additional sign without removing one of the existing signs is not a reasonable request. Many of the signs are simply advertising a service/product offered in the Winn Dixie store. The applicant needs to weigh the importance of the signage and be willing to remove one existing wall sign to accommodate the sign needed for the bank. The sign will provide the new bank being located in the Winn Dixie the identification it needs for its customers not typically utilizing the food store.

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

**YES.** The property complies with all the county codes when it was originally constructed in the 1970s. When the existing wall signs for the Winn Dixie were installed they were legally permitted and within the square footage allowed. When the ULDC sign code was amended in January 2001, the total number of wall signs was limited to one per business. Since Winn Dixie is only one business it is entitled to only one wall sign. Therefore, only one of the existing legally permitted wall signs is conforming; the other four are legal non-conforming. The

recently adopted sign changes were intended to apply to new business; however, there was no provision added to the code to address existing businesses that had signage exceed the new requirements. Therefore, modifications to these non-conforming structures is governed pursuant to article 1.5, non-conforming structures. This limits the amount of modifications to the sign to 20% of its value. In this particular situation the sign company removed one of the existing Winn Dixie signs without the knowledge of the newly adopted code language. Only after submitting a building permit for the new sign was the applicant aware that the sign for the bank could not be installed.

The applicant's variance **request is reasonable** when reviewed under the context of the site and recent code adoption, provided one of the existing 5 signs is removed. The signage for this overall site was in compliance when erected and compliant with the code language in effect. The recent amendments to the sign code place a significant burden on the property owner in that all the existing wall sign with the exception of one are now legal non-conforming.

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

**NO.** The granting of this variance **will not be injurious** to the surrounding area. The Winn Dixie store currently has 5 legally permitted wall signs. These signs were installed in 1995 when the center was renovated. The new wall sign for the bank will not be injurious to anyone visiting this site. The bank sign is needed for identification for both those customers of Winn Dixie and those just coming to use the bank.

#### **ENGINEERING COMMENT**

No comment **(ENG)**

#### **ZONING CONDITIONS**

1. The property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application. **(BLDG PERMIT: BLDG)**
2. By August 21, 2001, the applicant shall apply to the Building Division for a sign permit for the wall sign for the Marketplace bank wall sign. The sign shall not exceed 38 feet as outlined in the BA2001-042 variance application. **(DATE: MONITORING-BLDG PERMIT)**
3. The applicant shall administratively amend the approved Site Plan for the Lake Worth Plaza Shopping Center, Petition 73-091, to reflect the BA variance for the Winn Dixie Marketplace Bank sign, by July 21, 2001. **(DATE: MONITORING-DRC)**
4. The applicant shall remove one of the existing Winn Dixie wall signs prior

to applying for a permit for the new 38 square foot Marketplace Bank signs. **(BLDG PERMIT-ZONING-BA)**

5. This variance is limited to the new Marketplace Bank wall sign. **(ONGOING)**

VICE-CHAIRMAN KONYK: BOFA 2001-044, Wayne Hetzel of Wayne Hetzel Buildings, agent for Margaret Wisner to allow an existing garage to be converted to an accessory apartment.

Your name for the record?

MR. HETZEL: Wayne Hetzel.

VICE-CHAIRMAN KONYK: Staff has recommended five conditions. Do you understand and agree with those conditions?

MR. HETZEL: Yes, I do.

VICE-CHAIRMAN KONYK: Any letters?

MR. MacGILLIS: No letters.

VICE-CHAIRMAN KONYK: Any opposition from the public?

(No response.)

VICE-CHAIRMAN KONYK: Any board member feel this item warrants a full hearing?

(No response.)

VICE-CHAIRMAN KONYK: Seeing none, the item will remain on consent.

MR. HETZEL: Thank you.

**STAFF RECOMMENDATIONS**

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

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

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

YES. There are **unique circumstances surrounding this lot** and

existing structure that warrant special consideration when applying the literal intent of the accessory apartment setbacks. This is a legal non-conforming AR lot. The lot is surrounded by 1.25 acre non-conforming lots supporting similar single family residences and accessory structures. The existing structures on this site were constructed by prior owners. All existing structures were legally permitted and constructed. The current owner purchased the property in December 2000 and are now requesting to convert the detached garage located in the south west corner of the lot to an accessory apartment. In order to convert the structure the applicant must obtain a variance so the structure can remain at the existing setbacks. Accessory structures in the AR zoning district (garage, pole barns, sheds) less than 10 feet in height have a 15 foot rear and 5 foot side interior setback. Structures over 10 feet meet a 25 foot setback. The existing garage complied with the required setbacks at the time it was permitted. The proposed use of the structure as an Accessory Apartment requires more stringent setbacks of 54.19 for the rear (west property line) and side interior (south property line). The fact the structure is existing there will not impact or noticeably change the surrounding property owners.

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

**NO.** The variance request **is not self created**, but the result of the fact that the structure is existing and cannot be relocated to comply with the increase setbacks for an accessory apartment. The current owner purchased the lot in December of 2000 and therefore did not construct any of the existing structures on the lot. The applicant would like to make the best use of the structure. Currently there is a 400 square foot garage attached to the house. The conversion of this 1000 square foot garage to an accessory apartment will allow the current owner to utilize this space for something more in keeping with the family's needs.

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** a special privilege on the applicant. The structure is existing and the buffered from the adjacent lots by native upland trees and shrubs. The openings on the structure are oriented to the north and east of the building into the lot and away from adjacent properties. The applicant is not proposing to modify the exterior of the structure and therefore the surrounding residents will not see a noticeable change in the structure.

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 enforcement of the terms of the accessory apartment

setback would result in the applicant not being able to convert this existing garage. The current use of the garage does not meet the needs of the owner. If the variance is granted the applicant would be able to utilize this structure for habitation. Had the owner constructed the structure, they would have been informed that a more stringent setback would apply and the structure could have been located further into the lot. However, the current owner recently purchased the property and desires to convert the garage to a living area. In order to install a kitchen in the structure and utilize it 21 months out of the year, the applicant will have to obtain a special permit for the zoning division for an accessory apartment. The special permit is monitored on an annual basis by staff to ensure compliance with the code provisions.

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

**YES.** The granting of the setback variances will allow the minimum variance necessary to convert this structure for a new use. The applicant can comply with all other accessory apartment requirements with the exception of the setbacks. The existing setbacks were for an unhabitable structure and were less than a habitual structure. The existing vegetation along the west and south property line buffer the structure. Also, the openings to the garage are located internal to the lot. Only two small windows are on the west and south property line. The applicant is not proposing any exterior modifications to the building; therefore, there will be no noticeable change to the structure by the neighbors.

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

**YES.** The granting of the requested rear and side interior setbacks will allow this existing garage to be converted to an accessory apartment to better serve the owner's needs. Granting the requested variance **will meet** the general intent of the code. The ULDC establishes setbacks for principal and accessory structures. In this particular situation the garage was constructed as an accessory garage and was unhabitable structure. The setbacks were only 25 feet and 15 feet. The conversion of the structure to a habitual space requires the structure to comply with the principal structure setbacks. In order to comply with this requirement the owner would have to relocate the structure or not convert it. The applicant cannot reasonably relocate this 1000 square foot structure and considering that if the variances are granted, the applicant states they can comply with all other building and zoning requirements for the accessory apartment. The existing vegetation that is located along the west and south property line will mitigate the reduced setbacks that will allow the conversion of this structure to an apartment.

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



**PUBLIC WELFARE:**

**NO.** If this variance is granted it will not be injurious to the surrounding area. The fact that the structure currently exists along the southwest corner of the lot and no exterior modifications are proposed the general public will not be impacted. It is the intent of the BCC to encourage accessory apartments in all residential zoning districts so children can accommodate aging parents, handicapped children or provide accommodations for indigent people. The accessory apartment is meant as a form of affordable housing and not considered a second dwelling unit on the property for purposes of calculating density.

**ENGINEERING COMMENT**

No comment **(ENG)**

**ZONING CONDITIONS**

1. The property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter when applying for a building permit to convert the existing garage to an accessory apartment. Prior to submitting for this building permit the applicant shall have secured a special permit from the zoning division for an accessory apartment. **(BLDG PERMIT: ZONING-BA)**
2. By February 21, 2002, the property owner shall obtain a building permit for the conversion of the 1000 square foot garage to an accessory apartment in order to vest the rear and side setback approved pursuant to BA2001-044. **(BLDG PERMIT-ZONING)**
3. There shall be no additions or modifications to the openings on the 1000 square foot structure west or south facade, in order to protect adjacent property owners. **(ONGOING)**
4. By January 21, 2002, or prior to apply for the renovation permit for the accessory garage to an accessory apartment the applicant shall apply and obtain a special permit from the Zoning Division for an accessory apartment. **(DATE:ZONING-BA)**
5. By August 21, 2001, the applicant shall remove the storage shed located behind (west property line) the accessory building or obtain a permit to legalize the structure in a location that complies with the required setback. **(DATE:MONITORING:CODE ENFORCEMENT)**

VICE-CHAIRMAN KONYK: BATE 2001-045, Sara Lockhart, agent for Meyer Development.

Your name for the record?

MS. LOCKHART: Good morning. Sara Lockhart.

VICE-CHAIRMAN KONYK: The conditions are still the same four as before or are there additional conditions?

MS. LOCKHART: There's a date change; that's all.

VICE-CHAIRMAN KONYK: Okay. Do you understand and agree with that?

MS. LOCKHART: Yes.

VICE-CHAIRMAN KONYK: There would be no letters on this because it's not advertised?

MR. MacGILLIS: Correct.

VICE-CHAIRMAN KONYK: Any opposition from the public?

(No response.)

VICE-CHAIRMAN KONYK: Any board member feel this item warrants a full hearing?

