

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

Thursday, October 18, 2001  
9:00 a.m. - 9:35 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. Stanley Misroch

Ms. Nancy Cardone

Mr. Jonathan Gerber

Mr. Bart Cunningham

Mr. Raymond Puzzitiello

David Cuffe, Civil Engineer II, Land Development

Amy Petrick, Asst. County Attorney

Jon MacGillis, Principal Planner, Zoning

Miradieu Aubourg, Jr., Planner I, Zoning

Ronald Sullivan, Senior Planner

Janet Quinn, Secretary

**INDEX**

<b><u>Petition</u></b>		<b><u>Page</u></b>
1	BOFA 2001-075	6
2	BOFA 2001-076	6
3	BOFA 2001-071	6
4	BOFA 2001-073	11
5	SD-100	16

**CERTIFICATE OF REPORTER:**

**PROCEEDINGS**

CHAIRMAN BASEHART: I'd like to welcome everybody to the October 18, 2001, Palm Beach County Board of Adjustment meeting. The first item on the agenda is roll call.

MS. QUINN: Ms. Nancy Cardone.

MS. CARDONE: Here.

MS. QUINN: Mr. Joseph Jacobs.

MR. JACOBS: (No response.)

MS. QUINN: Ms. Chelle Konyk.

VICE CHAIRMAN KONYK: Here.

MS. QUINN: Mr. Ray Puzzitiello.

MR. PUZZITIELLO: Here.

MS. QUINN: Mr. Glenn Wichinsky.

MR. WICHINSKY: (No response.)

MS. QUINN: Mr. Bart Cunningham.

MR. CUNNINGHAM: Here.

MS. QUINN: Mr. Stanley Misroch.

MR. MISROCH: Here.

MS. QUINN: Mr. Jonathan Gerber.

MR. GERBER: Here.

MS. QUINN: And Mr. Bob Basehart.

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

Next item on the agenda is proof of publication. I have a copy of the proof that was published in the Palm Beach Post on September 30th.

Do we have a motion to accept this into the record?

MR. PUZZITIELLO: So moved.

VICE CHAIRMAN KONYK: Second.

CHAIRMAN BASEHART: Okay. We have a motion and a second.

All those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Okay. Next is remarks of the Chairman.

The only remarks I'd like to make are -- I'd like for those of you that are not familiar with the procedures of the Board, we break the agenda into two sections. The first part is the consent agenda and that consists of items where the staff has recommended approval, and if conditions of approval are included where the applicant has agreed with those conditions and where there's been no indication of opposition by surrounding property owners or members of the public in the form of letters and volumes of phone calls.

Each member of the Board has received the staff report. We've all read it. If the members of the Board agree with the staff report and no one is here to object, then those items will stay in the consent. There will be no need for a presentation. The staff report becomes the record of the hearing and we vote on the consent agenda items as a group.

If the applicant decides that they don't agree with the conditions or if anyone is here to oppose any of those items, they're automatically pulled and become part of the regular agenda. The regular agenda is made up of items where staff has recommended denial or there are conditions that haven't been

agreed on or there's indication of opposition from surrounding property owners, those items require a full hearing and then the Board will vote individually on those.

Other than that, I don't have anything to bring up. Any other member of the Board have anything they'd like to -- okay.

Then we'll go to the next item. That's the approval of the minutes of the September meeting. We've all received them. I assume we've all read them. Anybody have any problems with the minutes?

(No response.)

CHAIRMAN BASEHART: Okay. Seeing none, do we have a motion to approve the minutes?

VICE-CHAIRMAN KONYK: So moved.

MR. MISROCH: Second.

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

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: The minutes are adopted.

Next is remarks of the director. Jon?

MR. MacGILLIS: I just have actually two comments.

One, that we just sent over the paperwork for the reappointments for Puzzitiello and -- who else did we send?

MS. QUINN: Mr. Jacobs.

MR. MacGILLIS: Mr. Jacobs and --

VICE-CHAIRMAN KONYK: Somebody. Some guy.

MR. MacGILLIS: Oh, Mr. Wichinsky who has indicated he's not interested in being reappointed. So that paperwork will go out today, and we're hoping they'll do the reappointments at their December board meeting so we'll have the full board members for January.

CHAIRMAN BASEHART: Okay.

MR. MacGILLIS: The other thing is -- well, we can discuss this at the end of the meeting regarding the time certain conditions we put on the petitions. I wasn't here at the last meeting, but the staff brought that up to my attention that the Board was questioning the number of dates that we're having come in here.

And I don't know if I introduced Miradieu Aubourg. He's our newest planner for the Board of Adjustment, and Ron Sullivan's been here before but he's just sitting in helping us with some of the Board of Adjustment petitions. He's our senior planner for concurrency, so.

CHAIRMAN BASEHART: Welcome.

MR. MacGILLIS: That's it.

CHAIRMAN BASEHART: Okay. That gets us to the agenda. There are two postponed items.

