

PALM BEACH COUNTY
BOARD OF ADJUSTMENT

Thursday, September 20, 2001
9:00 a.m. - 9:25 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. Glenn Wichinsky

Mr. Joseph J. Jacobs

Mr. Bart Cunningham

David Cuffe, Civil Engineer II, Land Development

Amy Petrick, Asst. County Attorney

Alan Seaman, Senior Planner, Zoning

Miradieu Aubourg, Jr., Zoning Intern

Janet Quinn, Secretary

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CERTIFICATE OF REPORTER:

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PROCEEDINGS

CHAIRMAN BASEHART: We'll call to order the September 20, 2001, Palm Beach County Board of Adjustment meeting.

Why don't we just start with the roll call.

Well, first of all -- well, I guess we have to have roll call first.

MS. QUINN: Ms. Nancy Cardone.

MS. CARDONE: Here.

MS. QUINN: Mr. Joseph Jacobs.

MR. JACOBS: Here.

MS. QUINN: Ms. Chelle Konyk.

VICE CHAIRMAN KONYK: Here.

MS. QUINN: Mr. Ray Puzzitiello?

MR. PUZZITIELLO: (No response.)

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: (No response.)

MS. QUINN: And Mr. Bob Basehart.

CHAIRMAN BASEHART: Here.

We have a new member, actually a return of a former member, Mr. Cunningham. He needs to be sworn in, I would presume. Can we do that in the absence of the County -- do you know how to do that, Bunny?

COURT REPORTER: I don't know what the oath is, but --

CHAIRMAN BASEHART: Can you make something up?

COURT REPORTER: Yes, I guess I can do that. I mean, I'm a notary.

CHAIRMAN BASEHART: Is that all right with you, Alan?

MR. SEAMAN: That's fine with me.

CHAIRMAN BASEHART: Rather than wait, we don't know when the County Attorney --

MR. SEAMAN: She was called about it.

MS. QUINN: She was called.

MR. SEAMAN: That's fine with us then.

VICE-CHAIRMAN KONYK: That's all you have to do is just reaffirm his former oath.

(Whereupon, Mr. Cunningham was sworn in.)

CHAIRMAN BASEHART: Good enough for me. All right. Welcome back, Bart.

MR. CUNNINGHAM: Thank you.

CHAIRMAN BASEHART: Next item on the agenda is the proof of publication. Just for the record, let me note that we have a copy of the Notice of Publication that was printed in the Palm Beach Post on September 2nd. Can we have a motion to accept that into the record?

VICE-CHAIRMAN KONYK: So moved.

MR. JACOBS: Second.

CHAIRMAN BASEHART: Okay. Moved and seconded; all those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Okay. Next item on the agenda is remarks of the Chairman. All I'd like to do is familiarize those of you that aren't here often the way the Board conducts its business. We break the agenda into two sections.

Oh, let the record show that Mr. Wichinsky has shown up.

The first part is what we call the consent agenda, and that's made up of items that the staff is recommending approval where if conditions of approval are recommended, the applicant has agreed to accept them, and where there's been no indication of opposition from any member of the public.

We'll introduce those items one at a time. If no one has come to object and the Board members after having read the staff report agree with it, the items will be left on consent. In that case, no presentation is required. And at the end of going through the consent agenda, we will approve all of the items left on consent at once.

The second part is the regular agenda. There don't happen to be any items on the regular agenda at this point, unless something is pulled.

On the consent agenda if a member of the public shows up to object or if a member of the Board is not comfortable with the staff report and recommendations, those items will be pulled and moved to the regular agenda.

Items on the regular agenda require the applicant to make a full presentation and to justify the granting of the variance based on the seven criteria in the code, following which comments and testimony will be taken from the public, and then the Board will vote and render a decision on those items.

But as I said, at this point at least we don't have any regular agenda items.

Now that the County Attorney's Office has shown up, I'd just like to let you know we have in our own way sworn Mr. Cunningham in. I don't know if you feel it's necessary for you to do it.

MS. PETRICK: Well, I can't swear anyone in because I'm not a notary. So you need to have a notary do that.

CHAIRMAN BASEHART: We had a notary swear him in, so we're okay.

MS. PETRICK: Sorry about that.

CHAIRMAN BASEHART: All right. Any other member of the Board have anything they'd like to discuss under this item?

(No response.)

CHAIRMAN BASEHART: Seeing none, next item on the agenda is the approval of the minutes of the August meeting. We all got them in the mail with our packet for this month. Does anybody have any concerns or changes?

(No response.)

CHAIRMAN BASEHART: Then we're ready for a motion.

VICE-CHAIRMAN KONYK: Motion to approve the minutes of the August meeting.

CHAIRMAN BASEHART: We have a motion.