(No response.)

VICE-CHAIRMAN KONYK: Seeing none, this item will remain on consent.

MS. LOCKHART: Thank you.

#### **STAFF RECOMMENDATIONS**

Staff recommends a maximum of 12 months time extension with a possible additional one year extension next year from the Board. The 12 month extension will be from June 20, 2001, to June 20, 2002, consistent with Section 5.7.H.2 of the ULDC, to provide additional time for the petitioner to commence development and implement the approved variances. Although the applicant is requesting 24 months, staff only supports 12 months at this time. The intent of the condition is to ensure the final site plan is amended to reflect the buildable square footage. An additional one year is adequate time to secure a tenant and receive BCC approval.

The property owner shall comply with all conditions of approval of BA2000022, unless modified herein:

#### **ZONING CONDITIONS**

1. By June 20, 2001, the applicant shall receive the necessary approvals to add the additional square footage to the freestanding building. This parking variance to reduce the parking by 8 spaces shall become null and void if the approval of the additional 1,396 square feet of floor area is not secured by the applicant.

**(DATE:MONITORING-ZONING)**

**is hereby amended to read:**

**By June 20, 2002, the applicant shall receive the necessary approvals to add the additional square footage to the free standing building. This parking variance to reduce the parking by 8 spaces shall become null and void if the approval of the additional**

1,396 square feet of floor area is not secured by the applicant.  
**(DATE:MONITORING-ZONING)**

2. By April 20, 2001, or prior to the issuance of a building permit for the westerly free standing building, whichever occurs first, the applicant amends the site plan to reflect the Board of Adjustment parking variance and conditions of approval. **(DATE:MONITORING-ZONING)**
3. The parking variance was based on the uses, square footage (14,700 square feet plus additional 1,396 square feet to be requested from BCC for a total of 16,096 square feet) and design layout as shown on Exhibit 22 in BA2000-022 file in the Zoning Division. **(ONGOING)**
4. The westerly free standing building shall be limited to uses that are low generators of parking such as business professional offices, general retail limited repair. **(ONGOING)**

**ENGINEERING COMMENT(S):**

No comment. **(ENG)**

VICE-CHAIRMAN KONYK: BOFA 2001-046, George Gentile, to allow for a reduction in the required RT zoned lot frontage requirement for four proposed lots.

Your name for the record?

MR. GENTILE: George Gentile, for the record.

VICE-CHAIRMAN KONYK: Six conditions were recommended.

MR. MacGILLIS: Madam Chair, page 76 of your back-up material, there are some amendments. I think staff has provided you with a revised set of conditions and a revised site plan.

VICE-CHAIRMAN KONYK: Right.

MR. MacGILLIS: After the staff report was finalized, the applicant in order to comply with the land development requirement for water retention on site and had to provide some --

VICE-CHAIRMAN KONYK: You've seen this and you understand --

MR. GENTILE: We agree with the amended conditions.

MR. MacGILLIS: Just for the record the changes are on condition number two where it refers to Exhibit Number 20; that'll be replaced by Exhibit 24, which is the revised site plan.

On condition number four where it refers to Exhibit Number 20, it will be replaced with Exhibit 24.

Condition number five shall read, "By October 21, 2001, the applicant shall provide the Zoning Division and BOFA staff with a copy of the preserved management plan," which they've already done.

MR. GENTILE: We've already done.

MR. MacGILLIS: That was the only changes to the conditions. Staff recommends approval.

them? VICE-CHAIRMAN KONYK: Okay. And he understands and agrees with

MR. GENTILE: We agree with all of those amended conditions.

VICE-CHAIRMAN KONYK: Okay. And are there any letters on this?

MR. MacGILLIS: There were no -- oh, there were calls from adjoining property owners. Once it was explained that actually this was going to preserve the existing vegetation, they were in support.

VICE-CHAIRMAN KONYK: Okay. Any opposition from the public on this item?

(No response.)

VICE-CHAIRMAN KONYK: Any board member feel this item warrants a full hearing?

(No response.)

VICE-CHAIRMAN KONYK: Seeing none, this item will remain on consent.

### STAFF RECOMMENDATIONS

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

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

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

YES. There **are unique circumstances** and conditions peculiar to this lot and project that warrant special received BCC approval to rezone from RS to RT to be consistent with the LR-1 land use. The proposed 6 single family lot subdivision is located on the Loxahatchee River. The property currently supports one single family lot and a significant stand of native oak habitat. The applicant is required to preserve this significant habitat to the greatest extent possible. The Department of ERM has placed a condition on the applicant to apply for a frontage setback to allow for the elimination of cul-de-sacs that are proposed into the four lots. The cul-de-sacs are necessary for the applicant to meet the RT frontage requirement. If the variance is granted for the frontage reduction the cul-de-sacs will also be eliminated. This will ensure the front portion of all the lots maintain the significant stand of oaks.

Therefore, there **are unique conditions specifically unique to this lot** that warrant special consideration. The owner is complying with County Department of ERM's request to preserve more trees than required by code. The native oak habitat is one of the few remaining stands in this neighborhood. If the variance is granted the applicant will delineate the vegetation on the approved Site Plan/Subdivision plan to ensure the trees are preserved in perpetuity. The preservation of additional trees can only

be accomplished if the variance to reduce the frontage requirement is granted. Otherwise, the applicant will be required to bring cul-de-sacs into each of the four lots in order to comply with the ULDC frontage requirement of 100 feet for each of these lots. The lots have been laid out to maximize the tree preservation, views of the Loxahatchee River while maintaining minimum lot sizes.

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

**NO.** This is not a self created variance request. The applicant purchased the 9.33 acre property and has the necessary approvals to construct a 6 unit subdivision. The lot currently supports one single family residence and a significant oak habitat. The applicant has been requested by the Department of ERM to increase the tree preservation along the front of the lot. The only way this request can be accomplished is by the granting of a frontage reduction for 4 of the 6 lots. The applicant has prepared a site plan that maximizes tree preservation while at the same time complies with all other county requirements with the exception of lot coverage. The applicant will be maintained 65 to 66 feet of frontage on the four lots. Therefore, the variance is limited to the necessary reduction of the frontage to avoid the need to construct cul-de-sacs into these 4 lots in order to meet the frontage requirement.

The applicant can proceed without the variance, but this would result in the destruction of some on this last remaining oak habitat in the area. It is the goal of the applicant to work with the County staff to preserve the minimum amount of vegetation. The applicant recognizes the benefits to preserving additional vegetation on the lots. The preserved vegetation will buffer the future homes from Pennock Point Road and ensure the existing views the neighborhood currently has of this property are maintained.

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 can move forward without the variance, however, the Department of ERM has placed a DRC condition on the applicant to seek a variance to reduce the required lot frontage which will ensure additional preservation of the native oak habitat. The applicant has agreed to apply for a variance to reduce the frontage of four lots. If the variance is approved, the applicant will get DRC certification of the Site/Subdivision Plan and proceed through platting. The oak habitat boundaries will be delineated on the plan and plat to ensure they are preserved in perpetuity by the future owners.

Therefore, granting of the variance is necessary for the applicant to comply with the Department of ERM's request for additional preservation as well as the applicant's clients desire to preserve the maximum amount of the last remaining oak habitats in this community. At one time this community had many such habitats, however, as a result of

construction of subdivisions many of the habitats have been lost. In this case the County and owner are working together to ensure the habitat is preserved for future generations.

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

**YES.** The ULDC RT property development regulations requires the applicant to have a minimum 100 feet for legal frontage for each lot. The frontage is measured along the front property line which runs parallel to the street. However, in this particular proposed subdivision the overall parcel has a unique configuration, being narrow at the street (416 feet) and fanning out along the rear along Loxahatchee River. The existing native oak habitat is approximately 50 feet deep on lot 1 @ 2, 3 while along lot 4 it extends to approximately 100+ feet, while on lots 5 & 6 it is approximately 260 feet in depth. Lots 1 & 6 are rectangular lots and therefore can comply with the 100 feet of frontage. However, lots 2, 3, 4, 5 cannot accommodate the frontage without a variance. If the variance is denied the applicant would have to construct cul-de-sacs into these four lots which would result in the destruction of most of the habitat on these lots. The loss of the trees on these particular lots which significant affect the overall integrity of the habitat and its appearance from Pennock Point Road.

Therefore, the literal interpretation of the frontage requirement of 100 feet for all the lots which result in a significant impact on the oak habitat. On these lots subject to the variance the construction of cul-de-sacs would be necessary to meet the frontage requirement and this would result in destruction of a large if not all the upland vegetation on the 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 project was approved by the BCC for a rezoning from RS to RT. The residential subdivision was below the threshold for a conditional use. Therefore, the BCC could only impose voluntary conditions on the applicant. There was no condition to preserve the oak habitat. However, the applicant was approached by the Department of ERM staff to preserve the vegetation through the DRC approval process. However, in order to preserve the vegetation the applicant requires a reduced frontage variance. The Department of ERM consulted with both the applicant and Zoning staff to stress the importance of the habitat to the community and the need to explore all options necessary to preserve the trees. The applicant has no other design options that would avoid the need for a frontage variance. The overall 9.33 acre tract of land has a unique configuration and limits that lot configuration. The number of lots being processed is consistent with the LR-1 land use and RT zoning classification. If the variance is granted the applicant will be able to proceed to DRC for the final site

plan/subdivision approval and then platting. The habitat will be delineated on both the site plan and plat to ensure it is preserved.

The preservation of this native habitat is a significant goal of ERM and the property owner. It will also ensure the community does not lose a significant natural amenity to the neighborhood.

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

**YES.** The BCC approved the rezoning of this 9.33 acre tract of land this year. The project complies with the Comp Plan and the ULDC. The proposed six lot subdivision is located off Pennock Point Road and abuts onto the Loxahatchee River. The applicant currently has a DRC application into DRC for final Site Plan/Subdivision approval. The granting of the frontage variance will allow the applicant to move forward and obtain a final plat.