Are there any changes to the agenda first?

MR. MacGILLIS: No changes.

CHAIRMAN BASEHART: Okay. We've got two requests for postponement. The first item is BOFA 2001-075, Kilday & Associates. Jon?

MR. MacGILLIS: Staff has received a letter on both 75 and 76.

These petitions are tied together. The first petition is deleting acreage which is creating this second project, the 76 one.

Apparently, the homeowners association and the agents are still working out issues on this petition and have requested 30 days. So this will be time certain to the November 15, 2001, hearing.

CHAIRMAN BASEHART: This is their first postponement. So they're entitled to them?

MR. MacGILLIS: Yes.

CHAIRMAN BASEHART: So there's no need for a vote.

MR. MacGILLIS: Right.

CHAIRMAN BASEHART: Okay. BOFA 2001-075 and 076 are postponed to the November meeting.

CHAIRMAN BASEHART: That gets us to the consent agenda and there are two items on consent. First of all, BOFA 2001-071, Ralph and Maureen Martinez. Is the applicant present?

MRS. MARTINEZ: Yes.

CHAIRMAN BASEHART: Could you step forward, please? Staff has recommended - - for the record, your name?

MRS. MARTINEZ: Maureen Martinez.

CHAIRMAN BASEHART: Okay. For the record, the staff has recommended approval of your application with four conditions. Are you familiar with them?

MRS. MARTINEZ: Yes.

CHAIRMAN BASEHART: Do you agree with them?

MRS. MARTINEZ: Yes.

MR. MacGILLIS: Just for the record, there's a change on page 10 to condition number 2. That date should read by August 18, 2002. Do you have-- staff provided you with a new copy of that.

MRS. MARTINEZ: Yeah, I have that.

CHAIRMAN BASEHART: Okay. Any letters?

MR. MacGILLIS: We had four letters on this, two letters of support from the neighbors to the south and north, and a letter of support from the Village HOA association, so no opposition.

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

(No response.)

CHAIRMAN BASEHART: Any member of the Board feel there's any reason to pull this item?

(No response.)

CHAIRMAN BASEHART: Seeing none, this will stay on the consent

agenda.

### STAFF RECOMMENDATIONS

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

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

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

**YES.** This 7,150 square foot lot is within the Tumbury Village Subdivision of Winston Trails PUD which is east of Jog Road and north of Hypoluxo road. The lot is located at 6020 Royal Birkdale Drive and supports a single family residence and attached garage, typical in size for this development. The unique feature of this lot which results in the need for a rear setback variance, is that the house and garage had to be placed further back on the lot to meet side setbacks. This was necessary because the front corner of the lot is cut off to provide adequate street frontage for it and the adjacent corner lot which are on the outside of a curve on Royal Birkdale Drive. The residence (garage) was setback 31.6 feet instead of the 25 feet required by code in the RS Zoning District in order to meet the minimum side yard setback of 7.5 feet. The house is 60 feet deep which leaves a 22.15 foot rear yard. The applicant is proposing a 14 foot by 30 foot swimming pool which is typical size for a residential pool. The subject property abuts a 20 foot landscape tract to the rear and beyond that is the 80 foot right-of-way for Winston Trails Boulevard. There is a 5 foot privacy fence on the property line and a 6 foot hedge adjacent to the fence on the landscape tract. The open space and street to the rear is unique to this lot and other adjacent lots and will mitigate any negative impacts associated with the reduced rear setback for the pool. There is a mature ficus hedge and native shade trees beyond the rear yard within the open space and street which will buffer the notice associated with the pool.

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

**NO.** The conforming single family dwelling was purchased by the property owner in its existing configuration. The construction of a swimming pool is a reasonable request for a property owner on a single family lot.

The configuration of the lot was necessitated by its location on a curve in the road created by the cul-de-sac. If the house could have been placed closer to the street, the rear yard would have been large enough to accommodate a typical pool without the need for a variance. There is a fence, ficus hedge, sidewalk, median and then a street to the rear of the lot. There are no houses to the rear that could be negatively impacted by this reduced rear yard setback for the pool. The mature ficus hedge and shade trees mitigate any negative impacts associated with the reduced setback. A swimming pool is a typical amenity found on lots in south Florida. The applicant has limitations that restrict compliance with the literal intent of the ULDC setback requirement for pools.

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

**NO.** The applicant is requesting **the minimum variance** in order to construct a swimming pool on this lot. The pool has been located 3 feet from the residence to minimize the encroachment into the rear setback. The property owner has a 5 foot wood privacy fence on the rear property line. As previously stated, to the rear of the property is a 20 foot landscape tract and beyond that is the 80 foot R.O.W. for Winston Trails Boulevard. There is a 6 foot hedge adjacent to the fence on the bike path/landscape tract and therefore these minor encroachments will have no significant adverse effect.