MR. JACOBS: Second.

CHAIRMAN BASEHART: And a second. All those in favor,

indicate by saying aye.

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no?

(No response.)

CHAIRMAN BASEHART: Minutes are adopted.

Next item is the remarks of the Zoning Director. Alan.

MR. SEAMAN: I guess you're aware that -- again, I'm Alan Seaman, and Jon MacGillis is on vacation so I'm sitting in for him. Other than that, there are no comments this morning.

CHAIRMAN BASEHART: Okay. Nothing being postponed or withdrawn?

MR. SEAMAN: No.

CHAIRMAN BASEHART: Okay. That puts us on the agenda. The first item, of course, is the consent agenda.

CHAIRMAN BASEHART: The first item on that is BATE 2001-063. Is the applicant present?

MR. SEAMAN: Mr. Chairman, I do need -- there are four or five items I need to read in as corrections to the agenda.

CHAIRMAN BASEHART: Okay. Do you want to do that as we go along or do you want to do that right now?

MR. SEAMAN: We could do them right now.

CHAIRMAN BASEHART: Okay.

MR. SEAMAN: The first one relates to BOFA 2001-067 which is Land Design South. They entered in a change of agent.

CHAIRMAN BASEHART: Okay.

MR. SEAMAN: And we have a letter here authorizing Ken Delitori (ph) to represent the applicant.

On BOFA 2001-067 it really should read BATE 2001-067.

CHAIRMAN BASEHART: Right.

MR. SEAMAN: And you've been handed some replacement sheets that are identified at the lower corners 41 and 42, and they obviously replace the 41 and 42 within your packet. That's for BATE 2001-068.

And we also have just received a letter from Lake Charleston Homeowners Association which is the BOFA 2001-070, and they are in support of the variance that's being requested.

And that's all.

CHAIRMAN BASEHART: Okay. Back to the consent agenda.

Board of Adjustment Time Extension 063. Is the applicant here? Okay, staff. Of course these weren't advertised because they're only extensions. Any member of the Board have any problem with this extension?

(No response.)

CHAIRMAN BASEHART: And there wouldn't be any letters because there was no public notice, right?

VICE-CHAIRMAN KONYK: Yeah, I have a comment. This is a time extension. We seem to have a lot of these coming up. I would recommend that maybe staff in the future stop giving these time limits that are unreasonable, not by your standards but because sometimes the people can't get through all the processes. I'm sure Mr. Basehart can verify that sometimes you can't get all the things that you need to get within the time frames that we're, you know -- it just seems like every month we're ending up with so many.

Would you agree, Bob?

CHAIRMAN BASEHART: I agree. Unfortunately, the Code provides the time limit, the one year. But I think you really need to take a look at maybe having that extended. You know, maybe a two year limit.

VICE-CHAIRMAN KONYK: And it's not even our time that I'm concerned about. I'm concerned about the applicants and the fact that a lot of these people have hired agents to represent them. They've got to pay them to come back in today to get a time extension, and I just think it's something that certainly needs to be looked into.

MR. SEAMAN: I don't think we can do that. Sometimes there are circumstances that the applicant wasn't aware of, obviously, that perhaps if they had talked to staff initially we would have understood that and considered making the actual due date for that condition further into the future than what we really did.

But I will talk to Jon and we'll look into it further for you.

CHAIRMAN BASEHART: And the way permitting is getting, you know, it takes -- I mean, I've got projects that I've done in the last year or so that are taking twice as long to get through the South Florida Water Management District which you have to get before you get a building permit than it did to go through the whole zoning process. And when you have a time limit of a year, a lot of times it's just absolutely impossible to get your permitting done before your time is up.

MR. SEAMAN: I'll be happy to look into it and check the current requirements in the Code and go from there.

CHAIRMAN BASEHART: Okay. Seeing no objections, we'll leave 063 on consent.

CHAIRMAN BASEHART: Next one is BOFA 2001-066, Louis Pleeter and Carol Pleeter. Is the applicant here?

MR. PLEETER: Yes, I'm here.

CHAIRMAN BASEHART: Okay. If you can just come up to the microphone. Mr. Pleeter, staff is recommending approval of your application with three conditions. Do you understand and agree with the conditions?

MR. PLEETER: Yes.

CHAIRMAN BASEHART: Is there any letters or any indication of opposition from the public?

MR. SEAMAN: No, there were just calls that were addressed. We addressed the concerns of the caller.

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

(No response.)

CHAIRMAN BASEHART: Seeing none, any Board member have any reason to want to pull this item?

(No response.)

CHAIRMAN BASEHART: Seeing none, we'll leave 066 on consent agenda.

MR. PLEETER: Thank you.