The intent of the ULDC minimum frontage requirement is to ensure lots are a minimum size and have a minimum frontage abutting a legal street. The requirement avoids the creation of flag lots where only a small portion of the lot abuts the street and the lot flags out forward the center and rear. In this case the maintenance of 65 to 66 feet on the four lots subject to the variance will ensure the general intent of this provision is met. This variance is limited to the four lots and is the result of the County's and applicant's clients desire to preserve the greatest amount of the native oak habitat that exists along the front portion of the lots.

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

**NO.** Granting of the various will not be injurious to the surrounding area. The preservation of the trees will allow the applicant's client to preserve the existing native habitat the neighborhood currently enjoys. The lot frontage reduction will only affect four lots and will still allow the general intent of the code to provide a minimum frontage adjacent to a legal street.

#### ENGINEERING COMMENT

No comment **(ENG)**

#### ENVIRONMENTAL RESOURCE MANAGEMENT COMMENT

The Pennock Point Subdivision supports upland scrub vegetation, including Turkey Oak, Scrub Oak, Live Oak and Cabbage Palm canopy. The understory consists of an endangered air-plant, common wild pine, saw palmetto, prickly pear cactus, hog plum and stagger bush, which is typically found in slash pine ecosystems. Along the Loxahatchee River are red mangrove, swamp fern and live oaks. Endangered species such as gopher tortoise and scrub jay utilize this site. Nine gopher tortoise burrows have been documented on this site. **(ERM)**

### 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 21, 2001, the applicant shall amend the Site/Subdivision Plan for Estates at Pennock Point (Petition Z2000-101) to reflect the preserve area as shown on BA-2001-46, Site Plan, Exhibit 20, in the BA Petition File. The BA conditions of approval shall also be shown on the certified Site/Subdivision Plan. **(DATE:MONITORING-ZONING-BA)**
3. By April 21, 2002, the applicant shall obtain a building permit for one of the 6 single family dwelling units in order to vest the development order for the frontage variance, BA2001-46. **(DATE:MONITORING-ZONING-BA)**
4. The native oak habitat delineated on BA Site Plan, Exhibit 20, shall be preserved according to established practices and requirements of the Department of Environmental Resources Management. All precautions shall be taken during the construction phases of the infrastructure and dwelling units to ensure the oak habitat survives. Any destruction of native trees shall be subject to replacement and penalties according to Article 7.3 and Article 14 of the ULDC. **(ONGOING-ZONING-ERM)**
5. By October 21, 2001, the applicant shall provide the Zoning Division BA Staff with a copy of the recorded covenant to preserve the existing oak habitat. This frontage variance was justified to preserve the existing oak habitat, therefore assurance must be guaranteed by the current and future property owners that the trees are preserved in perpetuity. **(DATE:ZONING-BA)**
6. The variance for BA2001-046 is limited to the frontage reduction on lots 2, 3, 4, 5. **(ONGOING)**

VICE-CHAIRMAN KONYK: BATE 2001-047, Kenneth Blair, to request a six month time extension to BA 2000-040, condition number one.

Your name for the record?

MR. BLAIR: Kenneth Blair, Catafulmo Construction & Development.



VICE-CHAIRMAN KONYK: Five conditions were recommended by staff. Do you understand and agree with those?

MR. BLAIR: I do.

VICE-CHAIRMAN KONYK: There's no letters obviously because it's not advertised.

MR. MacGILLIS: No letters.

VICE-CHAIRMAN KONYK: Any opposition from the public?

(No response.)

VICE-CHAIRMAN KONYK: Any board member feels this item warrants a full hearing?

(No response.)

VICE-CHAIRMAN KONYK: Seeing none, this item will remain on the consent.

#### STAFF RECOMMENDATION

Staff recommends a maximum of **6 month time extension for BA2000040**, Condition #1 from June 20, 2001, to December 20, 2001, consistent with Section 5.7.H.2 of the ULDC, to provide additional time for the petitioner to commence development and implement the approved variances.

The property owner shall comply with all conditions of approval of BA2000040, unless modified herein:

#### ZONING CONDITIONS

1. Prior to June 20, 2001, the property owner shall obtain a Paving/Drainage permit from Palm Beach County Building Division in order to vest this parking variance. **(DATE:MONITORING BLDG PERMIT-ZONING)**

##### Is hereby amended to read:

Prior to December 20, 2001, the property owner shall obtain a Paving/Drainage Permit from Palm Beach County Building Division in order to vest this parking variance. **(DATE:MONITORING BLDG PERMIT-ZONING)**

2. Prior to DRC certification, the applicant shall ensure the BofA conditions (BA2000-040) are shown on the approved Site Plan. **(DRC-Zoning) COMPLETED-DRC NOT REQUIRED**
3. The property owner shall acquire an occupational license from Palm Beach County Tax Collector Division specifying the size and type of business exactly the same as indicated in the justification documentation presented in variance application BA2000-040. The method of service delivery (if applicable) should also be delineated on the occupational license, as outlined below:
  - Interior Yacht Design Firm
  - Total of four staff members
  - Appointment-only method of service delivery **(ON-GOING-ZONING-TRAFFIC)**

4. The applicant shall submit a Restrictive Covenant to limit the use of the subject property to an interior yacht design firm with four staff members, and operating on an appointment-only basis as indicated in the variance application BA2000-040. This Restrictive Covenant is to be reviewed and approved by the County Attorney's Office, prior to being recorded in the Public records of Palm Beach County, Florida. One copy of the recorded document shall be submitted to the Zoning Division for inclusion in the applicable Zoning Petition file. **(ZONING-COUNTY ATTORNEY) COMPLETED SEE PETITION FILE**
5. The variance is approved subject to limited use of the property as an interior yacht design consulting firm in a manner consistent with the provisions of this condition. The business shall be operated solely as an interior yacht design business with no more than four staff members, and on an appointment only basis. The property owner shall adhere to the letters of affirmation identified as Exhibit Numbers 25 and 28 and floor plans (Exhibit 24) filed with variance request BA2000-040. The variance shall be voided if the provisions of this condition are violated. Any future increases in the number of staff members of the size of the structure or modifications of the types of business services offered or method of business operation will require review by the Palm Beach County Zoning Division and may require a new variance from the provisions of Section 7.2.B of the Unified Land Development Code. **(ZONING)**

#### **ENGINEERING COMMENTS**

The requirement that the Base Building Line for the west side of the subject property be forty (40) feet beyond the existing right-of-way of U.S. Hwy No. 1 is hereby waived. Said Base Building Line is hereby established at the existing easterly right-of-way line, being also the westerly property line of the subject property. **(ENG)**

**VICE-CHAIRMAN KONYK:** BOFA 2001-048, Kenneth Blair, to allow utility easement to overlap a landscape buffer by 12 feet.

Name for the record?

**MR. BLAIR:** Kenneth Blair, Catafulmo Construction.

**VICE-CHAIRMAN KONYK:** Okay. Conditions were recommended. There's two. Do you understand and agree with those?

**MR. BLAIR:** We do.

**VICE-CHAIRMAN KONYK:** Okay. Any letters?

**MR. MacGILLIS:** There was a letter from a property owner across the Intracoastal to the rear who had a concern with landscaping. But I believe staff visited the site, and addressed her concern.

VICE-CHAIRMAN KONYK: Okay. Any opposition from the public on this item?

(No response.)

VICE-CHAIRMAN KONYK: Any board member feels this item warrants a full hearing?

(No response.)

VICE-CHAIRMAN KONYK: Seeing none, this item will remain on the consent.

MR. BLAIR: Thank you.

**STAFF RECOMMENDATIONS**

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

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

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

YES. There **are unique circumstances** surrounding this parcel of land and approvals. The site is .39 acres which is less than the required 1 acre for the CG-General Commercial zoning district. The site will have access from US Highway 1 and will accommodate a 5,991 square foot interior design showroom and offices. The Board of Adjustment granted an off street parking variance in July 2000 to allow for a total of 10 parking spaces instead of the required 30 spaces by code. When BA2000-40 was submitted the survey and site plan did not reflect the 21 foot platted easement along the south property line. The easement has existed for many years and cannot be relocated. The applicant has a building permit on hold in the Building Division until this overlap of the landscape easement is resolved.

The granting of this variance will recognize the platted 12 foot utility easement that was dedicated by the prior owner to the Seacoast Utility Authority in 1989 while recognizing the site is legal non-conforming and has limited land use. The remaining buffer width can still accommodate the trees and shrubs required by the landscape code. The same visual effect will be accomplished if this variance is granted by the Board.

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

**NO**. This is **not** a self-created hardship. The 12 foot utility easement was recorded in May 1989 to Seacoast Utility Authority for water and sewer lines. The applicant hired a surveyor to prepare the required survey for the original BA submitted in 2000. The surveyor failed to note the platted easement. This site is only .39 acres and has limited land

area to accommodate the overlap issue. If the easement had been discovered early in the review process the building could have been made smaller to accommodate the additional 7 feet to ensure the buffer and utility easement only overlapped by 5 feet as currently permitted in the ULDC. The applicant has a building permit in the process and would have to make significant changes to the building to reduce it to accommodate the overlap.

Therefore, the fact that the easement was dedicated in 1989 it is needed to provide water and sewer to the lots abutting US Hwy 1. The fact that the easement did not show up on the site plan in 2000 when the original site plan was prepared was because of the surveyors' error and not the applicant's. Once the applicant was made aware of the omission they met with staff to resolve it. The site cannot accommodate any readjustment for the overlap. The site has limited land area to accommodate the building and parking that was reduced by BA2000-40 variance.

