

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

Thursday, May 17, 2001  
9:00 a.m. - 10:00 a.m.  
100 South Australian Avenue  
West Palm Beach, Florida

Reporting:

Sophie M. (Bunny) Springer  
Notary Public

**ATTENDEES**

Robert E. Basehart, Chairman

Chelle Konyk, Vice Chairman

Mr. Jonathan Gerber

Mr. Joseph J. Jacobs

Mr. Stanley Misroch

Mr. Raymond Puzzitiello

David Cuffe, Civil Engineer II, Land Development

Michael Jones, Asst. County Attorney

Jon P. MacGillis, Principal Planner, Zoning

Stu Westphal

Janet Quinn, Secretary

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**CERTIFICATE OF REPORTER:**

**PROCEEDINGS**

CHAIRMAN BASEHART: I'd like to welcome everybody to the May 17, 2001 meeting of the Palm Beach County Board of Adjustment.

The first item on the agenda is roll call.

MS. QUINN: Good morning.

CHAIRMAN BASEHART: Good morning.

MS. QUINN: Ms. Nancy Cardone.

(No response.)

MS. QUINN: Mr. Joseph Jacobs.

MR. JACOBS: Here.

MS. QUINN: Ms. Chelle Konyk.

VICE CHAIRMAN KONYK: Here.

MS. QUINN: Mr. Ray Puzzitiello.

(No response.)

MS. QUINN: Mr. Glenn Wichinsky.

(No response.)

MS. QUINN: Mr. Wayne Richards.

(No response.)

MS. QUINN: Mr. Stanley Misroch.

MR. MISROCH: Here.

MS. QUINN: Mr. Jonathan Gerber.

MR. GERBER: Here.

MS. QUINN: Mr. Bob Basehart.

CHAIRMAN BASEHART: Here. We have a quorum.

The next item on the agenda is the proof of publication. I have a copy of the proof in our file here. Do we have a motion to accept it into the record?

MR. MISROCH: So moved.

MR. JACOBS: Second.

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

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Okay. We have an official meeting.

Next item is remarks of the Chairman. The only thing I'd like to do is for those of you that are not familiar with our proceedings here, the agenda is broken into two parts, the first part being the Consent Agenda.

Those are items where the staff has recommended approval, where if conditions are recommended the applicant has agreed and where there's been no indication of opposition from the public. All the Board members have received the staff reports prior to the meeting. We've all read them and if all the Board members agree with the staff report, then the item will remain on the Consent Agenda. That means that no presentation is necessary. We'll ask the applicant to acknowledge agreement with conditions. If that happens, then the item will remain on consent and they'll be voted on as a group.

The second group is items where the staff has recommended denial or only approval in part or where there are conditions that haven't been agreed to or where there's an indication of opposition from the public. Those items will require a full hearing and justification by the applicant. And after the hearing and after input by the public, each item will be voted on individually. Other than that, I have no comments.

Does any other member of the Board have anything they'd like to bring

forward?

(No response.)

CHAIRMAN BASEHART: Seeing none, we'll go to the approval of the Minutes. We all received the Minutes of the April meeting. Does anybody have any corrections to them?

(No response.)

CHAIRMAN BASEHART: Seeing none, is there a motion to adopt the Minutes of the April meeting?

MR. JACOBS: So moved.

MR. MISROCH: Second.

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

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no?

(No response.)

CHAIRMAN BASEHART: The Minutes for April are adopted.

Next item on the Agenda is remarks of the Zoning Director. Jon, do you have anything you'd like to bring forward?

MR. MacGILLIS: I just have one comment on our annual workshop. We're getting into June, so we're going to try to do it.

I've prepared a draft agenda and maybe at the end of the meeting we can go over it and I'll hand it out to you.

CHAIRMAN BASEHART: Okay.

MR. MacGILLIS: Next month is going to be a long agenda and I'm not sure how many are going to go on the consent agenda, so we may discuss this at the end whether or not we can do it a month later.

CHAIRMAN BASEHART: Okay.

MR. MacGILLIS: So we can go over this and if there's anything on here we want to cross off or focus in on, we can discuss that. And then staff can --we're preparing the actual back-up material right now, but if there's stuff that you want to focus on more than what's on -- similar to last year's agenda, we can do that.

CHAIRMAN BASEHART: Okay. I think it will be important because we've got several members that weren't here at last year's meeting, so -- okay. We'll discuss that and we'll put that at the end of the agenda.

Anything else?

MR. MacGILLIS: No, that's the only comments.

CHAIRMAN BASEHART: Okay. Then we can get to the agenda. First we'll do any requests for postponement or withdrawal.

MR. MacGILLIS: The first item on the agenda is a request for a second postponement. That's BOFA 2001-028. That's the petition of Danny Ramnarace.

This is the item that's still having problems with accessory structures that weren't identified in the original application that came in, and we advised the

applicant he should consider either moving them or applying for variances for that. Apparently one of them is in the Lake Worth Easement, and he's having problems getting sign-offs.

So staff supports an additional 30 days on this hopefully to determine whether or not he can proceed with the regular variance he applied for, and he has to amend his application. So this would be postponed to June 21, 2001, Room 441.

CHAIRMAN BASEHART: Okay. Is there any member of the public -- was this advertised?

MR. MacGILLIS: Yes, it was.

CHAIRMAN BASEHART: Any member of the public here for this item?

(No response.)

CHAIRMAN BASEHART: Seeing none, can we have a motion for postponement?

VICE CHAIRMAN KONYK: I move -- so moved.

CHAIRMAN BASEHART: Motion by Ms. Konyk.

MR. JACOBS: Second.

CHAIRMAN BASEHART: Second by I think both Mr. Misroch and Mr. Jacobs. All those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Okay. Postponed.

CHAIRMAN BASEHART: That gets us to the Consent Agenda. The first item on the Consent Agenda is a time extension, BATE 2001-032, represented by Mr. McGinley. These are not -- extension requests are not advertised, so there would be no, I imagine, nobody from the public here. I see Mr. McGinley is in the audience. Anybody have any concerns about this extension?

(No response.)

CHAIRMAN BASEHART: Okay. Mr. McGinley, for the record, there were three conditions attached to the original application. Do you still agree with those conditions?

MR. MCGINLEY: The conditions as they were modified in the staff report today, yes.

CHAIRMAN BASEHART: Okay. Very good. We'll leave that on consent.

MR. MCGINLEY: Thank you.

### STAFF RECOMMENDATION

Staff recommends of a one year time extension for the Development Order and Condition #2, and a six month time extension for Condition #1, 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 BA2000042, unless modified herein:

#### ZONING CONDITIONS:

1. By April 17, 2001, the property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan (Exhibit 9, revised indicating the removal of the carport and denoting the BOFA conditions), simultaneously with the building permit application. **(DATE:MONITORING-BLDG PERMIT)**

**is hereby amended to read:**

**By April 20, 2002**, the property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan (Exhibit 9, revised indicating the removal of the carport and denoting the BOFA conditions), simultaneously with the building permit application. **(DATE: MONITORING-BLDG PERMIT)**

2. By April 17, 2001, the applicant shall obtain a building permit for the landscaping, parking lot, building renovations, and the 570 sq/ft building addition. **(DATE:MONITORING-BLDG PERMIT)**

**is hereby amended to read:**

By **April 20, 2002**, the applicant shall obtain a building permit for the landscaping, parking lot, building renovations and the 570 sq/ft building addition. **(DATE:MONITORING-BA-ZONING)**

3. By October 20, 2000, the property owner shall provide a copy of the revised Site Plan, as required under condition number 1, to the Board of Adjustment Staff. **(DATE:MONITORING-BA-ZONING)**

#### ENGINEERING COMMENT:

The requirement that the Base Building Line for the north side of the subject lot be forty (40) feet beyond the existing right-of-way of Elmhurst Road (a.k.a. Westgate Avenue) is hereby waived in part. Said Base Building Line is hereby established at five (5) feet south from the existing north property line of the subject property. **(ENG)**

CHAIRMAN BASEHART: The next item is BOFA 2001-033, David A. Jr. and Tara Canfield. Is the applicant here? If you could step forward, please. The staff has recommended approval of your application with four conditions. Are you familiar with them?  
MR. CANFIELD: Yes.  
CHAIRMAN BASEHART: Do you agree with them?  
MR. CANFIELD: Yes.  
CHAIRMAN BASEHART: Okay. Your name for the record?  
MR. CANFIELD: David Canfield.  
CHAIRMAN BASEHART: Any letters?  
MR. MacGILLIS: There was one letter that was sent to us this morning with no comment on it from a Marion Schwartz March at 22216 Boca Rancho Drive.

This particular lot, we checked on the tax map, is not even located within this subdivision. It's within the 300 feet, but it's located in the Boca Rancho subdivision within the 300 feet. This is a rear setback for a pool and screen enclosure that backs up onto -- if you're familiar with the site, the large Wal-Mart site down on Palmetto and 441, it's the Vineyard subdivision.

So it has no effect on this property owner. She's giving no comments and we just got it this morning. Staff doesn't feel it's -- she is opposing it, but no comment why.

CHAIRMAN BASEHART: Okay. Is there any member of the public that's here to speak on this item?

(No response.)

CHAIRMAN BASEHART: Any member of the Board?

Let the record show that Mr. Puzzitiello has joined us. Looking for a parking spot?

MR. PUZZITIELLO: Yes. Ten minutes driving around in a circle.

CHAIRMAN BASEHART: All right. Any member of the Board feel it necessary to pull this item?

(No response.)

CHAIRMAN BASEHART: Seeing none, we'll leave it on the Consent Agenda. Thank you.

MR. CANFIELD: Thank you.