STAFF RECOMMENDATIONS

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

ANALYSIS OF ARTICLE 5, SECTION 5.7.3 VARIANCE STANDARDS

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

YES. This conforming SFD is located in Valencia Isles P.U.D. The property owner is proposing a screen roof screen enclosure. The property borders over 310 feet of landscape buffers, easements, and right-of-ways. The proposed 4 foot rear setback will allow the property owner to maximize use of the rear yard. The property owner would like to maximize the use of the screen roof screen enclosure as a precaution from insect bites due to a rare autoimmune disease.

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

NO. The conforming SFD was purchased by the property owner in its existing configuration. The property owner is requesting a rear setback of four (4) feet, necessitating a variance of three and a half feet. The property owner is inflicted with a rare autoimmune disease, Myasthenia Gravis. An insect bite would trigger a reaction that would severely affect the health of the property owner due to the immunosuppressant medication that is used to treat the disease. Approving the rear setback variance for a screen roof screen enclosure will allow the property owner to maximize the use of the back yard with a reduced health risk.

3. GRANTING THE VARIANCE SHALL CONFER UPON THE APPLICANT SPECIAL PRIVILEGE(S) DENIED BY THE COMPREHENSIVE PLAN AND THIS CODE TO OTHER

PARCELS OF LAND, BUILDING OR STRUCTURES IN THE SAME DISTRICT:

NO. Granting the variance **will not** confer special privileges to the applicant that would be denied by the ULDC. The proposed screen roof screen enclosure would be permitted with the proper building permits. The open space setback reduction (Article 6.6.5.G.6) allows for a reduced rear setback abutting open space with a minimum of 50 feet of width, and Article 6.6.6.A.10.2.a, allows screen roof screen enclosures to be constructed with a 0 foot rear or side interior setback. These provisions cannot be applied to this parcel since the landscape buffer is only 25 feet, however, with over 310 feet of buffers, easements, and right-of-ways, the conforming parcel meets the intent of the ULDC to maintain separation between parcels.

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

YES. The proposed screen roof screen enclosure would be permitted with the proper building permits. The open space setback reduction (Article 6.6.5.G.6) allows for a reduced rear setback abutting open space with a minimum of 50 feet of width, and Article 6.6.6.A.10.2.a, allows screen roof screen enclosures to be constructed with a 0 foot rear or side interior setback. These provisions cannot be applied to this parcel since the landscape buffer is only 25 feet, however with over 310 feet of buffers, easements, and right-of-ways, the conforming parcel meets the intent of the ULDC to maintain separation between parcels. The property owner would like to maximize the use of the screen roof screen enclosure as a precaution from insect bites due to a rare autoimmune disease. Denial of the variance will limit nearly one fourth of the proposed screen roof screen enclosure to 9 feet in width.

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

YES. Approving the proposed 4 foot rear setback will allow the property owner to fully utilize their property. The proposed screen roof screen enclosure is a permitted use in the RS zoning District. Approving the rear setback variance for a screen roof screen enclosure will allow the property owner to maximize the use of the back yard with a reduced health risk. The requested variance will have a minimal impact on surrounding property owners. There are no SFD's to the rear of the property, and the requested variance will not affect the ULDC required side interior

setbacks that insure separation between SFDs.

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

YES. The intent of the ULDC requirement for rear setbacks is to maintain separation between residences, protect adjacent property owners, and maintain property values. The proposed setback of 4 feet will be consistent with these provisions. The proposed screen roof screen enclosure will conform with ULDC required side interior setbacks, which will protect adjacent property owners. The rear property line borders over 310 feet of landscape buffers, easements and right-of-ways, and will not change the character of the development.

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

NO. Granting this variance will not be considered injurious to the surrounding area. The proposed screen roof screen enclosure is a permitted use in the RS Zoning District. The side interior setbacks will conform with ULDC requirements. The proposed 4 foot rear setback will not encroach on the use or value of surrounding homes. The rear property line borders over 310 feet of landscape buffers, easements, and right-of-ways, and will not change the character of the development.

ENGINEERING COMMENT

Note that the subject drainage easement was established for swale drainage of the adjacent common area buffer (Tract B-2). Construction of the proposed screen enclosure should be done in a manner which will not disturb the swale grading as designed. **(ENG)**

ZONING CONDITIONS

1. By March 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 presented to the Board, simultaneously with the building permit application. **(BLDG PERMIT:BLDG)**
2. By September 20, 2002, the property owner shall obtain a building permit for the screen roof screen enclosure in order to vest the rear setback variance approved pursuant to BA2001-066. **(DATE:MONITORING-BLDG PERMIT)**
3. The screen enclosure shall not be enclosed with a solid roof or walls at a future date. **(ONGOING)**

CHAIRMAN BASEHART: Next item is BATE 067, and that's the one that had change of agent to Ken Delitori. Is the applicant here or agent?