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

**NO.** The applicant **is requesting the minimum** variance to allow this project to move forward. The building permit is currently on hold in the Building Division until the easement overlap issue is resolved. The easement is a necessary tract of land to provide water and sewer to the lots that abut onto US Hwy 1. This project only required BA approval for the parking reduction and therefore since the easement did not show up on the survey it was not until building permit process was the overlap discovered by staff.

The fact that the site can still function with the variance no special privilege will be granted to the applicant. All required landscaping will be installed and the intended visual buffering from the street will be accomplished with the proposed landscape design.

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 a building permit in for final review. The only way the extra 7 feet can be accomplished to prevent the 12 foot overlap is to decrease the footprint of the building. This would be very costly and time consuming. The site is only .38 acres, less than the required 1 acre for a CG lot. The applicant was proposing a use that recognized the limitations of the property.

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 will allow the building permit to proceed through the permit review process. The required landscaping will be installed on the inside 7 feet of the buffer easement to ensure the same visual screening intended by the 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 use **is** consistent with the CH/8 land use designation and CG zoning. The applicant applied for and was granted an off street parking variance in July 2000. The applicant has complied with all other property development regulations. When the recent survey was prepared for the July BA case, the utility easement was somehow omitted. The applicant would have requested this variance at that time based on the hardship it presents to the property owner. When the original structure (SFD) was constructed on this site, it was on well and septic. In 1989 the property owner dedicated a 12 utility easement to provide water and sewer along US Hwy 1.

The granting of this variance, if granted, **will meet** the general intent of the code. All the required landscaping along US Hwy 1 will be installed.

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. The 12 foot utility easement was dedicated to Suncoast Utility Authority in 1989 to allow for sewer and water lines to be extended along properties along US Hwy 1. The installation of the required trees and shrubs can still be accomplished in the remaining area of the buffer outside the easement.

**ENGINEERING COMMENT**

No comment **(ENG)**

**ZONING CONDITIONS**

1. By July 21, 2001, the applicant shall provide the Building Division with a copy of the BA Result Letter and Landscape Plan, submitted to the BA in order for **PR01008401** to be finalized. **(DATE:ONGOING-BLDG PERMIT)**
2. Prior to December 21, 2001, or prior to issuance of the final Certificate of Occupancy the applicant shall contact the Landscape Section for a final landscape inspection. The required landscape shown on Landscape Plan Exhibit 20, in BA2001-048 file in the Zoning Division, shall be installed in accordance with this plan. **(DATE:MONITORING-CO-**

**LANDSCAPE)**

VICE-CHAIRMAN KONYK: BATE 2001-049, Dwight Weyant, agent for Norman and Annette Sullivan, to request a one year time extension for the development order.

Your name for the record?

MR. WEYANT: Good morning. I'm Dwight Weyant.

VICE-CHAIRMAN KONYK: Staff had five conditions on this item. You understand and agree with those conditions?

MR. WEYANT: We do.

VICE-CHAIRMAN KONYK: No letters; right?

MR. MacGILLIS: No letters.

VICE-CHAIRMAN KONYK: Any opposition from the public?

(No response.)

VICE-CHAIRMAN KONYK: Any board member feel this item warrants a full hearing?

(No response.)

VICE-CHAIRMAN KONYK: Seeing none, this item will remain on the consent.

**STAFF RECOMMENDATIONS**

Staff **recommends of a maximum of 12 month time extension** for both the Development Order and Condition 3, from May 15, 2001, to May 15, 2002, consistent with Section 5.7.H.2 of the ULDC, to provide additional time for the petitioner to commence development and implement the approved variances.

The property owner shall comply with all conditions of approval of BA2000028, unless modified herein.

**ZONING CONDITIONS**

1. The property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan presented to the Board simultaneously with the building permit application for the daycare center. **(BLDG PERMIT)**
2. Prior to DRC certification of the final site plan for this daycare use the applicant shall ensure the Board of Adjustment conditions are on the

certified plan. **(DRC) COMPLETED**

3. The applicant shall commence construction on the daycare center building by May 15, 2001, in order to vest the front and rear setback variances. **(DATE:MONITORING-ZONING\BA)**

**is hereby amended to read:**

By May 15, 2002, the applicant shall commence construction on the daycare center in order to vest the front and rear setback variances. **(DATE:MONITORING-ZONING\BA)**

4. By January 15, 2001 or concurrent with submittal of the final Landscape Plan to the Landscape Section, the applicant shall ensure the Landscape Plan reflects the upgrade landscaping along Northlake Blvd., as required by BA2000-28 approval. **(DATE:MONITORING-LANDSCAPE)**
5. The applicant shall install the following landscape plant material in the buffer along Northlake Blvd., prior to final Certificate of Occupancy on the daycare center:
1. Upgrade the required native tree planting with trees 20 feet on-center.
  2. Use of native saw palmettos, coco plum, wax myrtle, hedge material to create a solid visual buffer from the street. **(LANDSCAPE-CO/INSPECTIONS)**

#### **ENGINEERING COMMENTS**

Please note that the Engineering Department does not waive the requirement that the Base Building Line for the subject property be forty (40) feet beyond the existing right-of-way line (i.e. interior easement line) of Northlake Boulevard. Given the existing 100 ft. (total) right-of-way, said Base Building Line shall remain as established by Sec. 6.5.G.7.a, ULDC.

**VICE-CHAIRMAN KONYK:** BOFA 2001-050, Ken Kruger, agent for RB Graves & Son, to allow for the following variances. Is the agent present?

Name for the record?

**MR. KRUGER:** My name is Ken Kruger.

**VICE-CHAIRMAN KONYK:** Okay. Conditions are seven. Do you understand and agree with those conditions?

MR. KRUGER: We understand the conditions. We were just caught by surprise on one of them. It differs than the requested variance on the front, so I'm not sure --

VICE-CHAIRMAN KONYK: Did you want to tell us which one it was?

MR. KRUGER: I just want to see if the staff intentionally --

VICE-CHAIRMAN KONYK: Which number condition was it?

MR. KRUGER: It was five, Okeechobee Boulevard landscape buffer.

MR. MacGILLIS: Oh, yes, I should reflect that for the record. When the applicant came in and met with staff, staff was concerned that he was reducing that landscape buffer down to five feet along Okeechobee Boulevard.

I believe I instructed them at that time that staff would not support their request to go down to 10 feet. I should have indicated that when I sent him the report.

In the backup material it does say staff recommends we maintain at least 10 feet landscape buffer in that portion between the driveways along Okeechobee because of the size of that right-of-way.

MR. KRUGER: I don't know -- it is existing. That's why we were confused on that.

VICE-CHAIRMAN KONYK: I'm sorry; I can't hear you.

MR. KRUGER: The buffer that's there is existing, or the landscape that's there is existing.

VICE-CHAIRMAN KONYK: Okay. Is it ten feet now?

MR. KRUGER: No, it's five. It's five feet.

MR. MacGILLIS: We may have to pull it off the consent agenda because staff does not support that, because they are upgrading this entire site, tearing down the existing building, and we brought this up about the landscaping along the right-of-way. That was one thing that staff insisted at our pre-app, that they maintain the 10 feet.

And they can be accommodated. We looked at the flow of the site plan, an extra five feet. It's only between the driveways that actually we're talking about. I don't know, we're talking 20 feet of length?

MR. KRUGER: Yes, it's only a small existing buffer that's there.

MR. MacGILLIS: Right, and the five feet along Okeechobee is not enough to accommodate enough landscape to make any impact because the rest of the site is concrete for the gas station.

VICE-CHAIRMAN KONYK: Can you comply with that condition?

MR. KRUGER: Well, we're just not sure at this moment whether or not -- our problem with it was the truck access, the field trucks access entering in and out of the property, and we met with the DOT and they had concerns about it.

VICE-CHAIRMAN KONYK: Okay. If you can't comply with the condition, then we would have to pull this item off the consent and go to a full hearing or, I mean, would you recommend that they have time to review this and maybe reorder them?

MR. MacGILLIS: Reorder it at the end of the agenda because we have a regular agenda item to hear.

VICE-CHAIRMAN KONYK: Right. So what we would have to do since you can't comply or say that, you know, you don't know if you can comply with that condition, you would need to pull this item from the consent agenda then, because the only way this can stay on the consent is if you comply with all the conditions that have been recommended by staff.

MR. KRUGER: May I just have one moment to confer with my client? He's right here.

VICE-CHAIRMAN KONYK: Certainly. We'll come back. But can you do it out in the hall?

MR. KRUGER: Sure.



VICE-CHAIRMAN KONYK: Okay.

VICE-CHAIRMAN KONYK: Next item on the consent is BOFA 2001-051, Michael Starace and Gwyn Radish, to allow a proposed attached garage to encroach into the side interior setback.

Your name for the record?

MR. STARACE: Michael Starace.

VICE-CHAIRMAN KONYK: Okay. Staff has recommended two conditions. Do you understand and agree with those conditions?

MR. STARACE: I do. I have one question, though, on one of the conditions. It just says by February 21, 2002, or final certificate.

We're just want to make sure that we have enough time that we do finish the garage to put up that hedge. I mean, I don't know if I'm going to run a little bit longer. That's the only thing.

MR. MacGILLIS: We discussed this with the applicant yesterday on the phone and he requested we change this. Staff indicated on the telephone conversation with Jenny Mesina (phon.) we would not extend this, that he could come in for a time extension if he can't meet it.

MR. STARACE: Okay. Or it said -- my only question is, it says "...or final certificate of completion." So if we're not complete within eight months, then I don't have to have that done until I am complete; correct?

MR. MacGILLIS: Yes. The intent is that the landscaping goes in before that date or at the time you're getting the final Certificate of Occupancy.

MR. STARACE: Okay. That's fine. We can meet those.