#### **STAFF RECOMMENDATIONS**

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

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



**VARIANCE STANDARDS**

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

YES. There **are unique conditions** and circumstances related to this lot and the landscape easement in the rear yard that warrant special consideration when reviewing the variance request. This variance is for lot 19 within the Vineyards subdivision. This 14 acre subdivision is located south side of Palmetto Park Road approximately 600 east of State Road 7. The development has a land use designation of HR-8 and a zoning classification of RS. The Board of County Commission approved this 24 acre zero lot line community on May 23, 1996, pursuant to Z96-008. The property was rezoned from AR and RE to RS, Resolution \$R-96-811. The project received final site plan certification of Exhibit 1, on July 10, 1996. At that time the site complied with all ULDC requirements. On November 6, 1998, the developer amended the Site Plan through an Administrative Amendment to change the 5 landscape buffer easements to 7 feet along the west property line. This was done to address the South Florida Water Management District's request for additional taking. The 7 feet would allow for at least 3 feet clear for the planting of the required trees and shrubs in this buffer. The plat was amended to reflect the original 5 foot landscape easement and the amended 2 feet.

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

**NO.** The applicant has acted in good faith to be aware of the lot's potential prior to purchasing it. However, due to changes to the approved site plan and the survey the applicant is having to resolve an encroachment issue in the rear yard. The applicant studied the lot's potentially in terms of their needs prior to purchasing it. However, it was not until after the lot was purchased was it discovered by the applicant that the original survey they were presented with did not reflect the 7 foot wide landscape easement along the rear of the lot. The applicant approached the developer to shift the house prior to construction to give another 2 feet of buildable area in the rear yard. Although the developer said this could be done, it was not. The house was setback at 10 feet, the minimum setback required for a zero lot line. The applicant has met with staff to determine how their pool and screen enclosure design could be accommodated without variances. Therefore, the applicant has done their due diligent work prior to purchasing the lot and the house being constructed. The additional 2 feet easement in the rear yard wa something they had no control over and were never made aware of until after they purchased the lot. When they attempted to correct the problem with the developer by shifting the house 2 feet to the east of the lot, it was not carried out. Therefore, the applicant is requesting the Board of Adjustment to grant the reduction of the landscape buffer by 2 feet so the pool design can be implemented.

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 reduce the landscape easement in the rear yard by 2 feet in order to accommodate the proposed pool and screen enclosure. The applicant had researched the lot and proposed improvements prior to purchasing the lot to ensure everything would meet code. However, due to changes made to the Site Plan to accommodate the SWFWMD request for additional land area, the extra 2 feet was to accommodate in the rear yard of lots running parallel to the west property line. The applicant was only made aware of this after purchasing the lot and hoped that by requesting the developer to shift the house two feet to the east all future improvements could be accomplished. However, the developer placed the home at the required 10 foot rear setback thereby leaving no additional land area to accommodate a reasonable size pool. The applicant has designed a pool and takes into account the unique lot configuration and constraints and limits the variance to that necessary to make a reasonable use of the rear yard.

Therefore, the granting of the 2 foot landscape reduction **will not grant** a special privilege on the applicant. The intent of the buffer can still be met with the remaining 5 feet of buffer and the fact that the site to the west of this has a large mature buffer that provided the code intended buffer and screening between land uses.

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

**YES.** The applicant has explored all other options in order to avoid the need for a variance. However, due to the lot configuration, the placement of the house and the easement in the rear, there are limited pool design options that would eliminate the need for a variance. The applicant is requesting the buffer be reduced by 2 feet leaving a 5 foot wide buffer to accommodate the existing mature areca palms planted by the applicant. The buffer on the commercial Wal Mart site to the west of this lot will also ensure the general intent of the landscape buffer is met, if this variance is granted by the Board.

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

**YES.** The applicant has explored design options that make the best use of the rear yard while addressing lot limitations and constraints. The zero line house is placed on the south property line leaving the useable outdoor space for the homeowner

along the north and rear of the house. However, along a portion of the north property line the driveway utilizes considerable space. The only reasonable location for the pool is the south west corner of the lot in close proximity to the existing covered porch and patio.

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

**YES.** This zero lot line community complies with the intent of the land use and zoning code provision. The code provision the applicant is requesting the variance from is related to the landscape buffer easement that is required along the perimeter of the development. This buffer is intended to provide visual screening between the incompatible land uses. To the west is a high commercial use, Wal Mart store, that is required by code and BCC conditions to install a buffer along their east property line to buffer the commercial intensity on the residential development (Vineyard). The Vineyards is required to have buffers around the entire perim of the subdivision. When the original site plan was approved there was a 5 foot wide buffer shown on the plan. However, it was later revised to 7 feet in order to accommodate a request from SFWMD. The remaining 5 feet easement of the applicant will maintain and be an adequate area for the trees to thrive. Also, the buffer on the Wal Mart site to the west of this lot is adequate to screen the two incompatible land uses from each other.

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

**NO.** Granting the variances will not be injurious to the surrounding area. The only lot affected by this variance request is the applicant. The Wal Mart property to the rear has mature vegetation which screen this lot. Also, the applicant has installed areca palms along the rear of the lot that are now mature and provide a solid visual buffer for the pool and screen enclosure to the parcel to the west.

#### **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 January 17, 2002, the applicant shall obtain a building permit for the swimming pool in order to vest the landscape buffer reduction variance. **(DATE: MONITORING-BLDG)**

**PERMIT)**

3. The applicant shall maintain the 5 foot wide landscape easement in the rear of the lot for the required landscaping. No encroachments from the pool or screen enclosure shall be permitted into the 5 foot remaining landscape easement. **(ONGOING)**
4. Zoning staff shall amend the Vineyards Site Plan to reflect the variance on Lot 19 and the BA2001033 conditions of approval. **(ZONING-BA)**

CHAIRMAN BASEHART: Next item is BOFA 2001-035, Pauline J. Williams. Is the applicant here?

MS. WILLIAMS: Yes.

CHAIRMAN BASEHART: Okay. If you could step forward, please.

MR. MacGILLIS: Mr. Chairman, staff would make note that as of this morning, we prepared this drawing for you. This came in late. We had a -- Engineering and Zoning requested an updated survey to -- this is a fence that's actually -- that was constructed with a permit from the County. Then she was cited for it being too high in the front setback.

So what we required was a revised survey because the one that was submitted at the time of the building permit was nothing but a hand-drawn sketch. So staff requested this, Engineering's request, just to make sure we weren't in the right-of-way.

This drawing indicates here, the yellow is actually the base building line of 10 feet, and the actual pink color down in the bottom corner is the required safe sight triangle of 35 feet that's required, so the fence is going to have to be modified.

I did provide this to the Building Division staff, so they're aware of it. I don't know if they've spoken to the applicant yet about the --

MS. WILLIAMS: No, we have not been contacted by anyone from the Building Department. I spoke with Barbara Pinkston-Taylor as recently as yesterday morning, and we were not notified of any change being submitted by the Engineering Department at all.

So I don't know what the procedure is involved, but we would also like to review that. And I don't know if it's going to become necessary because if we can postpone and reevaluate it, we would like some time to review this.

MR. MacGILLIS: Just for the record, on page 40 of your back-up material, are the conditions that were actually -- that were provided to the applicant, and all the drawing is is reinforcing the conditions. It's just it's graphically explained to them so there's no confusion among building staff or the applicant of what has to be done.

I'd like to make a modification to both condition number 2 and 3 for the record.

Condition 2 is going to read -- excuse me, I need to have your attention -- I'm modifying Condition Number 2.

"By July 17, 2001, the property owner shall provide the building division with an executed removal agreement for future right-of-way for the existing fence along Seminole Pratt Whitney."

MS. WILLIAMS: Okay.

MR. MacGILLIS: That's a standard removal agreement when something is actually in the right-of-way.

MS. WILLIAMS: Correct.

MR. MacGILLIS: The third condition is "By August 17, 2001, the property owner shall modify the fence to comply with the Engineering requirement for the 25 foot corner clip, consistent with the survey, Exhibit 21, presented to the Board of Adjustment at the public hearing on May 17, 2001."

MS. WILLIAMS: Okay.

CHAIRMAN BASEHART: Okay. Do you understand that?

MS. WILLIAMS: I do.

MS. PAULINE WILLIAMS: Yes.

MS. WILLIAMS: And just for clarification, in case I'm not --

MS. SPRINGER: I need her name for the record.

CHAIRMAN BASEHART: Your name for the record?

MS. WILLIAMS: I'm Philippa Williams. I'm the daughter of Pauline Williams.

I had only briefly discussed with Ms. Pinkston-Taylor, and she had alluded to the need for a minor modification. Now that I have this visual representation, you know, I feel that that should not pose any kind of a problem for us.

CHAIRMAN BASEHART: Okay.

MS. WILLIAMS: But I just want to clarify that there will not be any additional expense which needs to be incurred by my mother in the modification of this.

CHAIRMAN BASEHART: The only expense would be moving that portion of the fence that's in the corner clip.

MS. WILLIAMS: Well, that would be more clearly outlined in the removal agreement; is that correct?

CHAIRMAN BASEHART: No.

MS. WILLIAMS: It needs to be approved upon at this point in time?

CHAIRMAN BASEHART: That's right.

MS. WILLIAMS: Okay. That is -- we are going to need to look at that a little bit more because we're talking about an expense of --

CHAIRMAN BASEHART: Why don't we do this? Two choices.

If you think you can resolve this in a few minutes, maybe you can go out in the hall or go maybe see Barbara and make a decision on it and we'll remove it from the Consent Agenda and put it at the end, or if you think you need more time than that we can postpone this for 30 days.

MS. WILLIAMS: I would like to attempt to resolve it at this point in time.