MR. DELITORI: Yes.

CHAIRMAN BASEHART: Okay. This is just a time extension -- oh, your name for the record.

MR. DELITORI: Kenneth Delitori with Land Design South.

CHAIRMAN BASEHART: Okay. Thanks. Any indication of opposition to this?

MR. SEAMAN: No, there was not.

CHAIRMAN BASEHART: And this is not a public notice item. Any member of the Board feel it needs to be pulled?

(No response.)

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

MR. DELITORI: Thank you.

STAFF RECOMMENDATION

Staff recommends an additional **12 month** time extension for BA99-63, Condition #4, from September 20, 2001, to September 20, 2002, consistent with Section 5.7.H.2 of the ULDC, to provide additional time for the petitioner to commence development and implement the approved variances. Pursuant to Section 7.H.2 of the ULDC, extension of time for the variance or any condition thereof may be granted for a maximum of twenty-four (24) hours.

The property owner shall comply with all conditions of approval of BA99-63 unless modified pursuant to BATE2000-46 or herein:

1. By March 19, 2000, or prior to DRC certification of the site plan, whichever occurs first, the applicant shall receive approval of the landscape plan that reflects the additional 720 square feet of landscaping will be installed around the proposed funeral home shown on Exhibit 9 in the BA99-063 file. **(DATE: MONITORING-ZONING/DRC). COMPLETED IN JANUARY 2000.**
2. The property owner shall provide the Building Division with a copy of the Board of Adjustment Letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application. (BLDG PERMIT BLDG)

3. By November 19, 1999, the applicant shall ensure the BA conditions are shown on the certified Site Plan.
(DATE:MONITORING-DRC) COMPLETED JANUARY 2002.
(DATE:MONITORING-ZONING-DRC) COMPLETED IN JANUARY 2000
4. This parking variance shall be limited to 18 additional spaces. The final site plan shall be revised to show a total 81 off street parking spaces this site. **(DRC) COMPLETE**
5. By August 19, 2001, the applicant shall obtain a final inspection on the parking for this site to vest this parking variance.
(DATE:MONITORING-BLDG CO)

Is hereby amended to read:

By September 20, 2002, the applicant shall obtain a final inspection on the parking lot for this site to vest this parking variance.
(DATE:MONITORING-BLD CO)

6. March 19, 2000, or prior to DRC certification of the site plan, whichever occurs first, the applicant shall receive approval of the landscape plan that reflects the additional 720 square feet of landscaping will be installed around the proposed funeral home shown on Exhibit 9, in the BA99-063 file.
(DATE: MONITORING-ZONING/DRC) COMPLETED IN JANUARY, 2000

CHAIRMAN BASEHART: Next item is another time extension, 068, 2001-068. Is the applicant here?

MR. JONES: Yes.

CHAIRMAN BASEHART: Staff has recommended approval -- Oh, your name?

MR. JONES: Shannon Jones.

CHAIRMAN BASEHART: Okay. Mr. Jones, staff has recommended approval of your extension with the same five conditions that were initially imposed. Any problem with that?

MR. JONES: No.

CHAIRMAN BASEHART: Okay. Any member of the public here on this item?

(No response.)

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

(No response.)

CHAIRMAN BASEHART: Okay. This stays on consent as well.

STAFF RECOMMENDATIONS

Staff recommends a maximum of 6 months time extension from September 20, 2001, to February 20, 2002, consistent with Section 5.7.H.2 of the ULDC, to provide additional time for the petitioner to commence development and implement the approved variances.

The property owner shall comply with all conditions of approval of BA2000069, unless modified herein:

1. By August 15, 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 26, indicating the BOFA conditions of approval. **(DATE:MONITORING-BLDG PERMIT)**

Is hereby amended to read:

By February 15, 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 26, indicating the BOFA conditions of approval. **(DATE:MONITORING-BLDG PERMIT)**

2. By February 18, 2002 or prior to the final C/O of the 4,800 sq ft. accessory structure, whichever occurs first, the applicant shall remove the carport attached to the west side of the existing SFD. **(BOFA-ZONING)**
3. The proposed 4,800 SF accessory structure shall be constructed, consistent with the elevation shown on Exhibit 27, in the BA file BA2001-069. **(BOFA-ZONING)**
4. By February 18, 2002, or prior to C/O of the 4,800 SF building, whichever occurs first, the applicant shall upgrade the north and south property line landscape buffers as shown in Exhibit 9, in the BA 2000069 file. **(DATE:MONITORING-ZONING-LANDSCAPE)**
5. The proposed variances are granted for the specific use of a "ministry". In the event the "ministry use" ceases, the applicant shall be required to meet the required off-site parking if the accessory building is to be utilized as the principal structure. **(ONGOING)**

CHAIRMAN BASEHART: Next item is BOFA 2001-069. Frank, Weinberg & Black.