VICE-CHAIRMAN KONYK: Okay. Do you have any letters on this?

MR. MacGILLIS: No, we got a couple of calls but they were more related to, I guess, some Sea Doos and stuff he has on the property and test driving bikes on the street, which are code enforcement issues. So I referred them to that. They weren't related specifically to the garage.

MR. STARACE: Yeah, that has nothing to do with this, anyway.

VICE-CHAIRMAN KONYK: Okay. Any opposition from the public?

(No response.)

VICE-CHAIRMAN KONYK: Any board member feel this item warrants a full hearing?

(No response.)

VICE-CHAIRMAN KONYK: Seeing none, this item will remain on the consent.

MR. STARACE: Thank you.

#### **STAFF RECOMMENDATIONS**

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

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

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

**YES.** There **are unique circumstances** surrounding this lot and existing structures that warrant special consideration when applying the literal intent of the AR zoning district percentage setbacks. This legal non-conforming .23 acre lot is located within the Delray Garden Estates. Many of the homes in this residential subdivision were constructed in the early 1950's. The typical home is 700 to 1,200 square feet. Many of the dwellings do not support garages or accessory structures. This AR lot is only 72 feet wide instead of the required 300 foot for an AR lot. The ULDC allows a reduced side setback of 15% of the width ( $72 \times .15 = 10.8$  ft), the lot width of 72 feet. Therefore, the side setback for the proposed attached garage would be 10.8 feet. The current dwelling has a 29.9 foot front setback with a west side setback of 20 feet and east side of 15.70. The lot to the west is currently vacant and therefore the minor encroachment proposed by this variance, if granted, will be minimal. Staff is recommending a condition of approval to mitigate the minor encroachment.

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

**NO.** This **is not** a self imposed variance. The applicant is proposing an attached garage to the west side of the dwelling. The garage is needed to store the applicant's vehicles as well as provide needed storage area for the house. The garage will align with the existing front setback of the home and encroach 2.26 feet into the side interior setback. The garage will be approximately 18 by 24 feet. The applicant currently has a concrete slab in this area that supports a temporary car port. The current carport allows views into the structure and does not provide the needed enclosed shelter for storage or permanent protection for the applicant's vehicles.

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 2.6 foot side interior setback for a proposed attached garage will not grant a special privilege on the applicant. The applicant is requesting the minimum variance to allow for the construction of an enclosed garage storage area. The existing 800

square foot home was constructed in the early 1950s without a garage or carport. The applicant has several vehicles that are currently stored on the driveway or under the temporary carport. The applicant's goal is to construct the garage on the west side of the house, utilizing the existing concrete slab and driveway. There is a doorway on the west side of the house that will lead directly into the new garage. The garage will provide the homeowner's with much needed storage area that cannot be accommodated in this small home. The garage will be in harmony with the existing house and will improve the visual quality of the property.

Therefore, the granting of the variance will allow the applicant to construct a garage on this lot which is a typical amenity to any home in Palm Beach County. The size of the garage is not out of scale with the existing home and will provide shelter for two vehicles while allowing for storage area at the back.

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.** This legal non-conforming lot has limited area to accommodate an attached garage without costly modifications to the existing house. The proposed location can maximize the use of the existing concrete slab and driveway. It also allows the existing door on the west side of the house with direct access to the garage. With a condition of approval, recommended by staff, to install a native hedge along the west property line where the encroachment occurs the future homeowner will not detect the minor encroachment.

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 2.66 foot setback variance will allow the applicant's building permit to move forward. The applicant was unaware when submitting for a building permit that the proposed structure did not meet the side interior setback. The applicant states in the justification that the space is needed for the family vehicles and storage area. The residence was constructed in the early 1950s without a carport or garage and there is limited storage area within the 800 square foot home. The granting of the variance will provide the applicant with a secure garage to protect vehicles from the elements while providing storage area. Also, the enclosed area will screen the views of the storage and vehicles in the garage that can currently be seen through the temporary carport.

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

**YES.** The ULDC establishes minimum setbacks in the various zoning districts to protect adjacent property owners, maintain property values and establish minimum separation between structures. The requested 2.66 foot variance will still allow the owner to comply with this criteria. The variance will be further mitigated by the required 5 foot hedge that will run the length of the garage along the west property line. The lot to the west that would be most impacted by this variance, if granted, is currently vacant.

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

**NO.** The granting of this variance will not be injurious to the surrounding area. The requested side interior setback for the attached garage will improve the appearance of the dwelling and overall lot. The applicant currently has a temporary carport that allows view into it from the street. It does not provide the security of permanent shelter the applicant needs to protect his vehicles or items from the house. The new garage will be in harmony with the existing house and utilize the existing driveway.

#### ENGINEERING COMMENT

No comment (ENG)

#### ZONING CONDITIONS

1. The applicant shall provide the Building Division with a copy of the Board of Adjustment Result Letter in order for PR01010712, garage building permit application to be processed. **(BLDG PERMIT)**
2. By February 21, 2002, or final Certificate of Completion on the garage (PR0101712) the applicant shall install a 48 inch native hedge along the west property line to extend approximately 30 feet along the side of the garage. The hedge is required to mitigate the side setback encroachment. **(DATE: MONITORING-BLDG CO)**

VICE-CHAIRMAN KONYK: BOFA 2000-050 (sic). I saw him peek his head in here. Did he leave again? We've got to find him. We either have to pull him or vote on him.

MR. MacGILLIS: We may just put it on the regular agenda.

VICE-CHAIRMAN KONYK: Okay. So we're going to pull BOFA 2001-

050. Okay. So I'm just going to go through this real quick.

BOFA 2001-028; BOFA 2001-040; BOFA 2001-041; BOFA 2001-042; BOFA 2001-044; BATE 2001-045; BOFA 2001-046; BATE 2001-047; BOFA 2001-048; BATE 2001-049; BOFA 2001-051 are remaining on the consent agenda. Do we have a motion for approval of the consent?

MR. WICHINSKY: So moved.

MR. JACOBS: Second.

VICE-CHAIRMAN KONYK: Motion by Mr. Wichinsky, second by Mr. Jacobs.

All those in favor?

BOARD: Aye.

VICE-CHAIRMAN KONYK: Opposed?

(No response.)

VICE-CHAIRMAN KONYK: Seeing none, the motion carries unanimously with BOFA 2001-050 reordered to the regular agenda.

And I'm going to go ahead and move to the regular agenda since they're still out there instead of reordering them to the first. Maybe they'll have time to resolve this.

VICE-CHAIRMAN KONYK: First item on the regular agenda is BOFA 2001-043, Billy and Jane Cox, to allow a proposed carport to encroach into the required front setback. It says, conditions, none.

Is this recommended for denial?

MR. MacGILLIS: Yes.

VICE-CHAIRMAN KONYK: Okay. It usually says so. Okay. Anybody that's going to speak today on any of the items, if you can stand and raise your right hand and get sworn in. Are you the only person speaking on this item?

MS. COX: I guess.

(Whereupon, the speaker was sworn in by Ms. Springer.)

VICE-CHAIRMAN KONYK: Okay. We're going to let -- huh?

MR. MacGILLIS: I was going to read the legal --

VICE-CHAIRMAN KONYK: Right. I was going to say we're going to let staff introduce the item and then we'll proceed.

MR. MacGILLIS: This is BOFA 2001-043, the petition of Billy E. and Jane Cox, to allow a proposed carport -- it shouldn't be a proposed carport; it's actually an existing carport -- to encroach into the required front setback.

The location is 5525 Third Road approximately .32 miles east of Florida Turnpike and north of Lantana Road within the Palm Beach Farms Plat 3 subdivision in the AR Zoning District, pages 152 through 161 of the backup material. I'll let the applicant explain her -- the graphic before you on the easel is pictures and the site plan aerial indicating the property.

Just for your information, that top graphic with the blue on it indicates the layout of the lots in that area which is part of the reason why staff is not supporting this, and I'll get into that when we go through it.

But the blue indicates that those lots are conforming with the lot depth for the AR and have to comply with the regular setbacks. The lots down in the red color towards the south of the drawing are lots that are not conforming to the AR setbacks, so they have a percentage setback. And that explains why there's a difference in setbacks in this subdivision in the southern part of the subdivision.

With that I'll turn it over to Mrs. Cox.

VICE-CHAIRMAN KONYK: Your name for the record?

MRS. COX: Jane Cox.

VICE-CHAIRMAN KONYK: Would you like to give us your presentation?

MRS. COX: I need to keep my carport. What am I supposed to say?

VICE-CHAIRMAN KONYK: Well, normally there's seven criteria that have to be met in order for you to qualify for a variance. So the best thing for you to do would be to explain to the Board how you feel that you've met the seven criteria.

MRS. COX: Well, it's a beautiful carport. We have some real dumps in our neighborhood, and all the lots down our road are all -- we have houses that sit 10 feet from the road, and you know, the same lot size. Once you get past the crossroads, they're all the same size lots, but all the houses are set different distances from the road. And we have some houses that you all should be out there citing for cars and debris in their yard, but that's different from what I'm here for, so.

And I see down here it says that I applied for a plumbing permit in 2000. I never applied for a plumbing permit in 2000. And we had those Sam's Covered Carports and the wind kept blowing them and tearing them up, so we put this up to protect the cars because we have pine trees and it just drops sap on them and it just ruins the cars.

So, we want to keep our carport. It's beautiful and it's open air and what else should I say? I wasn't prepared. I didn't know I had to stand up here and say anything. That's why I had to fill out all the paperwork, I thought.

VICE-CHAIRMAN KONYK: Okay. Why don't we just go over the seven criteria with you and you can explain when we get to each one how you feel you've met it.

MRS. COX: Oh, the ones down here on the back?