No special privilege will be granted to this property owner if the variance is granted. The applicant has demonstrated that this lot is unique in that even though it meets the minimum size, depth and width, the shape of the parcel creates the need for this rear setback variance. The existing fence and vegetation to the rear of the lot will mitigate the 5.5 foot setback encroachment for the pool.

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.** If the variance is denied, the applicant could not construct a reasonably sized swimming pool on this lot. The rear yard has been significantly reduced on this lot because of the reduced front yard. The builder had to place the house further back on the lot which in turn reduced the usable back yard for accessory structures, such as a swimming pool. A swimming pool is a typical amenity for a single family house in Florida. The property owner has made a



concerted effort to locate the swimming pool in order to request the minimum setback variance while still allowing for a reasonable sized pool.

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

**YES.** As previously stated, the desire to have a swimming pool in the rear yard is not an unreasonable request. Many lots are large enough to accommodate a pool and enclosure in the rear yard without need for variance relief. In this particular situation, the lot has a reduced front yard due to its location on the outside of a curve on the frontage road. This required an increase in the front setback and a corresponding reduced usable rear yard. The lot does not allow for alternative design options that would further reduce the variance request or eliminate the variance.

The granting of this minor rear setback variance will allow the applicant to construct a reasonable sized swimming pool. The existing fence on the applicant's property line will help to mitigate the impact on the adjacent property to the rear. Since the property to the rear is open space in the form of a 20 foot wide bike path/landscape tract and an 80 foot road right-of-way with a 6 foot hedge next to the fence, this further mitigates any negative impact.

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 Comp Plan is to encourage residential developments that are designed to provide amenities that meet the user's needs. Granting this minor rear setback variance for the swimming pool will allow the applicant the best use of the rear yard. The variance will not have negative impacts on the adjacent open space to the rear or to the single family uses on both sides.

A similar variance, BOFA 9700003, was granted in 1997 to another residence in this subdivision for the rear setback requirement for a pool and screen enclosure. This residence at 6108 Royal Birkdale Drive also abutted a 20 foot tract - in this case it was a golf course and landscape maintenance easement to the rear.

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

**NO.** Parcel 7 of Winston Trails PUD supports 96 single family dwellings on 24.5 acres. Many of these residences have similar pools. There is an existing 20 foot wide landscape tract to the rear including a 6 foot high hedge that mitigates a majority of the

impact of the proposed pool. In addition, the 80 foot road R.O.W. further mitigates the impact of this minor setback encroachment. The requested variance will have a no impact on surrounding property owners. There are no single family dwellings to the rear of the property, and the requested variance will not affect the ULDC required side interior setbacks that insure separation between single family dwellings.

#### **ENGINEERING COMMENT**

No Comment. (ENG)

#### **ZONING CONDITIONS**

1. By August 18, 2002, the applicant shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application for the pool. **(DATE:MONITORING-BLDG PERMIT)**
2. By August 18, 2002, the applicant shall obtain a building permit for the swimming pool in order to vest the rear setback variance. **(DATE:MONITORING-BLDG PERMIT)**
3. The final pool layout shall be consistent with Exhibit 9, the site plan in the Board of Adjustment file. **(BLDG PERMIT)**
4. This variance is only for the rear setback for the proposed swimming pool. Any further improvements must meet required setbacks. **(ONGOING)**

CHAIRMAN BASEHART: Next item on consent is BOFA 2001-073, Helen LaValley for Flora F. Goldberg.

MS. LaVALLEY: Thank you. Helen LaValley.

CHAIRMAN BASEHART: Hi. Staff has recommended approval subject to three conditions. Are you familiar with them?

MS. LaVALLEY: Yes.

CHAIRMAN BASEHART: Do you agree with them?

MS. LaVALLEY: Yes.

CHAIRMAN BASEHART: Any letters?

MR. MacGILLIS: We had 14 letters, 13 for support and one opposing it with just the letter sent back with no justification. The lot is across the street and down the block. It's right within the 300 foot notification, but there's no reason on the letter why he's opposing it.

CHAIRMAN BASEHART: Okay. And the variance actually is on the other side of the house from where this resident is?

MR. MacGILLIS: It's across the street, I believe. It's about 10 homes away across the street.

CHAIRMAN BASEHART: This is a rear setback variance?

MR. MacGILLIS: Yes.

CHAIRMAN BASEHART: So the house is in between where the variance is being requested and this person's -- okay. Ten houses. Okay. Any member of the public here to speak on this item?

(No response.)

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

MR. CUNNINGHAM: I have a comment. I don't want to pull it, but I know --

COURT REPORTER: Put your mike down, sir.

MR. CUNNINGHAM: Sorry. Question. Was there any notification forwarded to the builder for not pulling a permit?

MR. MacGILLIS: Staff -- we're going to check on that down with contractor certification.

MS. LaVALLEY: Actually, I can answer that. We did, myself and the property owner did notify them.

MR. CUNNINGHAM: But an official notice from the County?

MS. LaVALLEY: No, we haven't done that.