CHAIRMAN BASEHART: Okay. So we'll remove this from the Consent Agenda. There's only, I think, at this point one item on the Regular Agenda, so it's not going to be too long.

We'll consider this matter as a regular hearing at the end of the agenda. Okay?

MR. MacGILLIS: Apparently staff has just indicated that Barbara Pinkston-Taylor is not here today.

CHAIRMAN BASEHART: Great.

MR. MacGILLIS: What about Alan Seaman? Could he go in there because I know he's been working on this, too.

I mean, if you want to take it to Alan, if you can't resolve it, you're going to have to come back and take a postponement. Because if Barbara's not here, and that's imperative as to whether or not they're going to agree to the conditions.

MR. WESTPHAL: I think we can resolve it.

MR. MacGILLIS: Okay. If you just want to go out and come back --

VICE CHAIRMAN KONYK: The point is I think they can go and attempt to resolve it, and we can make the decision whether or not we need to postpone it when they come back, so that we can move forward. These people haven't been sworn in and I think we should just move forward on the consent.

MS. WILLIAMS: Thank you.

CHAIRMAN BASEHART: Okay. So BOFA 2001-035 is removed from consent and put on the end of the Regular Agenda.

CHAIRMAN BASEHART: Next item is BATE 2001-038, Robert Maclaren.

MR. MacGILLIS: For the record, the agent called me this morning and indicated she was not going to be able to attend. She has reviewed all the conditions. She doesn't have a problem. Staff doesn't have a problem with this moving forward without her being here.

She said if it comes down to it, she will accept a postponement if the Board prefers to have her here.

CHAIRMAN BASEHART: Well, this is not an advertised item. So is there anybody from the public here on this item?

(No response.)

CHAIRMAN BASEHART: Seeing none, does anybody have a problem with the extension? Okay. We'll leave it on consent.

#### **STAFF RECOMMENDATION**

Staff recommends a maximum **12 month time extension** from **May 18, 2001 to May 18, 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 BA2000027, unless modified herein:

#### ZONING CONDITIONS

1. The property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application. **(BLDG PERMIT:BLDG)**
2. Prior to DRC certification, the applicant shall ensure the BOFA conditions are shown on the site plan. **(DRC-ZONING)**
3. Prior to Development Review Committee certification, the applicant shall submit and receive Zoning Division approval of an Alternative Landscape Plan that is consistent with the Landscape Plan, Exhibit 21, in the BA file BA20000-027, in the Zoning Division. **(DRC-ZONING)**

#### ENGINEERING COMMENT

No comment **(ENG)**

CHAIRMAN BASEHART: The last consent item is BOFA 2001-039, Lesa Carney, agent for Albanese Homes. Is the applicant here?

Staff has recommended approval of your application with five conditions. Are you familiar with them?

MS. CARNEY: Yes.

CHAIRMAN BASEHART: And you agree with them?

MS. CARNEY: Yes.

CHAIRMAN BASEHART: Any comments from the --

MR. MacGILLIS: We had one call from actually the person who's purchasing this property called. Apparently the developer never let them know that this property was coming in for a variance, so I just --

MS. CARNEY: I actually talked to them.

MR. MacGILLIS: They called me three days ago and didn't understand why there was a yellow sign up on the property. I said you're the contract purchaser, blah-blah-blah. They're okay with it when I explained what it was to them, but they said that they were not notified that their home needed a variance.

CHAIRMAN BASEHART: Okay. For the record, your name is Lesa Carney?

MS. CARNEY: Yes, it is.

CHAIRMAN BASEHART: Okay.

MS. CARNEY: Can we make one change? We have the wrong address. It should be Gold Leaf instead of Golf Leaf.

MR. MacGILLIS: Which page are you on?

MS. CARNEY: 64.

MR. MacGILLIS: That's the owner address?

MS. CARNEY: That's the address of the property.

MR. MacGILLIS: Okay. I'm sorry. What is it again?

MS. CARNEY: It's Gold, G-O-L-D.

MR. MacGILLIS: Okay. Gold.

CHAIRMAN BASEHART: Okay.

### 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.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:

**YES.** This 79.62 acre residential subdivision known as The Club at Indian Lakes (aka Rossmoor Lakes), is located at the southwest corner of El Clair Ranch Road and Boynton Beach Blvd. The land use designation is MR-5 with a zoning classification of RTU. The property supports 268 zero lot line homes. This project was approved for a rezoning from AR to RTU in 1993 by the Board of County Commission, (Petition Z93-34, Resolution R93-1367) to support 223 zero lot line units on 59.63 acres. On September 24, 1998, the BCC approved a Development Order Amendment (93-34A, Resolution 98-1506), to add 19.99 acres of land area to the existing development. The 19.99 acres was added to the west side of the existing development.

Special circumstances and conditions **do exist** which are peculiar to this parcel of land, building or structure which are not applicable to other parcels within the same zoning district. The subject site is a "straight" subdivision (not approved as a PUD) of 268 zero lot line homes. The applicant is requesting this variance so that the largest model, Elegrande B) could be constructed on the subject lots. The special circumstances in this case result from the fact that this site was approved as a "straight" subdivision instead of a Planned Unit Development (PUD). According to Section 6.8.A.7.a of the ULDC, if this site is approved as a PUD, then the required maximum lot coverage of 50% can be administratively increased to 55%. Therefore the applicant would not require variance relief. However, because the subject site was approved as a regular subdivision, the applicant is requesting variance relief to allow for a 5% increase in lot coverage to 55%. In addition, the subject subdivision has all the design characteristics of a PUD. The size of the subdivision, housing type, landscape buffers, recreational tracts and open space are all consistent with Planned Unit Development type developments.



Therefore, the applicant has limited options in terms of providing the two subject models to the buyer market since no administrative remedy is available other than a variance or a redesign of the two models. Furthermore, the applicant could redesign the subject models as two story units, and meet lot coverage. However, the buyer market for the subject subdivision is mostly elderly and a two story house would not be marketable to this type of buyer market. The typical lot in the subject subdivision is 55' x 110'. The Elegrande B is 3,053 square feet.

Considering the fact that in 1997 and February 2001 similar variances were granted for this development warrants special consideration when evaluating this request. If the 19.99 acre that were added on in 1998 had been part of the 1997 BA application, the applicant would have requested these 9 lots to be part of the original variance request. Also, if lot 240 was included in the 2001 application this variance application would not be required. The granting of this variance will recognize that this model is already constructed in western portion of the development and allow it to be carried over to the lots added in 1999 to the western portion of the development and those approved in the eastern portion in February of 2001.

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

**NO.** The applicant is requesting that lot 240 be included in the lots previously granted building coverage variance. When the applicant prepared the previous application in February of 2001, lot 240 was accidentally omitted from the list of lots requiring the building coverage variance. The applicant is simply requesting the Board to consider the facts of the prior cases and grant this last lot the similar building coverage variance. The applicant is requesting a variance that will allow the Elegrande B model to be constructed on the units located in the 19.99 acres that was added to the development in 1998. When the original variance was granted in 1997, the 9 units that are the subject of this variance were not part of the development. The applicant is requesting this variance to allow this model to be constructed on these lots should an owner choose it. It allows more flexibility for the future lot owner and developer to choose from the various models available. Only the Elegrande B model will not fit on these 9 lots. Should the owner choose this model the developer does not want to have to delay the closing while a variance is secured. Therefore, the applicant is requesting the Board approve the requested variances that will avoid unnecessary confusion and delays for future property owner should they choose the Elegrande model on their lot. Since the unit is consistent with the model approved previously by the Board of Adjustment, the applicant would like to carry in onto the remaining undeveloped lots.

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.** As previously stated this developed is a straight zoned zero lot line community. However, the development in layout and amenities is very similar to a Planned Unit Development. It provides a variety of an open space, recreation amenities, landscape buffer, variation in architectural treatment of housing units. The ULDC PUD regulations permit a developer to apply to DRC to exceed the lot coverage by 5%. However, this project does not qualify for this provision. Therefore, the applicant is required to either comply with code or seek a variance. In 1997 the applicant did apply and was granted a variance to exceed the building coverage on various lots within the development. After the variance was approved the developer acquired additional land area along the western portion of the project. The land area accommodates 49 additional zero lot line units. In February 2001, the Board of Adjustment granted building coverage variance for 9 lots in case the property owner chooses the largest model available, the Elegrande B. Staff has determined that since this model has already been approved and constructed within this development to extend it to lot 240 is a reasonable request.

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

**YES.** The Board of Adjustment in 1997 and 2001 approved similar variance for lots within this development. The applicant informed staff that the larger model has never been constructed on all 111 lots for which the variance was granted (See Attachment). Some owners chose a different model and complied with code, while other lots are currently vacant. The applicant applied in 2001 for a building coverage variance on 9 lots and accidentally omitted Lot 240 in those lots. The applicant is now requesting the Board approve this additional lot to the list of lots currently having the increase in building coverage.

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 future property owner of Lot 240 to construct the Elegrande B model which already exists in the development. The model is only 5% over the building coverage and abuts the lake to the rear that will mitigate the impact of the increase building coverage.

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

**YES.** The intent of the ULDC provision to limit building coverage on

a residential lot is to ensure that there is area for landscaping and on-site percolation. The applicant has justified compliance with the variance criteria on similar applications in 1997 and 2001. Lot 240, which is the subject of this variance request is similar in size, location on a lake and proposed model to the other lots previously granted variances. Lot 240 was accidentally omitted from the 2001 application and therefore, the applicant has had to make a new application to include this lot. The lot abuts open space to the rear created by the lake which will further ensure the general intent of the code is met. The 5% increase in building coverage is minimal and the developer is required to landscape the lot, which will mitigate any negative impact associated with this minimal variance request from the street.