VICE-CHAIRMAN KONYK: Yes. The first item is special conditions and circumstances exist that are peculiar to the parcel of land that are not applicable to other parcels of land.

MRS. COX: That's where I put like it would be a financial hardship to move it and take it down and destroy my cars and --

VICE-CHAIRMAN KONYK: Okay. Special circumstances and conditions do not result from actions of the applicant.

MRS. COX: There's nowhere else I could put a carport to protect the cars.

VICE-CHAIRMAN KONYK: Do you have a garage?

MRS. COX: Yeah, it's a little single car garage, but my garage itself is 95 feet from the property line, so it never met the setback when they built the house. And my garage is full of stuff other than cars.

MR. WICHINSKY: How many cars do you have in your household?

MRS. COX: Two.

VICE-CHAIRMAN KONYK: Okay. We have a really difficult position here. If you can't demonstrate that you've met the seven criteria, then we can't approve your variance.

We can't just approve your variance just because you think it's a good idea to have a carport because your cars don't get --

MRS. COX: Pine sap.

VICE-CHAIRMAN KONYK: -- pine sap, et cetera. You really have to demonstrate to us, and I'm trying to help you as much as I can, how you feel that you have met the seven criteria or we have no choice but to deny the variance.

MRS. COX: Okay. I have a really odd-shaped lot and there's nowhere else to put a carport because I can't -- the house is too close to the road, and you know, I mean, the pine trees and all the limbs and we get hail out there on a regular basis. And it's just -- we have no other way of protecting our cars, and I have no place to put the storage stuff in the garage because we have such narrow sides to get around. And we sit beside a canal, so.

MR. RICHARDS: I have a question. Are you using your current one car garage for storage?

MRS. COX: Yes.

MR. RICHARDS: And would it be difficult for you to place your car in there and store those items elsewhere?

MRS. COX: Yes, there's nowhere else I could store them besides in the garage. Like I say, there's no way of getting around the side of the house even because they're so narrow between the fences and the houses that you can't really get anything back there to put anything, so.

MR. PUZZITIELLO: Did you put up this carport?

MRS. COX: Yes, my husband did. Like I said, we had the Sam's metal ones with the canvas covers and stuff, and they don't --

MR. PUZZITIELLO: This was obviously put up without a building permit?

MRS. COX: Yes.

MR. MacGILLIS: That's correct.

MRS. COX: Yeah, we put it up and the guy came by and gave us a little sticker and told us to post our permit. So we ran out -- I came here the next day and applied for a permit, and then they sent me to all these different engineering department and then I went to this other department and then I ended up here.

VICE-CHAIRMAN KONYK: So you were unable to get a permit because of the setback?

MRS. COX: Yes, because of the setback.

MR. WICHINSKY: Is there any restriction or is there any reason why those trees can't be trimmed back so they don't create the problem of the pine sap on your cars? I mean, if that's the main reason --

MRS. COX: Then I wouldn't have any shade. Like I said, we get hail out there on a regular basis. You know, I mean, we just seem to be one of the areas that when hail comes, it comes to our house.

MR. WICHINSKY: Your problem is prevalent in other areas which are in developments that have restrictions against cutting back pine trees because they're native or they're protected, and I'm not so sure that would relate to your property, and that might be a cure for that problem.

MRS. COX: Yeah. Well, then that's why it's so hot in Florida because everybody cuts down all the trees.

VICE-CHAIRMAN KONYK: Are these slash pines?

MRS. COX: Yeah. They're protected, right?

MR. JACOBS: You mentioned you had a peculiar shaped lot.

MRS. COX: Yes, it's only 70 foot wide by 300 feet deep.

MR. JACOBS: Are there any other similar shaped lots in the neighborhood?

MRS. COX: Yes, they're all that shape. Like I say, every house is a

different setback from the road. We have houses that are 10 feet, 20 feet. Mine's 95 from the front of the garage to the property line. So I mean, it's all throughout our neighborhood. It's agricultural and they were all built at different times and they're all set different setbacks from the street.

And I went to the County and pulled the original thing and it said we had a 55 foot setback on the original deed and everything, and then on my deed that came when I bought the house said I had a 55 foot setback. But that changed and nobody ever knew.

MR. JACOBS: What size cars do you have?

MRS. COX: I have a full size F150 pick-up and an Explorer.

MR. JACOBS: No way of getting that in a one car garage.

MRS. COX: No. You can't even open the doors when it wasn't full of debris. My husband works in construction, so he has to store some stuff at home.

VICE-CHAIRMAN KONYK: I imagine there's no homeowners' association that prevents you from --

MRS. COX: No homeowners, no sidewalks, right.

VICE-CHAIRMAN KONYK: Okay. Do you have anything else you want to add?

MRS. COX: Do I need to go down to the next one?

VICE-CHAIRMAN KONYK: Sure.

MRS. COX: I mean, it's a big open area. It doesn't restrict the air flow or you know, the light or anything like that. It's pretty much open air and well built.

VICE-CHAIRMAN KONYK: Okay. Is it completed?

MRS. COX: Yes, and it does look nice. I mean, we have some in our neighborhood that don't look real nice, but I mean, it was well built and I've had an engineer come and specify that it could withstand the wind and everything. So I had it signed and sealed by the engineer, that was part of -- after the fact, that I didn't know I needed -- cause like I say, we had the open air canvas ones from Sam's for five years, you know, and then we didn't realize it, you know, we needed a permit for this one because it's just a carport, not a building-building per se.

VICE-CHAIRMAN KONYK: Okay. Do you have anything else you want to add?

MRS. COX: Do I need to?

VICE-CHAIRMAN KONYK: Well, you can stay there and we'll let staff give their recommendations, then we'll ask you questions if we feel we need to.

Jon, I have a question, though. Why would the setback change? She said it was 55 feet and then it changed to 100.

MR. MacGILLIS: It was 100 feet.

VICE-CHAIRMAN KONYK: It didn't change?

MR. MacGILLIS: No.

MRS. COX: Like I say, it's on my deed and it's on the original deed when the property was -- back in 1950-something, and when I bought the house in '90 --

MR. MacGILLIS: It's not the deed. It's the building permit. The building permit clearly when the house was built was 100 feet. Whether it's 95 feet now depending on where the surveyor measured it from the point. But it's meeting code, it's a legal conforming house.

VICE-CHAIRMAN KONYK: The house meets code?

MR. MacGILLIS: Yes.

VICE-CHAIRMAN KONYK: Okay. Do you want to give your presentation?

MR. MacGILLIS: Staff's findings are on page 154 of your backup material. Clearly when Mrs. Cox had her pre-app meeting with staff, we informed her



staff could not support this variance. It didn't meet the seven criteria.

She decided to pursue her variance anyway, even under staff's recommendation that we could not support it.

She has not complied -- I'm sorry?

MS. COX: Go ahead. Sorry.

MR. MacGILLIS: -- with the first criteria. There's nothing -- the applicant has not met the seven criteria necessary to grant the front setback clearance for the illegally constructed carport. There's no special circumstances related to this lot.

As I indicated at the beginning of the presentation, there is nothing unique about these lots. As I indicated on that graphic on the board on the easel, the blue lots are all the same size in that subdivision. They all meet the AR requirements as far as depth.

The applicant indicated in her presentation that the lot is narrower. If this was a side setback, staff would have taken that into account and the ULDC takes that into account and allows for a percentage setback. This is a front setback. The property owner clearly meets the depth of the lot and as you can see on the top of page 154 there's a graphic of the typical lot layouts in that subdivision, so the entire block where she's located, Mrs. Cox, her home is the same size as any lots on that street.

Granting this variance would grant a special privilege to this applicant. The staff has done a site inspection of the neighborhood in response to Mrs. Cox's statements when she even met with staff that there are other homes out there that don't meet the setback.

Staff does not agree with that statement. We went out there. There was only one property that we noticed that actually had a structure in the front yard. We checked the mainframe, there was no permits on that one. That one has actually been forwarded to Code Enforcement Board to check if it's in violation.

Therefore, we did receive several calls from property owners in the area who were concerned that this structure was actually put up illegally in the front setback. It wasn't consistent with their area. A lot of the lots are large open areas with native preservation of slash pines and stuff, and they had concerns that this would be granted a variance.

This is not the minimum necessary variance that the staff has stated in the backup material. The property owner had other options available had she considered these before constructing this structure illegally. If she had come to the County for a building permit -- our records indicate that she did apply for a pool permit after purchasing this house. So they were clearly aware that there were permitting requirements in the County.

There is a garage existing on the house. The applicant could remove the stuff that's in the storage shed and create another storage building on the rear of the property to accommodate that stuff and use the car like anyone else in this neighborhood. Most of the homes are constructed in the last 20, 30 years, so they're typical in layout with a one car garage.

There was an option of somehow designing something creatively on the front of the house which could have accommodated the front setback, but it would have meant having the carport at the front door of the house. Whether that would have been acceptable to the property owner, it's up to her if it was necessary for her to have a carport.

Granting the variance would not be consistent with the purpose and intent of the codes which are to maintain consistency throughout the neighborhood and the front setbacks. Granting this variance would establish a precedent that is currently not existing in this rural neighborhood.

And clearly this is a self-created hardship. Had the applicant applied for

a building permit, like everyone else is required to do, staff clearly would have indicated that the carport did not comply with setbacks, and therefore the applicant at that time explored other options or came to staff to look at options for minimizing the amount of the variance and possibly mitigation, which we can't do now because it's existing.

Therefore, staff recommends denial of this request.

VICE-CHAIRMAN KONYK: You mentioned that you had calls from neighbors. Did you get any letters from neighbors?

MR. MacGILLIS: Of the four people I received calls from, I indicated to them that if they did get this sheet, they needed to send them back in. They indicated to me on their telephone conversation they didn't want to do that.