MR. MacGILLIS: Did you provide staff with the name of the contractor because I know there was a --

MS. LaVALLEY: Yes, yes.

MR. MacGILLIS: Okay. We can do that. We'll follow up with a letter to the -- okay.

MR. CUNNINGHAM: I notice in the paperwork that it identified the license number but nothing about the name. I'm curious as to is this the first or are there several that the same contractors pulled?

MS. LaVALLEY: That I don't know.

MR. CUNNINGHAM: I mean, seeing that -- okay.

MR. MacGILLIS: I mean, we can report back to you next month as far as if there's anything on this person's record as far as -- I know staff was going to check that, but I don't -- but we'll -- did you want a comment from this Board or do you just want staff to just --

CHAIRMAN BASEHART: No, I think staff can take care of it.

MR. MacGILLIS: Okay.

MR. CUNNINGHAM: That's all. Thank you.

CHAIRMAN BASEHART: Since no one has requested to pull this item, it will remain on consent as well.

MS. LaVALLEY: Thank you.

## **STAFF RECOMMENDATIONS**

**Approval with conditions**, based upon the following application of the

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

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

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

**YES.** This .13 acre lot is located at 6132 Caladium Road and has a land use designation of HR8 and Zoning classification of RM. The property is within the Floral Lakes PUD, which is located south of the intersection of Atlantic Boulevard and Jog Road. This PUD, (Petition 91-040) was approved in December, 1991. The property is located in Phase 3 of the PUD. All lots adjacent to a lake in Floral Lake PUD were granted reduced setback of 5 feet on the original 10' requested by the Code. The subject lot is identified as lot 52 supports a zero lot line townhouse constructed in 1999 (BA 99018226) with a floor area for lot 52 of approximately 2,217 sq/ft. The applicant is acting in good faith requesting a 5' setback variance in order to resolve the current situation and bring the existing addition into compliance with the Code requirements.

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

**NO.** The applicant received the approval from the Home Owner Association for the conversion of the outside patio to an enclosed addition in the rear of the house. The applicant, in good faith, hired and paid a contractor to construct an addition in the rear of the house. It was the understanding of the property owner that the certified contractor (license CB-C053029) would handle all necessary permitting of the addition. The owner discovered later thru the Home Owners Associations that the addition was illegally constructed without valid permit. The addition encroached into the required rear setback. Therefore, the applicant has the option of removing the addition or obtaining approval a variance and a valid building permit. The applicant is acting in good faith requesting for a rear setback variance in order to resolve the current situation. The granting of the variance will ensure the applicant can obtain the permit and inspections necessary for the conversion.

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

**NO.** Granting this variance **will not** confer any special privileges to the applicant that would be denied by the ULDC. To construct an addition on a single family dwelling is permitted in the zoning district where the subject property is located. There are other property owners within the immediate area which enjoy the use of solid roof screen enclosures or an addition to the rear of their zero lot line single family dwelling. As previously mentioned, the Board of Adjustment approve BA2000-038 in July 2000, to allow seven residences with solid roof and screen roof screen enclosure to encroach in the required rear setback. Therefore, granting the variance would not impact any of the surrounding property owners.

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

**YES.** A literal interpretation of the provisions of the ULDC would create an undue hardship on the applicant. The applicant would be required to remove the existing addition at considerable expense and would deprive the applicant of the use of such structures that are commonly constructed and enjoyed by other surrounding property owners. There are other properties adjacent to a lake within this subdivision which support screened roof, solid roof, or enclosed additions. The applicant informed staff the requested variance will allow them to enjoy the lake view and it's the primary reason why they purchased the house. Granting the variance will allow the addition to remain in its present location.

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

**YES.** The approval of the variance is the minimum variance that will allow a reasonable use of the parcel of land, building or structure. The subject lot supports a zero lot line townhouse and is 54.18 feet in width by 104.15 in depth. Considering there is no lots adjacent to rear property line, and there are no other possible design options. Granting the variance will allow the applicant to obtain a building permit and maintain the current setback of other homes in the neighborhood.

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

**YES.** The intend of the Code for rear setbacks is to maintain separation between residences, protect adjacent property owners, and maintain property values. The proposed 5 foot variance will be consistent with the residential areas. In this particular situation there is no building to the immediate south side of the lot 52. The

applicant is requesting 5' variance in the rear of the house, the distance between the subject property line to the edge of the water is 25' and the lake is 3.44 acre which results in a separation of 425' to the closest building on the south. This open space will ensure the general intent of the code is met, if this variance is granted.

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

**NO.** The granting of this variance **will not be injurious** to the surrounding area. The existing addition will not be visually obstructive to the other property in the area. The variance request is minor and compatible with the surrounding uses in the area. The rear property line borders over 425' open space, therefore granting the variance will not change the character of the Floral Lake PUD.