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

**NO.** This particular model, the Elegrande B, is already constructed within the western portion of the development. The applicant is requesting that Lot 240 be included with the other lots previously approved by the Board in 1997 and 2001. Some of the future property owners may select a model that can comply with the lot coverage. However, the developer does not want to inform a potential buyer that the Elegrande B model cannot be accommodated on their lot to do a building coverage requirement.

#### ENGINEERING COMMENT

No Comments. **(ENG)**

#### ZONING CONDITIONS

1. The property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application. **(BLDG.PERMIT:BLDG)**
2. Prior to January 17, 2002, the applicant shall obtain a building permit for 240, (PCN 00424527100002400), within the Club at Indian Development (Petitioner 93-034) in order to vest the building coverage variance approved pursuant to BA2001039 **(DATE:MONITORING-BLDG. PERMIT)**
3. The Elegrande B model of 3,053 square feet, as shown on the floor plan exhibit in the BA2001039 file, shall not be modified on Lot 240. **(ONGOING)**
4. By July 17, 2001, the applicant shall amend the approved Site Plan through an Administrative Amendment to reflect the lot 240, subject of the variances of Petition BA2001039. Also, the BA conditions shall be

placed on the approved Site Plan. **(DATE:MONITORING-DRC)**

5. The variance to exceed building coverage pursuant to BA2001039 is limited to Lot 240 (PCN00424527100002400), within the Club at Indian Lakes (aka Rossmoor Lakes), Petition 93-034. The variance was only for the Elegrande B model, as shown on the floor plan Exhibit in the BA2001039 file. **(ONGOING)**

VICE CHAIRMAN KONYK: Okay. I'll make a motion to accept the consent agenda. The following items will remain on consent: BATE 2001-032; BOFA 2001-033; BATE 2001-038; BOFA 2001-039 with the address as amended will remain on the consent with the staff report becoming part of the record.

And BOFA 2001-035 is pulled from consent and reordered to the end of the Regular Agenda.

MR. PUZZITIELLO: Second.

CHAIRMAN BASEHART: Okay. Motion by Ms.

Konyk, second by Mr. Puzzitiello. Any discussion?

(No response.)

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

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no?

(No response.)

CHAIRMAN BASEHART: Okay. Motion carries unanimously.

MR. MacGILLIS: Just for the record, those that were approved here today, you should get a letter in the mail that you can take to the Building Division.

CHAIRMAN BASEHART: Anybody that had an item on consent is free to go. You're finished.

CHAIRMAN BASEHART: Next part of the agenda is the Regular Agenda which will now have two items.

The first one is BOFA 2001-034, Steven A. McGinley [sic], agent for Ray and Elisina Diaz. Is the applicant here?

Your name for the record?

MR. MICKLEY: Steven Mickley. No relation to Kevin McGinley.

CHAIRMAN BASEHART: Okay. That's to your benefit.

Anybody wishing to speak on this item, either for or against, please rise to be sworn in.

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

CHAIRMAN BASEHART: Okay. Jon, do you want to introduce this item?

MR. MacGILLIS: This is the first item on our Regular Agenda, BOFA 2001-034, the petition of Agent Steven Mickley, agent for Ray and Elisina Diaz, to allow an existing building to be converted to a guest cottage and remain in the required setback.

The location is 12930 Orange Grove Boulevard, located .033 miles from the southeast intersection of Grove Boulevard and 130th Avenue in Royal Palm Acreage in the AR Zoning District, 130th Avenue in the Royal Palm Acreage in the AR zoning district found on pages 90 to 99 of your backup material.

I'll let the agent explain his case.

CHAIRMAN BASEHART: Okay. The floor is yours.

MR. MICKLEY: The situation is there was an existing pole barn here that was constructed on the property, and according to the zoning code an accessory building that is not habitable space is allowed to be closer than habitable space is.

In this case, as the report shows, Mr. Diaz did convert the space without getting a building permit. In his zealously to do the job, he also extended the perimeters of the building in the direction towards the property line.

And we're proposing that we cut the building back to its original size which will conform with the limits allowed for a guest cottage and get the adequate building permits to get the building to conform to all the other codes that would also apply to having habitable space.

It's kind of a setting aside the fact that there was work done without the permits, the building code allows one structure to be built closer to the property line than another structure based on its use. So I can imagine that you have quite a dilemma when these types of cases come to you in that it would make sense from a homeowner's standpoint that economically they're looking at a good sound roof and possibly walls that can save an enormous amount of money in the construction of additional space, but then are limited to not being able to put habitable space in that building due to the setback requirements.

We are hoping that we can imagine this as a situation where setting aside the code violation that we can look at this as a building that is working towards being converted to liveable space, and in the process all the code violation situations, cutting back the building to its original size and shape, and working on conforming the building to the other building codes, and Mr. Diaz working out with the Code Enforcement Department any fines that have accumulated on the property and being able to continue from there.

Would you like to say anything, Ray?

CHAIRMAN BASEHART: Give us your name for the record.

MR. DIAZ: My name is Ray Diaz. At the time that I started doing the thing, like I say, it was about almost 14 years ago, and the reason I did that is because I had a hardship case. There was an old lady in my house, my mother-in-law living in there, so I figured I'd close it up so she could stay.

At that time I wasn't aware that I was breaking any laws because I didn't know any better. I mean, I know it's no excuse for me to do it, but I didn't mean to do anything wrong. So I do have a permit for the barn, I did have a permit for the barn, I had a permit, so what I did is close it up. I make a room to put my mother-in-law to stay there.

So I didn't know any better. What can I say?

CHAIRMAN BASEHART: Okay. Have you completed your presentation?

MR. MICKLEY: Yes, sir.

CHAIRMAN BASEHART: Okay. Then let's go to staff.

MR. MacGILLIS: If you'll turn to page 94, it's the backup material that's staff's facts of findings.

Staff's analysis has found that the applicant has not met the seven criteria in order for this Board to grant the requested rear setback for an illegally converted pole barn. There is nothing unique about this lot. It meets the 300 foot of depth required for an AR lot which determines how the setbacks of 100 feet are calculated for a building.

The building, as you can see, and the applicant has indicated on page 92 of your back-up material, the original site plan and elevation that when this permit was issued in 1996 it was clearly for a pole barn that was meant for it to be open and comply with the setbacks in effect at that time for that type of structure.

To convert this now, I mean, there's two things in our code that whether this is an accessory structure as a guest cottage which is only -- can be habitable eight months out of the year, cannot be by anyone paying money for it, and it has to be less than 1,000 square feet based on the size of this lot.

The other criteria is if it's an accessory apartment, it requires a special permit and then someone elderly, indigent or handicapped can live in here permanently year round and can have a kitchen. The guest cottage cannot have a kitchen, either. This building does now and it's in violation for major interior electrical, structural conditions. It's been operating as a living unit illegally for several years.

This is not the minimum variance necessary to make a reasonable use of this structure. The structure was legally permitted as a pole barn in a rural area, whether it was used for horses or storage, that's what its intended use is. To come back now after illegally converting this without permits --

Then on page 93 it's clear that Mr. Diaz is aware that he required permits. He purchased this lot, it was vacant, he's pulled all the necessary permits that as you can see on there numerous permits over the years to legally build these structures that are on there, so he was clearly aware that there were requirements in effect in order to convert this building before he did it.

To come now to this Board of Adjustment and request permission to keep this as a structure that was never legally permitted in staff's estimate is not the minimum necessary variance.

And furthermore, this structure still can be used if it's cut back to its original thing and still comply with the accessory setbacks for an AR and to be used as storage.

The last thing -- this could be injurious to the area. We have a lot of people who come in asking to convert accessory structures to living quarters. They can't meet the code, we send them away. And to allow this gentleman who's illegally done this and then comes in after the fact to do this is opening up a precedent for the area.

This building needs major renovations, yet it's got liens on it, that if this Board approves this today, we have to condition it that it be contingent upon paying

the liens that have been accruing on this property for the last two years of not rectifying the violations.

And finally, coming to this Board and asking for a variance to legalize the structure so he could then apply for building permits and then stop the liens.

CHAIRMAN BASEHART: Okay. This is a public hearing. Is there any member of the public here to speak on this item, either in favor or in opposition?

(No response.)

CHAIRMAN BASEHART: Seeing none, we will close the public hearing and we'll go to the Board.

Does any member of the Board have any questions, comments? Ray?

MR. PUZZITIELLO: Just a couple of quick ones. It shows finished floor elevation 22.3 for the pole barn. What's the finished floor elevation of the house? It doesn't show it on the plan.

MR. MICKLEY: You're absolutely right. It doesn't. I hadn't noticed that that was an issue, but should we proceed beyond this point, that I would be working towards as far as first finding out what the 100 year flood elevation was and then finding --

MR. PUZZITIELLO: You might not even be able to get a permit, because you might be much lower.

MR. MICKLEY: There's that possibility, but there is like Mr. MacGillis said, substantial alterations that need to be made to the building to get it back to its conforming size.

MR. PUZZITIELLO: And you're on well and septic there?

MR. MICKLEY: Yes.

MR. PUZZITIELLO: Where's your well and septic in relationship to that barn?

MR. MICKLEY: Do you know where your well is, Ray?

MR. DIAZ: I don't know. I didn't build the house, so I don't know.

MR. MICKLEY: The only place --

MR. PUZZITIELLO: Your septic tank might not even be large enough, to add another building to it, so.

MR. MICKLEY: That's a good possibility, but when I sat down and figured out the total square footage, we have enough reserve area where that could be altered if necessary.

In looking at the site plan, the only equipment pad that I see adjacent to the house is on the west side, so I would assume that the septic tank is probably in the front with the well on the west side of the property.