VICE-CHAIRMAN KONYK: Well, I meant in addition to those people.

MR. MacGILLIS: No.

VICE-CHAIRMAN KONYK: So the people that you spoke to were calling because they were concerned about the structure being built?

MR. MacGILLIS: Yes, and I requested they fill this out because I needed their names for the record. They said they didn't want to cause problems, so they did not provide me with a letter.

VICE-CHAIRMAN KONYK: Did you have anything you wanted to add?

MRS. COX: Yes. When I went and applied for a permit for the carport, they told me that there wouldn't be a problem and then they called me and told me I needed to get the building baseline waiver, \$50 in engineering. I went there. Then I returned back. Then they told me that I didn't meet the setback so I needed to go up and talk to them.

I went up and talked to them. I asked them what the chances are of passing because it cost me \$1,600 to build the carport. I spent \$1,400 trying to keep it and I wouldn't have wasted the other \$1,400 if they had told me point blank you're not going to get it. They never told me.

They told me they don't know, a lot of times they pass, sometimes they don't, but they --

VICE-CHAIRMAN KONYK: That's the --

MRS. COX: -- told me I should go ahead and try. So I mean, they never told me at the beginning that I shouldn't do this. Cause like I say, I wouldn't have thrown another \$1,400 away between the surveys and all the other --

MR. MacGILLIS: We indicated that staff could not support the variance, that it's the board who makes the final motion. We indicated that since it was illegally constructed that it was going to be difficult for staff to support it until we went out and did our site analysis.

When we take an application -- until we get it in and actually go out and do our site inspections, check all the building records and all the facts of finding, it's very difficult for us to up front -- but based on when Mrs. Cox originally met with me, she indicated she would call back in a couple of days to even see whether she was going to pursue it and talk to her husband of whether or not he could take it down.

We did call the Building Division and Mr. Joe Sherpitis (phon.) who's the chief building inspector, did go out to inspect the thing.

I was concerned with the integrity of the original house once they took the structure down that it would cause a roof problem or something. He indicated no, that it was actually with lag bolts attached to the house, which could be easily removed and the structure could be relocated or removed completely from the property.

VICE-CHAIRMAN KONYK: Anybody have any questions?

(No response.)

VICE-CHAIRMAN KONYK: Then we're prepared to make a motion.

Ray?

MR. PUZZITIELLO: Unfortunately, I'm going to have to recommend denial of this request for BOFA 2001-043. I do not believe it meets the seven criteria. I wish we could find a way to do it to let her keep it, but --

COURT REPORTER: Could speak a little louder, please?

MR. PUZZITIELLO: I'm recommending denial due to it not meeting the seven criteria.

VICE-CHAIRMAN KONYK: We have a motion for denial. Do we have a second?

MS. CARDONE: Second.

VICE-CHAIRMAN KONYK: Second by Ms. Cardone. Any discussion?

(No response.)

VICE-CHAIRMAN KONYK: All those in favor of the motion?

BOARD: Aye.

VICE-CHAIRMAN KONYK: Opposed?

(No response.)

VICE-CHAIRMAN KONYK: The motion carries unanimously.

#### **STAFF RECOMMENDATIONS**

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

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

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

**NO.** This .49 acres legal non-conforming AR R is located at 5525 3rd Road, Lake Worth. The property has a RR10 Land use designation and AR zoning classification. This lot is located within the Palm Beach Farms Plant No. 3, which supports lots of various sizes ranging from .25 to 1 acre in size. The lot which is subject of this variance (32-822) is .49 acres in size with a depth of 305.0 feet and a 70.10 feet. The lot supports 1.803 sq/ft single family residence with screen porch and a pool. The dwelling was constructed by a prior owner while the pool was constructed by the applicant in 1990.

There are no special conditions or circumstances peculiar to this parcel of land. The lot is typical to other lots in this rural residential subdivision. The existing dwelling compliance with the approved setback on the permit. The single family dwellings constructed in the past 30 years and have attached garage which meet the required front and side setback requirements. The applicant illegally constructed a carport to the front of the garage which is encroaching into the required front setback. The granting of this variance is not consistent with the front setbacks that are

currently existing for structures along 3rd Road. The lots have large open front yards supporting lawns and large shade trees.

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

**YES.** The applicant purchased the property in January 1990. When purchasing a property the owner must evaluate their current and future needs. The existing house supports an attached garage 22 by 13 = 286 sq/ft garage, which the applicant informed staff is currently used for storage. The applicant illegally constructed the 24 by 24 -- 575 sq ft carport on the weekend without permits. If the applicant had inquired or applied for a permit the front setback issue would have been discussed and the owner could have explored other locations for the structure, if they still choose to construct it. The applicant's justification for the variance is the carport will protect their car from severe weather and many houses in the neighborhood have different size lot. The applicant can utilize the existing garage for its intended purpose instead of storage. There are different lot sizes along 3rd Road, however, those property owners are complying with the established setbacks. There are approximately 28 lots on both sides of the street just north of Coconut Street that all are the same size as the applicant's lot size. These lots have structures complying with the front AR 100 foot setback. The applicant illegally constructed the carport without regard for the zoning or building regulations. No permits or inspections were obtained for the carport. Therefore the need for the variance is self-created condition.

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.** Granting this variance would confer special privileges upon the applicant that would be denied to other property owners. The intent of the front setback is to maintain uniformity along the property lines, protect adjacent property owners, and maintain property values. To allow the carport to encroach in the front setback would confer special privileges upon the applicant since other properties are not permitted to construct structure in the front setback.

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.** A literal enforcement of the provision of the Code would not deny the applicant of the rights commonly enjoyed by other parcels of land in the same direction. There is an existing attached garage on the house. The applicant is currently using the garage as storage. Furthermore, the carport was illegally constructed within the front setbacks without permits. The applicant had obtained prior building permits for a pool and

plumbing so they are aware of the permitting process. Denial of the variance would result in the owner removing it from the house, possible relocating it or removing it from the property. The existing attached garage can be utilized to shelter their vehicles from the weather.

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 granting of this variance **is not** the minimum variance that would be a reasonable use of the land. The structure was illegally constructed. The lot could have possibly supported a carport at a different location. The applicant has an existing enclosed garage that is being used for storage. If the variance is denied the applicant would have to remove the carport and utilize the existing garage for storage of their vehicles. To grant a variance for an illegal structure is not the minimum variance necessary for this property or applicant.

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

**NO.** Granting the variance would not be consistent with the intent of the Code or Comprehensive Plan. The intent of the front setback is to promote uniformity of structures from front property lines. The immediate surrounding lots along 3rd Rd are similar in size and support single family residences with attached garages, similar to this property. These lots comply with the required setbacks. The granting of this variance will send a negative message to the residents that setbacks are not consistently enforced in their community. The basis for a variance is on hardship, not self create, unique circumstances, etc. The applicant does not meet these requirements. The variance would also encourage other property owners to seek variances for structures in their front setbacks. The applicant has submitted photos of other properties in the neighborhood (Palm Beach Farms, Plat 3) to show different front setbacks in the area. There are different setbacks for lots due to the lot size and property dimensions. On this particular lot and those adjacent to it comply with the 300 foot AR lot depth and therefore must comply with the 100 foot setback. To grant this variance would allow this carport to be located in the front setback and inconsistent with other structure setbacks along this block of 3rd Road.

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

**YES.** Granting a variance for an illegally constructed structure is detrimental to the consistent enforcement of the terms of the front setback. The ULDC establishes setbacks so all structures will be setback a consistent distance from property lines. This ensures the community property values are maintained, minimum distances from structures is maintained and adequate open space in the yards is

maintained without encroachments. This carport in the setbacks is not consistent with the visual continuity and openness that currently exists on the other lots in this community.

#### **ENGINEERING COMMENT**

The requirement that the base building line for the subject property be thirty (30) feet from the centerline of 3rd Road is hereby waived. Said Base Building Line is hereby established at the existing interior easement line, being twenty-five (25) feet west from the east property line of the subject property as described on the submitted survey.

#### **ZONING CONDITIONS**

No conditions since staff is recommending denial (**ZONING**).

VICE-CHAIRMAN KONYK: Next item is the item that was pulled from the consent. It's BOFA 2001-050. Have you come to any conclusion?

MR. KRUGER: Yes, we looked over the site plan and we feel that we can accept the conditions as stated by staff.

VICE-CHAIRMAN KONYK: Okay. So there are seven conditions. You understand and agree with all seven, including number five?

MR. KRUGER: Yes.

VICE-CHAIRMAN KONYK: Okay. We don't have to have a full hearing now, do we?

MR. MacGILLIS: There was only one -- I got one call of concern from the development to the south. Once I explained what they were doing, they were all fine with it.

VICE-CHAIRMAN KONYK: Okay. Any opposition from the public?

(No response.)

VICE-CHAIRMAN KONYK: Any board member feel this item warrants a full hearing?

(No response.)

VICE-CHAIRMAN KONYK: Seeing none, does someone want to make a motion for approval of BOFA 2001-050?

MR. JACOBS: So moved.

VICE-CHAIRMAN KONYK: Motion by Mr. Jacobs.

MR. RICHARDS: Second.

VICE-CHAIRMAN KONYK: Second by Mr. Richards.

All those in favor?

BOARD: Aye.

VICE-CHAIRMAN KONYK: Opposed?

(No response.)

VICE-CHAIRMAN KONYK: Motion carries unanimously.

MR. KRUGER: Thank you.