MR. DEUTSCHE: Steve Deutsche of the firm here.

CHAIRMAN BASEHART: Okay, Mr. Deutsche, the staff has recommended approval with three conditions and --

MR. DEUTSCHE: All of which are acceptable to us.

CHAIRMAN BASEHART: They're acceptable. Any member of the public here to speak on this item?

(No response.)

CHAIRMAN BASEHART: Seeing none, any letters?

MR. SEAMAN: There was a call. I returned it, but the individual didn't respond to my return call.

CHAIRMAN BASEHART: For the record, I'll ask the County Attorney's Office, I have been involved with this project, not with this application. It's a conversion of a liquor store to an MRI center. Like I said, I have been involved with the project, but I did not participate with the Board of Adjustment application.

Do I need to abstain from voting on this?

MS. PETRICK: I think so.

CHAIRMAN BASEHART: Okay. Not a problem. When we do the consent agenda, I'll just register an abstinence on that item.

VICE-CHAIRMAN KONYK: Why don't we just do that one separate from the rest?

CHAIRMAN BASEHART: Okay. Why don't we do that.

VICE-CHAIRMAN KONYK: Okay.

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

(No response.)

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 5.7.3 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 .67 acre legal non-conforming CC-Community Commercial property is located on Congress Avenue, approximately 1400 feet north of Lake Worth Road in the Lake Worth Road Overlay District. The property is within the Swan's Subdivision and documented in Plat Book 6, Page 660 and has a Land Use Category of Commercial High (CH/8). The property currently supports a non-conforming, vacated building along the north portion of the site. The structure was constructed in 1959 for a commercial use in a commercial zoning district. At that time, no side yard setback was required for commercial buildings. In 1991 the site and structure were the subject of Petition #90-38 by ABC Liquors, Inc. for a rezoning from CN to CC and a Special Exception for a Planned Commercial Development. The site and building were considered nonconforming and the petition was approved. The ABC Liquors, Inc. then occupied the structure as a liquor store. The owner now wishes to renovate the structure to accommodate an MRI diagnostic center.

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

NO. Since the building has existed at its location with a 0 foot (per '57 code) side interior setback since 1959 and is considered nonconforming, the proposed variance is the only way to achieve conformity status with the ULDC. The proposed construction has exceeded the 30% dollar amount threshold for renovation improvements and now the building must meet minimum property development regulations and conforming status. The renovations are for interior floor plan and major exterior cosmetic improvements to the facade. The foot print of the building will not change. It is important to note that the building could remain and continue as it was a retail store indefinitely without the need for variances. Staff does support the proposed setback variance considering the substantial benefits that the proposed facility will provide to the health care system for the central county area. The site is located in an established retail commercial strip that has been declining for several years and will promote desirable in-fill in the surrounding area.

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. This use has existed at this location since 1959, one year after the adoption of the first Zoning Code. At the time the business was operating according to the regulations in effect. In

addition, in 1991 the site received a rezoning and Special Exception for a Planned Commercial Development to allow a liquor store. At that time the building was determined to have nonconforming status. The area to the north and south both support commercial development and the granting of the variance will confer no special privileges denied to other surrounding parcels.

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

YES. The applicant is requesting the minimal variance that will allow this property to be brought into compliance with the current ULDC. The use has existed on this site since 1959 and is non-conforming. The property owner is proposing to renovate the existing building in order to accommodate a MRI diagnostic center. In doing so, the building now must come into conformance with the current ULDC. The variance will upgrade the quality of the site and the surrounding area. Staff does support the proposed side setback variance considering the substantial benefits that the proposed facility will provide to the health care system for the central county area. The site is located in an established retail commercial strip that has been declining for several years and in addition to the interior renovation, the applicant is proposing substantial aesthetic improvements to the facade. There is no proposed expansion to the existing footprint of the building.

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 proposes to renovate the building to accommodate an MRI diagnostic center, he has exceeded the 30% renovation dollar amount threshold for improvements and now must meet minimum property development regulations for a conforming structure. The proposed variance is the only way to achieve the desired intent (conforming building) and has no negative impact on the adjacent and surrounding uses since the building has existed at its location since 1959. This will greatly improve the overall appearance of this property from Congress Avenue.

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

YES. The requested variances will allow this existing non-conforming use to receive conforming status. The property is located within the Lake Worth Overlay District which encourages quality in-fill, a major objective of the Board of County Commissioners.