VICE CHAIRMAN KONYK: I have one quick question. Is anyone living in this structure at the present time?

MR. DIAZ: What happened is since I built it for my mother-in-law and then she got way, way too old, so I switched with my son who had a room in my house.

So I let the old lady come to stay in the house because she needed to be taken care of and I let my son sleep there sometime. He don't live there, so he's a single man, he's always out. So actually I don't know what to say, if he's really living or staying there forever. That's all I can tell you. I mean, I don't know any better than that. I don't know.

CHAIRMAN BASEHART: Okay. Any other questions?

MR. PUZZITIELLO: The liens on the house are all from --

VICE CHAIRMAN KONYK: Code enforcement.

MR. MacGILLIS: Yeah, the property was cited in 1998, and it's taken this long -- he's gone to the Code Enforcement Board. I don't know the exact date he went to Code Enforcement, but he was cited in '98.

So I assume he's been given -- I mean, we're talking three to four years and it's finally getting to this point, so I mean, the Order of imposing fines and liens was levied on November 4, 1998 at \$50 per day. Actually, it went into effect on May 4, 1999.

So I don't know if we even have the amount here, but this is the Court Order where the fines have to be paid.

VICE CHAIRMAN KONYK: Mr. Chair, I'm actually prepared to make a motion on this item.

I don't feel that the applicant has demonstrated compliance with the seven criteria. My motion is going to be for denial of BOFA 2001-034, with the staff report becoming part of the record.

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

MR. JACOBS: I'll second that.

CHAIRMAN BASEHART: Second by Mr. Jacobs. Any further discussion?

(No response.)

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

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no?

(No response.)

CHAIRMAN BASEHART: Show the motion carries unanimously.

MR. DIAZ: What does that mean?

CHAIRMAN BASEHART: It means you've got to take it down.

MR. MacGILLIS: Or you can convert it. You've got to meet the 15 foot rear setback for an accessory structure, and then once you do that you can use the structure for storage only. It's considered an accessory structure.

MR. DIAZ: I don't mind that. The thing is I need quite a bit of time 'cause like I say, I'm an old man now and the reason I waited this long is because the last time we are supposed to be here for hearing, I was having an operation. I was in the VA having an operation which was not good. My hands, they went bad, can't use them.

So I came back and asked the Board and maybe -- I don't know too much about these things, anyway, but bear with me, I'm going to take the best way I know how. So they denied to give me a new meeting with the Board.

CHAIRMAN BASEHART: Okay. Well, that --

MR. MICKLEY: We'll address that with Code Enforcement, Ray.

CHAIRMAN BASEHART: That's all behind us and actually your issue now is to, I think, try to settle up with Code Enforcement some way.

There are procedures for requesting modifications of fines, but you've got, I guess in medical terms, to stop the bleeding first. So you need to bring the building into compliance or remove it and then you can go talk to Code Enforcement about the fines.

MR. MICKLEY: Do you understand that, Ray? We need to go back to the Code Enforcement officer that wrote you the original letter and we'll work at it from there.

CHAIRMAN BASEHART: Okay? Thank you.

#### **STAFF RECOMMENDATIONS**

**Denial**, based upon the following application of the standards enumerated in Article 5, Section 5.7.E. of the Palm Beach County Unified Land Development Code



(ULDC), which a petitioner must meet before the Board of Adjustment may authorize a variance.

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

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

**NO.** This legal non-conforming 1.25 acre is similar in layout to the other lots located in Royal Palm Beach Acreage subdivision. The lot is 300 feet deep and 164 feet wide. The lot supports a single family residence, pool and accessory structure similar to other lots in this rural subdivision. The lot was vacant when the current owner purchased it in May 1979. The single family dwelling, pool and pole barn (now the accessory structure, subject to this variance) were all permitted in the 1980s by the owner. All structures complied with the established AR setbacks. When the pole barn was constructed it was placed at the rear of the property with a 15 foot setback, consistent with code. However, the illegal conversion of the structure by the owner over the years made it illegal. The current use of the structure is an accessory apartment or guest cottage. The owner was informed by staff both structures have the same setbacks, however, there are supplementary regulations that differ for the both. The applicant states in the application the structure will be used as a guest cottage, if the variance is permitted. This would limit to only guests of the owner using it only 8 months out of the year and NO kitchen facilities. However, the structure does not meet many of the building and zoning codes for this type of structure. Since the structure was illegally converted the structure was never inspected to comply with the residential building code. Also, the conversion of the structure changes the use of the structure and the setbacks. This structure is currently 1,390 square feet. The structure is now only 3.3 feet of the rear setback according to the survey.

There **is nothing unique** about this lot other than the lot width does not comply with code. However, the property owner was already provided relief for the side setbacks by the permitted non-conforming lot width provision of 15% reduction for interior setback for this house. There is nothing unique and peculiar to this lot or structures, this variance is simply the result of the owner illegally converted a once permitted pole barn to a habitable structure and now requesting the Board to allow it to remain. Had the owner inquired or applied for a permit to convert the pole barn he would have been informed of the setbacks and the need to meet the building code.

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

**YES.** As previously stated, the owner purchased this lot in 1979 when it was vacant and constructed all the buildings with valid permits in the

1980s. The applicant was obviously aware permits were required prior to converting the pole barn to a habital structure. The accessory building was permitted as a pole barn, however, illegally converted to a guest cottage or accessory apartment by the owner. The structure currently has a kitchen in it and therefore is considered an accessory apartment. The accessory apartment provisions of the ULDC required a rear setback consistent with the primary structure. If the owner had applied for a permit he would have been informed of this requirement and could have explored other options. Such as addition onto the front or sides of the structure, not converting the structure at all, etc. The owner claims they will remove the kitchen and use the structure as a guest cottage.

Therefore, in staff's analysis of this request it appears obvious that the property owner illegally converted an accessory structure to a residence without regard for the zoning or building regulations and permits creating the special conditions and need for a 79 foot rear setback.

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

**YES.** If this variance of 79 feet for the rear setback is granted, the property owner will clearly be given a special privilege other property owners have been denied. The Zoning Division staff often receive inquiries from property owners wanting to convert an existing garage or building to a guest cottage or accessory apartment. Staff explains the regulations including setback and in many cases residents can either meet them or not. In this case the property owner disregarded the building and zoning regulations and simply converted the accessory pole barn to a residence. The applicant has not obtained a building permit from the Building Division or inspections to confirm the building is safe for habitation.

The applicant can still keep the structure provided modifications are made to the rear of the structure to comply with a 15 foot setback provided the use of the building remains as storage and not a residential unit. This would then allow the applicant a reasonable use of the structure while at the same time not granting him a privilege other residents have been denied due to similar circumstances.

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.** The conversion of this pole barn to a guest cottage or accessory apartment was done with permits by the property owner. The denial of this variance still leaves the owner with options, such as converting

the structure to a storage building and modifying it to comply with a 15 foot setback. The illegal use of this structure for a residence without building permits and inspections. Had the owner request advise from County staff prior to the conversion. The applicant has relied on no information or permits that would be deprived if this rear setback is denied. Considering the structure can be utilized as a storage shed will not require it to be completely removed.

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 **will not comply** with the literal or general intent of the code. The ULDC establishes setbacks in the AR zoning district based on the lot dimensions. In this particular situation all the existing structures constructed by the existing owner were built to code. The front and rear setbacks of 100 feet were applied to the existing dwelling while a reduced side yard setback was applied to accommodate the non-conforming width of the lot. The accessory structure that is subject of this variance was constructed in 1986 as a pole barn with only a roof and no walls at a rear setback of 15 feet. Accessory structures that are not habitable are given a reduced setback from the principal structure, simply because they are typically smaller, less than 10 feet and less than the size of the house. The applicant illegally converted the pole barn to what Zoning considers an accessory apartment, since it had a kitchen in it. An accessory apartment has the same setback as the principal residence and can not exceed 1,000 gross square feet on lots greater than one are. The apartment is permitted to have a kitchen and is required to accommodate an elderly, handicapped or indigent person. A Special Permit for an Accessory Apt. is required from the Zoning Division and an annual renewal is required by the property owner. The applicant has enjoyed the privileges of having an accessory unit without any of the necessary county building or zoning approvals. The existing building has numerous interior code violations that is currently in violation with code enforcement. The applicant states that they now would agree to use the structure as a guest cottage and remove the kitchen if the variance was approved.

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

**NO.** This property has a land use of RR-10 and the surrounding area supports single family residential lots of 1.25 acres in size. The code encourages large open lots with large setbacks for principal structures to maintain the feeling of openness and natural landscape. The ULDC establishes setbacks in AR to maintain the quality of living in this rural residential zoning district. The ULDC does recognize that there are various lot sizes in the AR zoning district due to amendments to the Comp Plan and Zoning Code. The AR lot size has also changed from 5 acres to 10 acres and sometimes less on legal non-conforming lots. For this particular lot the applicant has been able to comply with the

required setbacks for the structures that were built in the 1980s. The problem arose when the property owner converted the existing pole barn to an accessory apartment. The change in use of the structure triggers different code provisions. Had the owner contacted the Zoning Division or applied for a building permit these provisions would have been made clear. Any improvements done to this structure were done without permits and therefore the property owner has nothing to rely on to vest it. A variance of 79 feet is not a reasonable request. There are considerable modifications that still will be required by the owner to bring this structure up to code. As well as obtaining a Special Permit for the Zoning Division for an accessory apartment.

The owner should be required to modify the structure to comply with the 15 foot accessory setback and the need for a variance will not be required. The owner should not be rewarded by the granting of this variance for work and improvements that were performed without approvals, permits and inspections.