### STAFF RECOMMENDATIONS

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

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

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

YES. There **are unique circumstances and conditions** related to this property and use that warrant special consideration when applying the literal intent of the code. This legal .82 non-conforming CG-General Commercial lot is located along Okeechobee Blvd in the C/8 land use designation and CG zoning classification. The site currently supports an approved, Petition 84-94 gas station and pumps. The site has supported an auto service station for 18 years. The site layout and structures do not meet the industry standards in terms of architecture, building footprint and use as well as gasoline pumps and circulation. The applicant is proposing to demolish the existing 896 square foot convenience store that runs north/south and replace it with a new 2,560 square foot convenience store running east/west along the south property line. The existing 94 by 45 foot canopy will remain. The 4 pumps will not be increased, however, the pumps will be replaced with new ones. The overall off street parking will be increased from the existing 6 spaces to 13 spaces. Also, the overall on-site vehicular circulation will be greatly improved the vehicles entering into the spaces as they approach the pumps from Okeechobee Blvd, ingress/egress. The landscaping on-site is currently minimal but will be upgraded to the greatest extent possible to meet current code. The applicant is requesting to reduce the width of the Okeechobee Blvd right-of-way buffer from the required 20 feet to 5 feet. Staff recommends it be maintained at 10 feet consistent with the original site plan approved pursuant to Petition 84-94.

The applicant is having to upgrade the site to comply with industry standards as well as meet the changing market demands and customers needs. The larger C store is typical of many of the gas companies new stores. It provides a wider range of convenience items for the user. The applicant is not increasing the intensity of gas pumps, however, the overall design of the site will significantly improve the vehicular circulation on the site.

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

**NO.** The applicant is proposing to redevelop this legal non-conforming CG lot to support a modernized facility. In order to accomplish the redevelopment the applicant is requesting the minimum variances that will allow the best use of the property. Other property owners have requested and have been granted similar variances from property development regulations along Okeechobee Boulevard. This major commercial corridor supports properties that were developed, in some cases, more than 75 years ago. The properties have been reduced in size to do right-of-way expansion. Many of the properties, as in this case, support structures that no longer meet industry standards or user needs. The proposed improvement will improve the visual appearance and provide the user with expanded convenience.

Therefore, the granting of these variances are not self created and are more a result of the lot size and redevelopment of this existing use.

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 confer** any special privilege on the applicant. The applicant has met with staff to discuss the proposed modifications to the existing site plan prior to submitting for the variances. Staff evaluated the number and types of variances prior to the applicant submitting. Staff did recommend the applicant maintain at least a 10 foot wide buffer along Okeechobee Blvd for two reasons, the original site plan approved in 1984 indicated 10 feet and the current code requires 20 feet. Also, this site is located along a major commercial corridor where the County is trying to ensure some consistency in the landscape appearance from the street. The site supports considerable amount of pavement and vehicular activity that needs to be screened to the greatest extent possible from the street. A 5 foot wide buffer is not sufficient area to accommodate a wide enough buffer for trees and shrubs to buffer the use. The other 3 variances are minor and if granted will meet the general intent of the code and not confer any special privilege on the applicant.

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

**YES.** The applicant has limited the variance necessary to allow for the redevelopment of this existing use. The lot size is .82 which is less than the 1 acre required for the CG zoning district. However, as the result of Okeechobee Blvd widening over the years the property owner has dedicated land for this cause. The site layout is typical to other gas stations being redeveloped in PBC. Many of the older service stations constructed in the 1980s are now currently outdated and do not meet industry standards or user needs. In order to maintain a franchise the owner is required to comply with industry upgrades in order to continue



to utilize the company name. Also, users now expect a wider range of goods when they get gas and visit the convenience store. Therefore, the service station part of the older gas stations have been eliminated making way for larger C-stores.

The applicant is requesting only those variances that will make the best use of this property and encourage the redevelopment. It is the County's goal to encourage property owners to invest money in the properties to bring them up to current code. This redevelopment encourages other property owners in the area to reinvest in their properties so everyone can benefit from this project.

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

**YES.** The requested variances, with the modification to the right-of-way buffer variance request, **will allow** a reasonable use of this property and allow for the redevelopment to move forward. The site currently supports a service station approved in 1984. The site and building is outdated in terms of meeting industry and user needs. The overall improvements are consistent with the trend for this type of use, where pumps, canopies and convenience store size and being modified to respond to market demands. The applicant is not increasing the number of pumps from what currently exists. The convenience store will be increased from the current 896 sq/ft to 2,560 sq/ft.

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

**YES.** Granting the variance **will be consistent with the general intent of the Comp Plan and ULDC.** The Comp Plan designates this property with C/8 land use. The property is approved for an intense commercial use. The major commercial corridors in PBC are planned to support this type of use and associated intense vehicular activity. The BCC is encouraging the redevelopment of properties in this area. There is an effort by the County to encourage property owners to redevelop the eastern communities to provide services for the existing residential communities surrounding them as well as traffic traveling by them. The ULDC establishes minimum regulations for this type of project. These requirements are based on the assumption the lot is 1 acre. In this case as the result of right-of-way taking over the years for Okeechobee Blvd, the site has been decreased from 1 acre to .82. The reduction in lot size has a significant impact on this vehicular intense use. The site requires significant area to accommodate stacking, parking, loading and general circulation for vehicles and pedestrians.

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. In fact the redevelopment of this site will benefit the surrounding community. The improvements and investment by the owner in this property will benefit the County, other commercial properties adjacent to it as well as future users of the site. The improvement will be to provide a modern convenience store, improve vehicular circulation, queuing, parking, loading, landscaping and signage.

#### **ENGINEERING COMMENT**

Please note the proposed landscape buffer will encroach the 25 ft corner clip area at the northwest corner of the subject property, regardless of the requested width reduction. **(ENG)**

#### **ZONING CONDITIONS**

1. The property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application. **(BLDG PERMIT: BLDG)**
2. Prior to final DRC certification the applicant shall revise the plan to reflect a minimum 10 ft wide landscape buffer along Okeechobee Blvd **(DRC)**
3. Prior to final DRC certification the site plan shall reflect the BA conditions. The site plan presented to the Board of Adjustment, Exhibit 9, in BA2001-050 file, shall only be modified if those changes are consistent with the BA or BCC approval **(ONGOING)**
4. By April 21, 2002, the applicant shall obtain a building permit for the 2,560 sq ft convenience store in order to vest the variance to BA 2001-050. **(DATE: MONITORING-BLDG PERMIT)**
5. Prior to DRC certification the landscaping along Okeechobee Blvd shall be upgraded as follows:
  - a) Buffer width minimum 10 feet wide
  - b) Native shade trees 14 feet in height
  - c) Native hedge material 36 inches in height**(DRC:LANDSCAPE)**
6. The required landscaping on site shall be maintained in accordance with ULDC, Article 7.3. The trees shall not be shaped or pruned inconsistent with code. All plant material shall be maintained to provide a visual buffer of the site from the adjacent streets and property lines. **(ONGOING)**
7. The landscape buffer along the south property line shall be upgraded to mitigate the rear setback encroachment onto the adjacent mobile home park:
  - a) Install 16 foot high native shade trees 20 feet on center
  - b) Ensure the existing CBS wall complies

with code requirements in terms of height, architectural treatment and buffering.

c) Install a 36 inch native hedge, 24 inches on-center. **(LANDSCAPE)**

VICE-CHAIRMAN KONYK: Next item on the regular agenda is BOFA 2001-052, Walter and Suzanne Karpinia, to allow a partially constructed accessory structure to remain in the required front setback. Denial?

MR. MacGILLIS: We've had a request from Marty Perry -- I believe he's Mr. Karpinia's attorney -- yesterday around 3:00 indicating he had a conflict with another project he's working on and requested a 30 day postponement.

I said since we didn't receive the letter in the five days, you have to come and ask for it. So I believe Mr. Karpinia is here this morning to request that 30 days.

VICE-CHAIRMAN KONYK: Could we have your name for the record?

MR. KARPINIA: For the record, Walter Karpinia. My wife Suzanne is present.

VICE-CHAIRMAN KONYK: And you would request a 30 day postponement because your attorney was unable to be here today?

MR. KARPINIA: Yes, ma'am.

VICE-CHAIRMAN KONYK: Okay. So we need to vote on that?

MR. MacGILLIS: Yes. That will be time certain July 19th, 9:00 a.m.

MR. PUZZITIELLO: Motion to postpone.

VICE-CHAIRMAN KONYK: Motion from Mr. Puzzitiello.

MR. WICHINSKY: Second.

VICE-CHAIRMAN KONYK: Second by Mr. Wichinsky.

All those in favor?

BOARD: Aye.

VICE-CHAIRMAN KONYK: Opposed?

(No response.)

VICE-CHAIRMAN KONYK: Motion carries unanimously. We'll see you next month.

MR. KARPINIA: Thank you.

VICE-CHAIRMAN KONYK: The next thing we have to look at is the hearing attendance chart. We're going to do the chart for April and May.

Ms. Cardone was absent in May for business, Mr. Wichinsky for vacation, Mr. Puzzitiello for business in April, Mr. Richards for business in May. Can we have a motion to accept these as excused absences?

MR. GERBER: So moved.

VICE-CHAIRMAN KONYK: Mr. Gerber made the motion. Do we have a second?

MR. JACOBS: I'll second that.

MS. CARDONE: Second.

VICE-CHAIRMAN KONYK: I'll make it from Mr. Jacobs since he's not being considered. Second was Mr. Jacobs.

All those in favor?

BOARD: Aye.

VICE-CHAIRMAN KONYK: Motion carries unanimously.

VICE-CHAIRMAN KONYK: The next item is the adjournment. That was quick.

MR. PUZZITIELLO: Motion to adjourn.

MR. WICHINSKY: Second.

VICE-CHAIRMAN KONYK: Motion by Mr. Puzzitiello, second by Mr. Wichinsky.

All those in favor?

BOARD: Aye.

VICE-CHAIRMAN KONYK: We're adjourned.  
(Whereupon, the meeting was adjourned at 9:50 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 71, 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 11th day of July, 2001.

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