#### ENGINEERING COMMENT

The addition must not result in raising the finished grade elevation at the edge of the abutting lake maintenance easement (ie...the rear property line of the subject lot) above the design elevation of 19.5 ft NDGVD for the back edge of the maintenance berm. **(ENG)**

#### ZONING CONDITIONS

1. By December 18, 2001, the Applicant shall administratively amend the certified Site Plan (Pet. 91-040) for lot 52 in Phase 3 of Floral Lake PUD to reflect the approved variance and conditions for the existing addition in the rear setback. **(DATE:MONITORING-ZONING-DRC)**
2. By April 18, 2002, the property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan, presented to the Board, simultaneously with the building permit application. **(BLDG PERMIT:BLDG)**
3. By October 18, 2002, the property owner shall receive the building permits for the existing addition to the unit on lot 52. **(DATE:MONITORING-BLDG PERMIT)**

CHAIRMAN BASEHART: I guess that makes us ready for a motion on the consent agenda.

VICE-CHAIRMAN KONYK: I'll make a motion to approve items BOFA 2001-071 and BOFA 2001-073 on the consent agenda with the staff report becoming part of the record.

MR. PUZZITIELLO: Second.

VICE-CHAIRMAN KONYK: Second by who? Okay. Ray.

CHAIRMAN BASEHART: We have a motion by Ms. Konyk, a second by Mr. Puzzitiello to approve the consent agenda. All those in favor,

indicate by saying aye.

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no?

(No response.)

CHAIRMAN BASEHART: Motion carries unanimously.

CHAIRMAN BASEHART: That gets us to the regular agenda. You guys have never, ever recommended approval of one of these, have you? I didn't think so. All right. Next item on the agenda is SD-100. Jon?

MR. MacGILLIS: That's David.

MR. CUFFE: This is subdivision variance SD-100, the petition of George Kirkham and Pamela Crawford Kirkham requesting a variance from the requirement that sidewalks be constructed on both sides of the street to allow instead elimination of the requirement for sidewalks. The requirements are set forth in Unified Land Development Code Sections 8.21.A.1 and 8.22.B.1.

The property is located on Western Way, approximately .85 miles east of Jog Road and south of Hypoluxo Road in the AR Zoning District. The applicant is requesting a variance to eliminate the requirement, the subdivision requirement for sidewalks in order to allow subdivision of the property on a street with no provision for pedestrian access.

CHAIRMAN BASEHART: Okay. It's a little confusing in the staff report. The variance – normally, when you do a subdivision you've got to put sidewalks in. This subdivision is remote from where sidewalks exist.

Is it a requirement that they put sidewalks in front of the lots involved in the subdivision or also all the way to where sidewalks exist?

MR. CUFFE: Where a street is being constructed as part of the subdivision itself, that street is required to be constructed with sidewalks. For subdivision – but every lot created by a subdivision has to have its access and frontage on a local street constructed to the subdivision standards, which includes the sidewalks.

So, basically, the Code does not allow the subdivision of property on a street that does not have the necessary infrastructure.

CHAIRMAN BASEHART: So in other words, the Code then requires for this lot split for them to build 4,000 feet of sidewalk?

MR. CUFFE: If the street does not meet the standards for a subdivision street, it would preclude the subdivision of the property.

CHAIRMAN BASEHART: Okay. All right. Is the applicant present? Give us your name for the record, Mr. Putman.

MR. PUTMAN: For the record, my name is Charlie Putman. I'm a land planner with offices in Boca Raton, Florida. I'm here representing –

CHAIRMAN BASEHART: Before you go any further, this is a public hearing, so anyone that wishes to speak on this item, if you'd rise and raise your

right hand?

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

MR. PUTMAN: Actually, that segues me into the fact that I do want to introduce the people that are with me today. George Kirkham is here, Pamela Crawford Kirkham is here. They're the applicants. And also as we get into this petition, you'll see that it involves an existing home in the Western Way corridor and that home is occupied by Pat Quinn who is also here. They may add some comments.

The overview of my presentation is this. I'm going to explain briefly why we're here and what we're asking you to do, even though it's probably clear from your handout material, and then we have some justification information that we're going to present, and Pamela Crawford will make some comments in that regard.

First of all, let me set the stage for this and explain why we're here. This is an exhibit that basically shows the location of the property that we're talking about today. This is Jog Road. This is Lantana Road. Western Way is a road that services basically a rural type of subdivision in the central part of the county and the subject property that we're discussing is indicated here in the red tape.

The situation of this subdivision is probably expressed best in this aerial photograph. This is Western Way that I just referenced, and the subject property is here (indicating). As you can see, this area is a very unique part of the county. It's really a rural type of subdivision with large five acre lots. As a matter of fact, the Kirkhams own this five acre tract right here (indicating).

And the situation that has brought us here today is that they purchased the adjacent five acres with the idea that they were going to keep a portion of it, three acres, and sell off two acres where there's an existing home. And it was that concept, I guess, or that idea that brought them to the County to find out what the legal process was for accomplishing this.