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

NO. The granting of the variance will bring this site into compliance with the current ULDC. The structure was constructed in 1959 for a commercial use in a commercial zoning district. At that time, no side yard setback was required for commercial buildings. Current code requires 15 foot side interior setback, and with the building sitting on the property line, the variance request is for 15 foot to allow a 0 foot setback. The granting of the variance would place a conforming status on the building. Staff does support the proposed setback variance, considering the site is located in an established retail commercial strip that has been declining for several years; and that the interior renovation as well as the substantial aesthetic improvements to the facade will reverse the declining trend.

ENGINEERING COMMENTS

(No comments) ENG

ZONING CONDITIONS

1. By September 20, 2001, the applicant shall provide the Building Division Intake Section with a copy of the Board of Adjustment Result Letter for inclusion with the official building permit record of B01022401. **(DATE: MONITORING-BLDG PERMIT)**
2. By March 20, 2002, or issuance of the Certificate of Completion for the renovation the building on-site, whichever occurs first, install the landscaping pursuant to Exhibit 21 found in the BA 2001-069 file in the Zoning Division. **(DATE:MONITORING-CO-INSPECT)**
3. By March 20, 2002, the applicant shall contact the Zoning Division to request a site inspection to determine that the landscaping is installed per condition of approval #2. **(DATE:MONITORING-ZONING-BA)**

CHAIRMAN BASEHART: Last item is BOFA 2001-070, Todd C.

& Cleoann Reeves. Is the applicant here?

MS. REEVES: Yes.

CHAIRMAN BASEHART: Staff has recommended approval of your variance with two conditions. Do you agree with them?

MS. REEVES: Yes, I do.

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

(No response.)

CHAIRMAN BASEHART: Seeing none, Alan, any letters or indications?

MR. SEAMAN: This is one where we actually got a letter from the homeowners association supporting their variance.

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

VICE-CHAIRMAN KONYK: Her name?

CHAIRMAN BASEHART: Your name?

MS. REEVES: Cleo Reeves.

CHAIRMAN BASEHART: All right. Seeing no opposition and no member of the Board feels it necessary to pull this, we'll leave this on consent as well.

STAFF RECOMMENDATIONS

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

ANALYSIS OF ARTICLE 5, SECTION 5.7.3 VARIANCE STANDARDS

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

YES. The subject property is located at 7560 Ladson Terrace, within the Lake Charleston PUD. The Lake Charleston PUD was approved by the Board of County Commissioners in 1986. The property has LR 3 Land use description with a an RTS/SE Zoning classification. The lot supports a 2,965 sq/ft single family residence, which was constructed by the applicant in 1992 (B92014069). The surrounding neighborhood supports single family residential lots which are similar in size and architectural character. There are **special** conditions or circumstances peculiar to this parcel of land. the subject lot is a corner lot with a 45 degree cuts (right of way taking) and 10' utility easement platted along the west and south property line. Adjacent to the south line is a 5 foot sidewalk and 50'R/W (Bradham Drive), the west side has also a 5 foot sidewalk and 50' R/W (Ladson Terrace). The existing 6 foot mature ficus hedge, along the rear

property line will provide the separation and buffer to mitigate the setback encroachment.

The applicant applied for and was granted a pool, spa and deck permit. When the applicant designed the deck, it encroached into the side corner setback, which it is permitted by code since the deck is less than 3 feet in height. However, the applicant later decided to construct a screen enclosure over the entire deck. In order to do this, a side corner setback encroachment will occur. The applicant applied and was granted a side corner variance by the Board of Adjustment (BOFA 2001054). The applicant wasn't aware of a rear setback issue until he went for permit with the variance letter and was informed by building staff that he needed a rear setback variance.

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

NO. The current property owner purchased the subject lot in 1992 and has made improvement to the property. In March 2000, the property owner was issued a building permit (B00009169) to construct a swimming pool, an 8x8 fiberglass spa and paver deck. The pool and accessory spa was constructed according to the building permit plans. In February 2000, the applicant submitted an application to construct a screen enclosure over the existing pool and deck. The building plans are currently on hold with the Building Division until the applicant resolves the side corner setback issue. The applicant in an effort to resolve the encroachment has requested and was granted a side corner setback variance along the south side of the enclosure. As previously stated, the applicant does not comply with the rear setback, therefore in order to maintain a minimum distance between the pool and the screen enclosure, 1.8 feet into the setback is needed. To bring the screen enclosure in 1.8 feet will result in it being immediately adjacent to the pool. This is not a safe situation in that it could obstruct someone from walk around. There is an existing ficus hedge along the rear property line that will mitigate the setback encroachment from the street.