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

**YES.** Granting this variance **will be** considered injurious to the general area. The ULDC established setbacks in all zoning districts to protect land values, ensure minimum separations between lot lines and structures and allow for air/light to travel between structures. The pole barn and other accessory structures are permitted to be constructed closer (15 feet) to the rear property line because they are not habitable structures and are generally much smaller than the primary structure. By granting a 79 foot variance will not comply with the literal or general intent of the code and will support the applicant failure to obtain permits prior to constructing. Other residents will use this as an example to perform the work then ask for variances to vest the encroachment. The structure currently needs considerable interior and exterior improvements to make this a habitable building to meet county building codes. Considering the structure can be modified and used as a storage building and meet the 15 foot setback is a reasonable compromise for the property owner.

**ENGINEERING COMMENT**

No comment. **(ENG)**

**ZONING CONDITIONS**

No conditions since staff is recommending denial of this variance request.

CHAIRMAN BASEHART: Okay. That brings us back to the item that was removed from the Consent Agenda, BOFA 2001-035. I see the applicants have returned to the room.

MS. WILLIAMS: We would like to request --

CHAIRMAN BASEHART: Actually, this is going to be a regular hearing, so we need to swear you in.

VICE CHAIRMAN KONYK: And anybody that's going to speak.

CHAIRMAN BASEHART: Anybody that's going to speak.

MS. SPRINGER: Anyone going to speak on this agenda item, raise your right hand, please.

CHAIRMAN BASEHART: I'd raise mine, too, if I were you. Stu. (Whereupon, the speakers were sworn in by Ms. Springer.)

CHAIRMAN BASEHART: Your name for the record?

MS. PAULINE WILLIAMS: I'm Pauline Williams.

MS. WILLIAMS: And I'm Phillipa Williams.

MR. WESTPHAL: And I'm Stuart Westphal.

CHAIRMAN BASEHART: Okay.

MS. WILLIAMS: We would like to request -- I'm not certain whether or not we do have that option, but we would like to request a postponement to give staff the opportunity to review and discuss with us the specific circumstances and details that would be involved on this corner clip.

CHAIRMAN BASEHART: Okay. Very good.

MS. WILLIAMS: Do you need a reason for that?

CHAIRMAN BASEHART: Well, basically you want time to try to work the issue out with the staff; that's the reason for the postponement?

MS. WILLIAMS: Yes, sir.

CHAIRMAN BASEHART: Okay. Anybody have a problem with that?

MR. MacGILLIS: I don't know if Dave wants to comment.

MR. CUFFE: Not to confuse the issue, but the variance itself as I understand it is strictly for the fence height. The question of the corner clip, the question of the base building line and the removal agreement for future right-of-way are totally independent of that and are requirements. If this had come through properly for building permitting, it would have been the imposed requirement for permitting regardless of the fence height.

So I think that the question at this point is it may not be prudent to postpone the variance request. The question of the fence height itself can be settled today regardless.

VICE CHAIRMAN KONYK: But the conditions addressed the issues that she wants to work out, I think that's the problem.

Don't the conditions refer to the -- the conditions that are imposed in order for us to approve this variance deal with these issues that she's confused about.

MR. CUFFE: All the conditions actually do is require that it comply with the standard requirements for building permitting for the fence.

Basically what's happening is that we're allowing or the Engineering Department will allow the run of the fence with the exception of the corner clip to remain within the limit -- within the area between the existing right-of-way and the actual base building line with the removal agreement for future right-of-way, which would be a standard process if this had come in for a base building line waiver at the time of permitting. That's what the condition would have been.

CHAIRMAN BASEHART: Well, we understand that, but again you've got to understand these people don't deal with this kind of stuff every day, and I think they need a little time just to digest it. Okay?

MR. CUFFE: I just wanted to make -- okay.

MR. MacGILLIS: I mean, the other two as far as staff, zoning staff doesn't have a problem with two and three being deleted.

VICE CHAIRMAN KONYK: Well, the point is, though, is that the problem is this fence cannot become legal until those conditions are met, and she's going to have to understand that. We have no control over removing those requirements from another agency.

We've just added them to this to clarify, I think, the issue. Am I correct?

MR. MacGILLIS: Yeah, there are --

VICE CHAIRMAN KONYK: The point is they're not going to change, no matter how much time it takes. So I do understand Dave's point. It makes perfect sense to me. She's going to have to comply with those conditions, there's no, you know, it's very clear.

But the problem is she feels that, I think, that since she just received this drawing today and she just wants some more time to look at it.

MS. WILLIAMS: Specifically, point number three deals with the 25 foot corner clip, and I'm unclear as to how this would have come into play with the pre-existing fence in terms of a possible expense to us as the homeowners?

CHAIRMAN BASEHART: I think the issue -- you understand what the corner clip is?

MS. WILLIAMS: Yes, I do.

CHAIRMAN BASEHART: It's to create a safe sight distance for people approaching an intersection. And the Code has, you know, what is it, 24 inches is the height limit within a corner clip?

MR. CUFFE: Thirty inches within the corner clip, but we're acquiring the corner clip. We're in the process of acquiring that as part of the right-of-way expansion beginning next year.

CHAIRMAN BASEHART: Okay. So it wouldn't be on their property anyway within a year, and basically even if they weren't acquiring it, the corner clip is a requirement in the Code that has to be complied with when you build anything near the corner of your property, whether it be landscaping or fences so that you don't create a traffic hazard, a safety hazard.

And what they're saying is that the staff is recommending approval of the variance to allow the fence to stay the way it is, except for within that corner clip they want the fence cut back out of that corner clip which is going to be a requirement whether or not you get the variance. Even if the variance were not approved and the fence, most of the fence had to be reduced in height, you'd still have that corner clip issue.

MS. WILLIAMS: I do understand and agree completely. But as you determine an issue, there was an existing fence when we purchased the property three or four years ago, and had this not become an issue, the height of the fence, then we might be seeking to come before you all about how the removal -- and I suppose we would have to do a removal agreement or no, not if --

The fact of the matter is the reason -- essentially why I'm asking that we request or why we're requesting a postponement is because there are a lot of details. We have to ask a lot of questions and we don't want to tie up all of your time asking and getting clarification on certain issues, procedure and so forth.

But specifically, as I said, the existing fence that was there, how would that have been handled? I'm not requesting an answer to that question, but that is one of the issues. How would that have been handled? It does exceed, did you

say 24 inches? It already exceeds the --

CHAIRMAN BASEHART: Thirty inches.

MS. WILLIAMS: It already exceeds --

VICE CHAIRMAN KONYK: It's the safe sight triangle that they're talking about. That's all it is. Everybody has to comply with that.

MR. PUZZITIELLO: The question is if the fence was put up legally. If you bought the property and there was an illegal fence, as a property owner you're responsible for it.

VICE CHAIRMAN KONYK: You inherit the problem.

MR. PUZZITIELLO: You're responsible for costs of moving it or removing it.

MS. WILLIAMS: Okay.

MR. PUZZITIELLO: It's always the property owner's responsibility to move or fix any structures or fences on their property.

VICE CHAIRMAN KONYK: And whether or not you want to contact the previous owners on your own, you know, later on to discuss this with them or bring a civil action or whatever you want, it has nothing to do with your variance or your permission of your fence or the removal of the safe sight triangle. You are the property owner, you are responsible for complying.

MS. WILLIAMS: Okay.

VICE CHAIRMAN KONYK: Or your mother is, rather.

MS. WILLIAMS: Okay.

VICE CHAIRMAN KONYK: So that would be the problem. Postponing it is certainly an option. I don't know if it's by right. It's not by right 'cause it wasn't received in time, you have to ask for postponement how many days in advance?

MR. MacGILLIS: Five.

VICE CHAIRMAN KONYK: Five. It would be a matter of whether or not the Board chooses to accept your reasons for postponement. It's up to the Board now to decide that.

Just a personal comment. I personally don't see a benefit to you to postpone this issue as the staff is recommending consent of the variance that you're requesting.

MS. WILLIAMS: Right.

VICE CHAIRMAN KONYK: If you postpone it, you never know what's going to happen later on, and I'm just saying some other information could come forward. A homeowner could come forward and complain about it.

You're opening up a Pandora's box, I think. That's my opinion. You're certainly welcome to consider the postponement.

MS. WILLIAMS: Let me push it a little further, if you don't mind. You started to say that items two and three could be deleted. You mean deleted from this particular --

MR. MacGILLIS: Yeah. I just put them on there to clarify for building staff and for the applicant so that they didn't come back in here later and say why weren't they informed that they had to get a removal agreement, and that they knew that if this ever comes up in the future that there was some drawing that staff looked at to verify what you were removing out of the safe corner.

So I discussed it within the hearing. We added these on at the last minute because of the survey.

VICE CHAIRMAN KONYK: Right.

MR. MacGILLIS: It wasn't clear. Now that we've got the survey, it's a permitting requirement.

VICE CHAIRMAN KONYK: Right. I think it's really more of a point of clarification for the rest of the parties that are going to be involved in this.

But the point is now she's on record, she's been notified of this, you know that there's a safe sight problem. It's been brought to your attention, so building is not going to be offering you any further surprises.

MR. JACOBS: I don't know, it seems to me -- I have to agree with Ms. Konyk, if I were you I'd take the variance now and you're always going to be responsible for the clip problem.

MS. WILLIAMS: Well, I would -- essentially I received what I was hoping for, which was clarification in terms of how it would be handled regardless of this six foot fence.

So I'm, of course, willing to comply. I need to, of course ask --

MRS. PAULINE WILLIAMS: Yeah, I'll go ahead with it. Thank you.

CHAIRMAN BASEHART: Okay. Now you're requesting that conditions number two and three be removed?

VICE CHAIRMAN KONYK: Well, they're not necessary, I don't think, because they don't apply to the variance request.