They went to the Zoning Department and Zoning said, well, you are going to have to rezone because of the technicalities of the zoning code, they're in an AR zoning district, and you're also going to have to subdivide the property. So that sent them to the Engineering Department where they were advised that they would have to go through the subdivision process.

When they got there they were advised that they needed to have a waiver of plat approval in order to proceed. At the end of that investigation they said, well, this is going to get complicated; let's call Mr. Putman who we've worked with before on properties as a land planner and get him involved. I went to Zoning. They confirmed, yeah, you have to rezone. And I went to Engineering and talked about a waiver of plat.

And when we got into that process, we got to David's department and it was indicated to us that before we could proceed to even make an application for a waiver of plat that we needed to come to you all and request a variance because the road that's in front of our property doesn't have sidewalks.

So the reason that we're here today is to ask for that variance, and the way it's been presented to us if you – I'm not putting pressure on you – but if you approve this variance, then we can proceed onto our next steps of rezoning and waiver of plat.

If you don't approve the variance, we really have no alternative to pursue this venture, so to speak, because as was pointed out the only other option available to us is to construct the sidewalk all the way to Jog Road which



is 4,000 feet, and as you can guess it's impractical economically for these folks to do that.

We feel that the approval of this request is clearly justifiable. Pam Crawford will come up. Pam, if you can kind of make your way up to the podium.

Let me give you a couple of more details as to what we're doing so that you can understand it more clearly. The property, the five acre tract that we're talking about -- actually, I'm going to put this this way because it coincides with my other exhibit. The Kirkhams own the five acre tract next door. This is the property that they purchased. Here is the existing home that Ms. Quinn lives in (indicating). So that's the situation that existed.

Our proposal is to subdivide the property into a three acre tract which the Kirkhams will keep to add on to their property, and they do live here, and this is their home.

And this is the two acre tract that would be spun out of the subdivision.

CHAIRMAN BASEHART: According to the staff report, they operate a nursery on their property?

MR. PUTMAN: Yes. They live there and also it's a nursery called Color Guard Nursery. That's a good point that this whole area, just to give you a flavor of it, has a lot of nurseries in the area. That's basically what it is. It's nurseries, large lot residences and so forth.

As you'll see in a minute, the proposal we're making is not out of line with other -- with the pattern of development that already exists, and really, I think that's what Pamela is going to bring up to you right now.

CHAIRMAN BASEHART: Okay. I think Chelle --

VICE-CHAIRMAN KONYK: Before we hear from her, I just have a couple of real quick questions.

Western Way is a dead-end; am I correct?

MR. PUTMAN: Not really, no.

VICE-CHAIRMAN KONYK: Or kind of loops around those other streets?

MR. PUTMAN: Yeah, it loops around.

VICE-CHAIRMAN KONYK: But it doesn't go out onto another main road?

MR. PUTMAN: No, it's an internal street to the --

VICE-CHAIRMAN KONYK: Right. And there are three or four streets over there that have that same flavor?

MR. PUTMAN: Exactly.

VICE-CHAIRMAN KONYK: And it's just like all of a sudden they are kind of been protected from the development that's gone all around?

MR. PUTMAN: Yes.

VICE-CHAIRMAN KONYK: Jog Road used to be only two lanes there and over the years it's now, you know, Winn-Dixies and big --

MR. PUTMAN: Yes.

VICE-CHAIRMAN KONYK: And this little area here has been kind of forgotten, hopefully for a while.

MR. PUTMAN: Yes.

VICE-CHAIRMAN KONYK: And it has remained a totally rural, totally rural atmosphere.

MR. PUTMAN: Yes.

VICE-CHAIRMAN KONYK: I live somewhat near there and I think that one of my kids had a friend that lived on one of the other streets over there,

so I've been back there and it is quite an unusual area.

MR. PUTMAN: Yeah. I'm glad you brought that up because I meant to. The technical issue that we have here, a planning issue, is just that. We have a rural type of development that's inside the urban service line, and because it's inside the urban service line when it gets to the Engineering Department, they superimpose the urban standards, whether it's sidewalks or whatever.

It would be difficult to do anything in this project that would comply with the current code, just because it really is a rural type of development. So, yes, that's --

VICE-CHAIRMAN KONYK: I just have one other question. How did that road end up getting paved? Was that a private road that they made a -- or was that a public road?

MR. PUTMAN: The County paved it earlier this year.

VICE-CHAIRMAN KONYK: So it wasn't a private road; it was a public road?

MR. PUTMAN: Yeah, and they did it, I think, as a maintenance improvement --

MR. CUFFE: It was an MSTU street improvement program petitioned by the property owners.

VICE-CHAIRMAN KONYK: What's an MSTU? I don't know what --

MR. CUFFE: Municipal Services Taxing Unit.

VICE-CHAIRMAN KONYK: Did they have to pay any portion of it?

MR. CUFFE: The property owners reimbursed the revolving fund for it.