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

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

SAME DISTRICT:

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

As previously stated, when the original pool/spa design was completed, it did not anticipate a screen enclosure, but rather a fence. When the screen enclosure application was submitted, it was placed on hold due to the fact that it was encroaching in the side corner setback. The applicant applied and was granted a side corner variance by the Board of Adjustment on July 2001. The applicant was not aware of a rear setback encroachment, otherwise, he would apply for both on the same application form in June 2001. The applicant informed staff the screen enclosure cannot be modified to comply with setback and at the same time provide the needed separation between the pool and the screen enclosure.

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

YES. A literal enforcement of the provision of the Code **will deprive** the applicant of rights commonly enjoyed by other parcels of land in the same district. The setbacks for residential properties establish and maintain continuity of structure from property lines. Considering this is a 1.8 foot variance and there is a 5.7 foot separation remaining to the rear property line, in addition to a mature 6 foot hedge, the code intent can be met. If the requested variance is granted, it will allow the applicant to be issued the screen permit and receive a final on both; the pool and screen enclosure.

5. THE APPROVAL OF VARIANCE IS THE MINIMUM VARIANCE THAT WILL ALLOW A REASONABLE USE OF THE

PARCEL OF LAND, BUILDING OR STRUCTURE:

YES. The granting of this variance **is the minimum** variance that would allow a reasonable use of the lot. The lot layout does not allow alternative design options that would eliminate the variance request without creating a unsafe area around the spa and the pool. If the proposed screen enclosure is modified to meet the rear setback, the screen frame would be too close to the pool. A minimum distance of 2 feet from the pool to the screen enclosure is necessary for pedestrian circulation between the pool and the screen enclosure.

Therefore, the variance is the minimum variance to allow a reasonable use of the parcel of land and ensure a safe circulation around the pool and the screen enclosure.

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

YES. Granting of this variance will be consistent with the intent of the Code. The intent of the setbacks for residential use is to establish consistency and uniformity in appearance from all property lines. The property owner was issued a building permit (B00009169) to construct in ground swimming pool, a (8x8) detached fiberglass spa and a paver deck. There is a mature ficus hedge, will mitigate the setback encroachment. If the variance is granted, the general intent of the code will be met.

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

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

ENGINEERING COMMENT

No Comments (ENG).

ZONING CONDITIONS

1. By November 20, 2001, the applicant shall provide the Building Division with a copy of the Board of Adjustment Result letter and revised Survey in order for PRO1005173 to be finalized for the screen roof screen enclosure. **(DATE:MONITORING-BLDG PERMIT)**

2. The structure shall not be enclosed with solid walls or be converted into an enclosed space. **(ONGOING)**
3. This variance is for only the rear setback for the proposed screen enclosure for 1.8 feet variance. **(ONGOING)**

CHAIRMAN BASEHART: Okay.

MR. SEAMAN: Apparently, we've overlooked one.

CHAIRMAN BASEHART: You have?

MR. SEAMAN: Yeah.

CHAIRMAN BASEHART: We have. Who has?

MR. SEAMAN: BOFA 2001-063.

VICE CHAIRMAN KONYK: O what?

MR. SEAMAN: 063.

CHAIRMAN BASEHART: I'm sorry, yeah.

VICE-CHAIRMAN KONYK: Yeah, Shannon Jones.

CHAIRMAN BASEHART: Okay. This is a time extension as

well.

MR. AUBOURG: No, it's not. For the record, my name is Miradieu Aubourg. It's not a time extension. It's for the Nextel tower, but the number over here is 63. But it's for Brian Johnson. I don't think you got that copy.

MR. SEAMAN: On your agenda does it say BOFA 2001-063 at the very beginning on the agenda?

VICE-CHAIRMAN KONYK: Yes.

CHAIRMAN BASEHART: Yeah.

MR. SEAMAN: Okay. That's correct. Brian Johnson.

VICE-CHAIRMAN KONYK: Well, ours says Shannon Jones.

MR. SEAMAN: Yours is wrong.

CHAIRMAN BASEHART: Yeah, something's weird here.

VICE-CHAIRMAN KONYK: The right person came forward, I believe. When we called up the Board of Adjustment Time Extension 063. Who was that? Oh, we didn't call you?

MR. JOHNSON: I'm a little late. I apologize.

CHAIRMAN BASEHART: Okay. Again, this is a time extension

--

MR. SEAMAN: It's not a time extension.

CHAIRMAN BASEHART: Well, the agenda is wrong.

VICE-CHAIRMAN KONYK: Somehow we don't have it correct

then.

CHAIRMAN BASEHART: The agenda is wrong.

VICE-CHAIRMAN KONYK: So why don't you read into the

record what we should have so we can do it?

MR. SEAMAN: Okay. What you should have on this consent agenda is BOFA 2001-063.

CHAIRMAN BASEHART: You've got that. Oh, no, it's --

VICE-CHAIRMAN KONYK: No, we've got --

MR. SEAMAN: It should be Brian Johnson, agent for E. Pierce and Sandra M. Pierce as trustees.