They were just put in for a point of clarification and I would agree to delete those conditions as long as staff agreed to it.

MR. MacGILLIS: Just to point out because this property is in violation with Code Enforcement since '99 --

VICE CHAIRMAN KONYK: Right.

MR. MacGILLIS: So the condition of getting a building permit and executing it was to expedite the person getting the Code Enforcement case closed.

VICE CHAIRMAN KONYK: And the point is is that I'm sure Mrs. Williams is totally aware now of this issue, and if Code Enforcement had any question of whether or not she was aware they could refer to the minutes of this meeting at this point, and I think we can safely delete those two conditions and you can proceed with your variance.

I just have to reiterate that in many communities they wouldn't allow you to have a six foot fence in your front yard, and I think it's more prudent for you to get your variance.

MS. WILLIAMS: I totally agree. For the record, it's -- actually I did discuss this with Ms. Pinkston-Taylor as the house is situated on the property although it does front Seminole Pratt Whitney and she did explain that that is what they refer, they termed the front of the yard; it actually sits at the side. But that's just for the record.

And for the record, also, we do have documentation from Terry Verner of Code Enforcement, which indicates that we are not presently in violation. So I'm not certain.

VICE CHAIRMAN KONYK: Well, you'll need to take that up with him.

MS. WILLIAMS: Yes.

VICE CHAIRMAN KONYK: We're just going to deal with the variance right now.

MS. WILLIAMS: Okay.

VICE CHAIRMAN KONYK: If you're willing to proceed --

MS. WILLIAMS: Yes.

VICE CHAIRMAN KONYK: I'll make a motion.

MR. MacGILLIS: I'm sorry. For approving this, there's an ordinance requiring staff to put a condition on it if there's liens on a property.

VICE CHAIRMAN KONYK: Okay.

MR. MacGILLIS: So --

VICE CHAIRMAN KONYK: Is there liens on the property?

MR. MacGILLIS: Yes.



MS. PAULINE WILLIAMS: Not to my knowledge.

MS. WILLIAMS: Ma'am, we have not been so notified at all.

VICE CHAIRMAN KONYK: But the point is is if there's not liens then this is a moot point, correct?

MR. MacGILLIS: This is -- part of our application requirement, we have to send every property control number out to an outside private consultant. That's part of the application they filled out to check if there's any liens owing to the County.

VICE CHAIRMAN KONYK: Okay.

MS. PAULINE WILLIAMS: Not to my knowledge.

MR. MacGILLIS: I'm sorry -- I'm sorry.

VICE CHAIRMAN KONYK: Never mind.

CHAIRMAN BASEHART: It was Mr. Diaz, wasn't it?

MR. MacGILLIS: The other one was -- I'm sorry. Never mind.

VICE CHAIRMAN KONYK: Okay. There are no liens that we're aware of, there's nothing else that has to be added.

I'm going to make a motion for approval of BOFA 2001-035 with the staff report becoming part of the record. And I would just comment that we're removing the two conditions, as they do not specifically relate to the variance --

CHAIRMAN BASEHART: Number two and three.

VICE CHAIRMAN KONYK: Number two and three are being deleted because they do not specifically relate to the variance, but we have made the applicant aware of the safe sight triangle.

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

MR. JACOBS: Second.

CHAIRMAN BASEHART: Second by Mr. Jacobs. Any discussion?

(No response.)

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

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no?

(No response.)

CHAIRMAN BASEHART: Motion carries unanimously.

MS. WILLIAMS: 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 property and request that warrant special consideration. This legal non-conforming

1.41 acre lot is located at the intersection of Seminole Pratt Whitney and Glasgow Drive East within the AR zoning district. The property has 218 feet of depth and 248 feet of frontage along Glasgow Drive, a 60 foot unimproved road and drainage easement. The lot currently supports a single 2,900 square foot single family residence and storage shed. Along the west property line there is approximately 50 feet to the center line of Seminole Pratt Whitney, within this area is a travel lane and swale supporting Australian pine trees. What is unique about this property is that it abuts a major road along the west property line. This 120 ultimate right of way, Seminole Pratt Whitney is a major north/south artery for traffic traveling through the acreage and Loxahatchee rural subdivisions. This particular lot must contend with the noise and fumes associated with this daily traffic. The property owner applied for and was granted a building permit to install a stockade fence along the existing chain link fence to provide buffering from the noise and fumes associated with the traffic.

Therefore, granting this variance to allow the existing fence to remain at 6 feet in the front yard will allow this property owner to have a higher quality of living. The 6 foot fence provides needed protection for the property owner from the negative impacts associated with being adjacent to a major 120 right-of-way.

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

**NO.** The applicant followed the appropriate permitting procedures in order to obtain a permit and final inspection. The permit application clearly indicated the applicant's intent to construct a fence 6 feet along the entire length of both the west and east property line. The applicant was unaware that the fence could not be 6 feet along the entire property line and the Building Technician did not notice the notation on the plan indicated the applicant's intent. The permit was issued, the fence installed and a final Certificate of Completion issued to the property owner. The applicant was notified months later that the fence permit was issued by error and the applicant would have to correct it. The applicant could cut 2 feet of the stockade fence for the 153 feet of the 208 feet of depth and meet code. However, this is a prefab stockade fence that could be compromised if two feet was removed from it. Also, the applicant clearly has a unique situation that warrants the extra 2 feet of fence height. The general intent of the code will be met if this variance is approved. There will still be a 4 foot fence running parallel to the Glasgow Drive and there will only be a 6 foot fence in the front yard along the west and east property line. Based on the site inspections by the Code Enforcement Director and Building staff there will be no visibility issue by allowing the fence to remain at 6 feet. Staff has inspected the site and observed that the 6 foot fence is far enough back from the existing right-of-way for Seminole Pratt Whitney that clear visibility for the motorist pulling out of Glasgow Drive will be 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 granting of the variance **will not grant a special privilege** on the applicant. This lot and variance request has unique circumstances that warrants special consideration when applying the literal intent of the code provision related to fence height in a residential zoning district. The variance is to allow a fence that was legally permitted and inspected by PBC Building Division to remain. The fence was installed by the applicant to buffer the negative impacts associated with the major 120 road that abuts this property to the west. The road is heavily traveled by large trucks and motorists from the rural residential communities to the north and south. This constant traffic greatly impacts the property owner in terms of noise, fumes and dust. The fence was attached to an existing fence that was installed in 1996 by the previous property owner. When the applicant installed the fence it was consistent with the permit she obtained from PBC Building Division. The only issue related to the fence is the high exceeds code by 2 feet for approximately 153 feet of the 218 depth of property along both the east and west property line. In order for the property owner to enjoy the use of the side yard and be able to open the windows on the west side of the house the 6 foot stockade fence is needed. To have to lower the fence by 2 feet to comply with code would place an undue hardship on the applicant and compromise the integrity and intent of the fence.

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 applied for a six foot fence to run the entire length of the side and rear property lines with a four foot fence along the south property line. The permit was reviewed and issued to the applicant. The fence was inspected by the Building Inspector and a final Certificate of Completion issued in 1999. At this point no one knew the fence was incorrectly issued since it exceeded the height in the front yard. It was the owner's clear intent to have the 6 foot fence along the entire property line to provide the extra buffering from the street along the west property line. The fence is a typical pre-fab stockade fence that comes in 6 x 6 foot panels. So when the fence was purchased it was installed for consistency 6 feet along all the property lines with the exception of the front property line adjacent to Glasgow Drive.

The applicant clearly needs the extra fence height to improve the quality of life. The fence provides the needed buffering to mitigate the negative impacts associated with the major right-of-way it abuts to the west.

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 fence that has already been permitted and inspected to remain without costly modifications. The fence is a typical 6 x 6 foot stockade fence that many property owners purchase to provide privacy for their lot. This fence greatly improves the quality of life for the property owner. The extra 2 feet of fence helps reduce the dust, noise and fumes associated with the traffic on Seminole Pratt Whitney Road.

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

**YES.** The general intent of the Comp Plan is to provide quality living environments for residents in the RR2.5 land use designation. The AR zoning of this property supports rural residential lots. The owner purchased this lot with the existing single family residence. The installation of the fence was done to provide needed buffering from the major street it abuts to the west. The ULDC restricts fences in the front yard to 4 feet. Although the property owner will have a four foot fence running along the front property line, the code also limits the side property lines to fence 4 feet in the designated front yard. This means the property owner would have to lower approximately 153 feet of the fence from the 6 feet to the 4 feet to meet code. The extra 2 feet is critical in this case to meeting the intent of why the fence was originally constructed by the applicant. The solid visual barrier created by the stockade fence reduces noise, dust and fumes from the property.

Granting the variance will allow the fence that was permitted and inspected in 1999 to remain without costly modifications. Also, it will allow the Code Enforcement Division to close out the open violation currently on this property. The owner will be able to continue to enjoy the benefits provided by the extra 2 feet of fence height along the sides property lines.

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 surround area. Code Enforcement and Building Division staff have inspected the fence to observe if there were any obstructions created to motorists by raising the fence an extra 2 feet in the front yard. See backup material for letters from the Code Enforcement Director and Building Official stating they saw no visibility issues related to the fence. The fence is setback 25 feet from the edge of the pavement and therefore, a motorist pulling out of Glasgow Drive will have adequate safe sight distance to see oncoming traffic prior to merging into traffic.