CHAIRMAN BASEHART: It's --

MR. CUFFE: It's in order to pave courtesy maintained shellrock or the courtesy maintained unpaved road.

CHAIRMAN BASEHART: It's an interesting scenario, and I've run into this on property I've dealt with before where you've had a rural area and the County's come in and done that.

I was involved in a property and the guy wanted to subdivide his property, too, to give lots to his kids and the issue was, well, if you're going to do that you have to put sidewalks in. Also, you've got to bring the road up to County standards and the drainage up to County standards.

And the question was, well, if the County just paved this road last year, why didn't the County meet their own standards? And I guess the answer is you exempt yourself from those standards when you do these pavings.

MR. CUFFE: No, because the standards for creation of streets for new lots, for subdivision for additional lots, comes under the subdivision regulations. The MSTU program, street improvement programs are a retrofit in order to bring up the street to at least a minimally acceptable paved and maintainable surface. It's not intended to -- it is intended to serve strictly the existing properties, the existing development on that street.

The MSTU program is not intended to create a street suitable for subdivision, unless the property owners that are petitioning the MSTU want to go that extra step.

VICE-CHAIRMAN KONYK: So then they're not -- for the MSTU they're not required to bring it up to subdivision standards, but when he wants to subdivide it, then he's got to follow a whole 'nother set of rules?

MR. CUFFE: When he asked to subdivide it, he has to meet the subdivision regulations. The subdivision regulations are for the creation of additional lots.

MR. PUZZITIELLO: On your "B" portion of your – the three acres you're keeping for the – the three acres, are you going to do a unity of title with the original five or are you going to keep them separate?

MR. PUTMAN: Well, the intention right now is that the three acres would be integrated with the other property, where they going to do – okay, Pam Crawford?

MRS. KIRKHAM: I think I may be able to answer all these questions in about five minutes. I'm Pamela Crawford; I'm the property owner. Essentially, we live in paradise at 5596 Western Way. It's five acres of wooded property. It's absolutely beautiful.

About two years ago we were called in, along with the rest of our neighborhood, by the Planning and Zoning Department of Palm Beach County who explained to us that our tenancy there as a rural community was short-lived, that we were part of the urban services area and that we needed to expect the fact that there would probably going to be some high density development taking place on our three streets.

We then formed various committees in the neighborhood. We've had numerous people coming to us and trying to get us to sign petitions saying that we will sell to developers. There's currently a developer – I believe the name is Continental Homes – who has been looking at the whole first portion of this street.

We love where we live. It's the center of our life. And when the property next door came up for sale, our house is right on that side, we only had 50 feet between our house. And they were talking about – somebody had applied for an occupancy rate of 19 units per acre, and essentially we felt it would just be wonderful if we could buy the land and use it as a buffer.

Before we bought the property we went to the County Commissioner's Office. The majority of the places in our neighborhood are in the two to three acre range, which I'll show you. He said because of the fact that everything else was on two to three acres, he did not see a problem with it.

We also went to several county offices. They also said they also saw no problem with it. So we did go ahead and buy the property. We then rented out the house and the barn to Ms. Raines (ph) who expressed a very strong desire to buy it. And quite frankly, the rental payment doesn't pay for the payments on the whole property, so for us, if we could sell part of it, then we would be in a situation where we could have our buffer and wouldn't be half-killing ourselves financially.

Now, I'm going to give you a description and show you basically what we're talking about.

VICE-CHAIRMAN KONYK: You know what? I don't want to interrupt you, but I'm ready to make a motion to approve this variance, and I would like to go forward with that and see how we do, and then let you make your presentation if it doesn't, okay?

CHAIRMAN BASEHART: Well, before we do that, are the members of the Board ready for a motion or do the members need to hear more evidence?

MS. CARDONE: I'm ready.

CHAIRMAN BASEHART: Okay.

VICE-CHAIRMAN KONYK: I'd like to make a motion to approve SD-100 with the staff report becoming part of the record, and the presentation today also becoming part of the record, and ask the Engineering Department if there would be any conditions that they would like to add if this variance is

approved.

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

MS. CARDONE: Second.

CHAIRMAN BASEHART: Second by Ms. Cardone. 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: Motion carries.

VICE-CHAIRMAN KONYK: I didn't mean to interrupt you, but --

MRS. KIRKHAM: That's okay. That's the best interruption we've had. I really want to thank you. We feel that you've made some people's -- helped our dreams come true. Thank you very much.

CHAIRMAN BASEHART: Thank you.

CHAIRMAN BASEHART: That concludes the items on the agenda. And I guess before we adjourn, we need to approve the attendance record from last month. Last month there was one absence, and that was Mr. Puzzitiello for business reasons.

Does the Board agree that that's an excused absence?

VICE-CHAIRMAN KONYK: Absolutely.

CHAIRMAN BASEHART: I don't think we need to vote. I think it's a consensus.

MS. CARDONE: Did he bring cookies or doughnuts or anything?

CHAIRMAN BASEHART: He should have brought presents back from his business trip.

VICE CHAIRMAN KONYK: Bob said it was going to be rude if I interrupted, Mrs. Kirkham was her name?

CHAIRMAN BASEHART: Yes.

VICE CHAIRMAN KONYK: I said I was going to make a motion for approval. He said that was okay then.

CHAIRMAN BASEHART: All right. We're ready to adjourn. Do we have a motion?

MR. MacGILLIS: Actually I have one thing I want to go over that Ms. Konyk brought up at the last meeting regarding time extensions.

Just to put into perspective, the Board's staff comes up with the time limits we put on them. The ULDC requires somebody to -- in order to vest the variances, the Code was changed several years ago to say you have to

commence construction.

So people come in here and think they pull a building permit that they're vested, and I say no, you have to actually start construction on the pool or whatever it is. And we get variances coming in here in all different stages. We get some that we have to put conditions on that they're in violation with code enforcement. So if we don't put conditions on those, the people will drag the code enforcement cases out.

So the person gets these conditions two weeks before this meeting. They're told to go over them if there's any conditions they can foresee being a problem. We've gone in and changed the dates on them that we're too stringent on it. I mean, we try to work within our county framework and at the same time realize what a property owner is doing. But if we can see that they've been in violation with code enforcement for months, we're going to say, well, you want nine months. We're going to give you six because we want this m o v i n g f o r w a r d .

So a lot of the ones you'll see on here, they're conditions in order to -- once the agent is gone it's usually the property owner who's left with this and they don't have any clue. All these dates go into a tickler file that staff monitor the petition, and we call them three months in advance and say you haven't pulled your building permits yet; do you realize you'd better do that. And they say thanks for calling me, but --

CHAIRMAN BASEHART: So you use the time limitations like a cattle prod?

MR. MacGILLIS: Sort of. To keep the ones that -- I mean, this year so far we've had a total of 15 out of about 90 variances so far this year. Fifteen of those were time extensions.

These used to be done by staff administratively. The Board never even saw them, but what we had, variances were being dragged out for two years. We had site plans on file that the variances have lapsed because they never activated anything on it. So it was a mechanism, bringing it back to this Board to sort of formalize it a bit, put time certain conditions on it, which the property owner or agent gets weeks in advance.

Of course, there are going to be those ones like we only had 15 this year where neither staff nor the developer knew they were going to run into problems. And we usually -- staff supports usually the time extension. I don't think there's any time we've never supported it, so.

CHAIRMAN BASEHART: I think part of the problem is in a large development, the permitting processes has become so burdensome and so long that it's virtually impossible to get a permit before your variances expire.

An example would be like larger commercial developments. You know, let's say you have a large shopping center that comes in let's say for a variance from the requirement that all parking spaces have to be within 600 feet of the main entrance, or for a setback or something.

But on a large facility like that by the time you get through the Water Management District and the Lake Worth Drainage District and this and that and the other agency and DOT for your driveway permits and all that stuff, a lot of times -- and as you know right now, the permitting time for just the County building permit can exceed six months sometimes on some of these things.

Plus you've got to get the permits from Engineering and the Health Department and the Fire Marshall and all that stuff.

VICE-CHAIRMAN KONYK: Look how long it's taking him just to explain it.

CHAIRMAN BASEHART: Yeah, it really boils down to on a large project, like a commercial project, it's often a 14 or 16 month permit process.

MR. MacGILLIS: Actually there is a provision in the Code where an agent can ask for an extension of their development order beyond the year. It's never very often used. I know Kilday has used it several times –

CHAIRMAN BASEHART: For governmental delay?

MR. MacGILLIS: No, it doesn't really say government delay. It just says if you can demonstrate to staff when you come in that you're not going to activate like within a year, like a large – we had Aberdeen or something come in with turn lanes into the commercial pod, but it was all contingent upon curb cuts and stuff that they had no control over.

So they asked for two years right up front, and we wrote that in as a condition that this variance will be active for at least two years, and then they can come back in and ask for an extension after that. I mean, there is the provision in there.

But the problem with variances is because they're based on the surrounding land uses and the conditions that we look at specific in that time frame, and if somebody buys a lot and all of a sudden two years later finds out that somebody's building a house on top of the setbacks, they're going well, how was this happening? How did I not know about this?

So the variance is intended you prove a hardship, you build a structure or the parking – whatever the problem is within that time frame so the surrounding situations that staff analyze and the board approved, don't change drastically so the property owner is not notified and you might move in and all of a sudden say how could this take place.

CHAIRMAN BASEHART: Okay. Anything else?

MR. PUZZITIELLO: Motion to adjourn.

CHAIRMAN BASEHART: That sounded like a motion to me.  
Motion by Mr. Puzzitiello.

VICE-CHAIRMAN KONYK: Second.

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

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Okay.

(Whereupon, the meeting was adjourned at 9:35 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 25, 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 2nd day of November, 2001.

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