**ENGINEERING COMMENTS**

The requirement that the Base Building Line for the subject property be forty (40)

feet beyond the existing right-of-way line of Seminole Pratt Whitney Road is hereby waived in part. Said Base Building is hereby established at ten (10) feet east from the existing west property line of the subject property, except that it shall follow the standard 25 foot corner clip at its intersection with existing interior (north) easement line of Glasgow Drive at the southwest corner of the subject property. Please note that no fence construction shall be approved in the portion of the property lying westerly of the above established Base Building. **(ENG)**

#### ZONING CONDITIONS

1. This variance BA20001035 is limited to the fence height of 6 feet in the front yard along the west and east property line. The fence adjacent to the front property line shall comply with the 4 foot height. **(Ongoing)**
2. **By July 17, 2001**, the property owner shall provide the Building Division with an executed removal Agreement for the existing fence along Seminole Pratt Whitney. **(DATE: MONITORING-BUILDING-ZONING/BA)**
3. **By August 17, 2001**, the property owner shall modify the fence to comply with the Engineering requirement for the 25 foot corner clip. **(DATE: MONITORING-ZONING)**

CHAIRMAN BASEHART: Okay. At the beginning of the meeting we discussed briefly the annual workshop, and let's go back to that before we adjourn.

VICE CHAIRMAN KONYK: We were originally going to do it in June and you feel that the agenda is very --

MR. MacGILLIS: Yeah, we have a full agenda. Currently we're short staffed, so if we could do it in July that would be --

VICE CHAIRMAN KONYK: Do you want a motion? We don't need a motion for that, right? Just a consideration.

CHAIRMAN BASEHART: Do you want to do that at the end of the regular meeting as opposed to having everybody come in --

MR. MacGILLIS: Right, and then we don't have to advertise it under the Sunshine Law, a separate one. We can just carry on.

VICE CHAIRMAN KONYK: We usually do do it during the meeting, don't we, at the end of the meeting?

CHAIRMAN BASEHART: We've done it both ways.

VICE CHAIRMAN KONYK: Oh. Not since I've been here. But I would recommend that we move it to July if the June agenda is --

CHAIRMAN BASEHART: Everybody agree with that? We'll just do that.

MR. MacGILLIS: I don't know if you want to take this home and send it back or do you just want to -- I mean, I don't know if you still want to go over the decision making standards; we typically go over that. But I mean, most of the Board members have been here for a while.

Mr. Wayne Richards, I mean, he was the attorney for the City of West Palm Beach, its code enforcement board, so he's very familiar with it. So I don't know, most of the Board members here are I think are --

VICE CHAIRMAN KONYK: I think it's a good idea just to go over it briefly, you know, refresh everybody's memory. I don't think we have to turn it into an all day workshop. I think probably 15 minutes will be sufficient.

MR. MacGILLIS: I was thinking of taking out the Planning and Zoning Overview functions. That's where we just explain --

VICE CHAIRMAN KONYK: How long is that?

MR. MacGILLIS: Five minutes.

VICE CHAIRMAN KONYK: Leave it in.

MR. PUZZITIELLO: We'll give you three.

MR. MacGILLIS: What I was going to do was replace that and have somebody from our code revision staff come in to talk about what we're doing with the Unified Land Development Code.

VICE CHAIRMAN KONYK: Okay.

MR. MacGILLIS: We have a consultant here working on that, so I was thinking of just maybe I'll leave the planning and maybe I'll summarize it really short but spend time on the code revision stuff, what we're doing with the consultant.

CHAIRMAN BASEHART: One thing that I think might be good, say in the next package or even with the July package, you send a copy of our by-laws.

Some of the members probably don't have them and those of us that do probably don't know where they are so everybody can just kind of go over them, and if anybody has any feelings about maybe needing to make any amendments to them, then they'll be prepared to bring them up.

MR. MacGILLIS: Does everybody want them sent?

VICE CHAIRMAN KONYK: I don't.

MR. MacGILLIS: Paperwise.

VICE CHAIRMAN KONYK: Are they online? About everything else is online.

MR. MacGILLIS: They're not. That's a good idea. We'll put them online if they're not. We can do that.

CHAIRMAN BASEHART: I've got my copy. I don't need a copy, but I don't know if everybody --

MR. MacGILLIS: I think all the new members we typically --

VICE CHAIRMAN KONYK: Let's just ask, does anybody not have a copy of the by-laws?

MR. JACOBS: I'm not sure where it is.

MR. MacGILLIS: So, Mr. Jacobs, we'll send you one.

MR. GERBER: I'll take one.

MR. MacGILLIS: Janet, if you could make a note of those. That's just the by-laws. We'll send those out and you can comment on them.

Review of the -- then we've got somebody in here from Code Revision who can also bring up because you asked for the extension of the Board members' terms. I'll have that person. They'll be in here and they'll research whether it's consistent with our other boards, the BCC and Zoning Commission, just so if it is consistent. You could ask them to put it in their next cycle of changes.

VICE CHAIRMAN KONYK: We know it's consistent with the County Attorney's contract, Denise's.

MR. MacGILLIS: Then we have the annual statistics that we typically go over the number of variances and what they were for, and the votings, and the last thing is the hearing attendance charts.

CHAIRMAN BASEHART: Which brings something to mind. I don't believe that we got an attendance chart from last month. It's not in the packet here.

MR. MacGILLIS: Okay.

CHAIRMAN BASEHART: Usually the last thing we do on the agenda is approve any absences from last month.

MR. MacGILLIS: Okay. We'll bring it.

VICE CHAIRMAN KONYK: Do we have it?

CHAIRMAN BASEHART: We'll just do two months next month.

MR. MacGILLIS: Yeah.

CHAIRMAN BASEHART: Okay.

MR. MacGILLIS: Is there anything else?

CHAIRMAN BASEHART: One other thing. A couple of the members have brought up this morning, and I experienced it myself, a parking problem.

You know, I know what the problem is. I mean, first of all, I don't know whether this building meets code or not for parking. I know that the design of the parking lot doesn't. You've got more than 12 spaces in a row without a landscape island, but I think the last thing we need to do is take parking spaces out.

I know the problem stems from the fact that the building inspectors all come in, you know, like at 7:30 in the morning and they're usually here till about 9:00, and they take up a lot of parking spaces. You go into the parking lot at 8:45 or 8:50 any morning and you can't find a parking space. And then, you know, at 9:15 half the lot's empty.

MR. MacGILLIS: They're supposed to be parking. I know Dominic requested them to be parking further over there and I don't know why they're not. They're supposed to be parking over, especially when they have meetings, sometimes they're in here later.

They're supposed to park over on the other side of the Hilton's parking lot.

CHAIRMAN BASEHART: Yeah, but they don't. I mean, half the spaces in the lot this morning had yellow license tags on them.

VICE CHAIRMAN KONYK: Seems like the Hilton has acquired more valet spots, too, since we first started coming here. They keep expanding and expanding. Is that something that --

MR. PUZZITIELLO: What are they doing? They're doing traffic studies now? They want all those people out there counting?

MR. MacGILLIS: I mean, they're building a new planning and zoning building over behind Engineering. It's under -- they're doing the construction drawings.

CHAIRMAN BASEHART: For this department?

MR. MacGILLIS: Yes.

CHAIRMAN BASEHART: You're moving again?

MR. MacGILLIS: Well, Engineering, I think they're moving a bunch of departments in a new five story building, a huge building is being built over there on that vacant lot. They'll be moving everybody out of this building into that building. So they're looking at it. I mean, it's moving forward.

They've been in here with a consultant looking at our space needs in the last month here with an architect. So I mean, it's at the point it's moving forward, but construction --

VICE CHAIRMAN KONYK: So you mean in like a year and a half we'll be able to find a parking spot?

MR. MacGILLIS: That's why they're going to look at a parking garage that's going to accommodate the parking needs.

CHAIRMAN BASEHART: One thing that -- it was actually Mr. Jacobs suggested that what you all might want to consider doing is, you know, having some movable, you know, like "Reserved" signs for the various boards, I mean the L a n d U s e A d v i s o r y B o a r d .

There's the same problem with that Board and they meet every other Friday. This Board and several other boards that meet here, you know, the ones that meet that start at like 9:00 in the morning, it might be good if spaces can be reserved for those people and you'd probably be able to accommodate it without disturbing business here if the building inspectors at least on those days were required to park on the other side of the Hilton.

But Ray would have been on time today if there were any parking spaces and I was almost late because there weren't any parking spaces. One of the building inspectors finally, I circled the lot three times and then all of a sudden one of the building inspectors was leaving and I grabbed the space. It was the only one in the lot.

MR. GERBER: That was Ray's space.

MR. MacGILLIS: I'll bring it up but we've got to through Dominic and John Lauer, and I know there's --

VICE CHAIRMAN KONYK: Tell Dominic to give up his spot.

CHAIRMAN BASEHART: Dominic doesn't care anymore.

MR. PUZZITIELLO: I saw him driving around, too. Dominic was driving around in front of me.

MR. MacGILLIS: I know it's a problem.

MR. JACOBS: He gets paid and we don't. But I think there is some equity in the proposal.

VICE CHAIRMAN KONYK: Or we could get here at 7:15 before the building inspectors.

MR. MacGILLIS: We'll bring it up to the Executive Director and see what he says. Maybe in the new building we'll have a designated parking space for you all.

MR. PUZZITIELLO: In the garage.

CHAIRMAN BASEHART: Okay. Anybody on the Board have anything else they'd like to bring up?

VICE CHAIRMAN KONYK: No.

CHAIRMAN BASEHART: Okay. We're ready for a motion to adjourn.

MR. PUZZITIELLO: So moved.

MR. JACOBS: Second.

CHAIRMAN BASEHART: Motion by Mr. Puzzitiello, second by Mr. Jacobs.

All those in favor indicate by saying aye?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no?

(No response.)

CHAIRMAN BASEHART: We're adjourned.

(Whereupon, the meeting was adjourned at 10:05 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 48, inclusive, comprise a true and correct transcription of the Board of Adjustment hearing.

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

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 8th day of June, 2001.

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