VICE-CHAIRMAN KONYK: We don't have that. Keep reading.

CHAIRMAN BASEHART: It's not on the agenda.

VICE-CHAIRMAN KONYK: Read the whole thing so it's in the record.

MR. SEAMAN: To allow a proposed communication equipment structure to encroach into the required front setback. The location is 1801 Hypoluxo Road, approximately 200 feet north of Hypoluxo Road and 250 feet west of I-95, and it is within the Lake Osborne Monopole Site Plan in the IL Zoning District, Petition DRC99-095. And it should be on the pages --

VICE-CHAIRMAN KONYK: It's not on the front.

CHAIRMAN BASEHART: Yeah, we have it. It's in the staff report. The staff report is in there, but the agenda doesn't have it.

VICE-CHAIRMAN KONYK: Right. That's why I asked him to read it in.

MR. SEAMAN: So by reading it in, we're okay now?

CHAIRMAN BASEHART: Yes.

VICE-CHAIRMAN KONYK: I would assume so. Why don't we ask the County Attorney? Just say yes.

MS. PETRICK: Okay. Yes.

CHAIRMAN BASEHART: And the staff has recommended approval of the variance with three conditions.

Are you familiar with them?

MR. JOHNSON: Yes, I am.

CHAIRMAN BASEHART: Do you agree with them?

MR. JOHNSON: Yes, I do.

CHAIRMAN BASEHART: Okay. Is there any member of the public here that's here to speak on BOFA 2001-063?

(No response.)

CHAIRMAN BASEHART: Seeing none, any phone calls?

MR. SEAMAN: No letters, no calls.

CHAIRMAN BASEHART: The staff report was in our packages. Everybody read it and agree with it?

VICE-CHAIRMAN KONYK: Correct.

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

MR. JOHNSON: Thank you.

MR. CUNNINGHAM: Question. Was it part of the proof of publication?

CHAIRMAN BASEHART: Yeah, it was in the --

VICE-CHAIRMAN KONYK: It was in there.

CHAIRMAN BASEHART: Yeah. It's in here.

VICE-CHAIRMAN KONYK: Okay. Is that it then?

CHAIRMAN BASEHART: See, right there. I'm not even making it up.

VICE-CHAIRMAN KONYK: I'm going to make a motion to

approve the consent agenda, BOFA 2001-063, BATE 2001-063, BOFA 2001-066, BATE 2001-067, BATE 2001-068, BOFA 2001-070 to remain on the consent with the item Mr. Basehart is recusing himself not mentioned, and the staff report becoming part of the record.

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

MS. CARDONE: Second.

CHAIRMAN BASEHART: Second by Ms. Cardone.

Any discussion?

(No response.)

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

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no?

(No response.)

CHAIRMAN BASEHART: Motion carries unanimously. The next item --

MR. WICHINSKY: Mr. Chairman, I move for the approval -- I guess this is still on the consent agenda, but we'll vote it separately, BOFA 2001-069.

VICE-CHAIRMAN KONYK: To remain on consent?

MR. WICHINSKY: To remain on consent agenda.

CHAIRMAN BASEHART: We have a motion by Mr. Wichinsky.

MR. CUNNINGHAM: Second.

VICE-CHAIRMAN KONYK: I actually should probably do that to be correct, since you're recusing yourself.

CHAIRMAN BASEHART: Yeah, okay.

VICE-CHAIRMAN KONYK: Okay. We have a motion by Mr. Wichinsky. Do we have a second?

MR. CUNNINGHAM: Second.

VICE-CHAIRMAN KONYK: Mr. Cunningham. All those in favor?

BOARD: Aye.

VICE-CHAIRMAN KONYK: Opposed?

(No response.)

VICE-CHAIRMAN KONYK: Motion carries unanimously.

CHAIRMAN BASEHART: And show me abstaining.

VICE-CHAIRMAN KONYK: Showing Mr. Basehart abstaining.

STAFF RECOMMENDATIONS

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

ANALYSIS OF ARTICLE 5, SECTION 5.7.3 VARIANCE STANDARDS

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

PARCELS OF LAND, STRUCTURES OR BUILDINGS IN THE SAME DISTRICT:

YES. The subject lot is located at 1801 Hypoluxo Road, approximately 200 feet N. of Hypoluxo Road and 250 feet W. of I-95 within the Lake Osborne Monopole Site Plan. The property has a Land Use Designation of Industrial and a Zoning Classification of IL-Light Industrial. The ULDC requires a 1 acre for newly created IL lots. The subject lot is only .07 acres, therefore legal nonconforming. The lot has 71 feet of depth and 47 feet of width and currently supports a tower, equipment building and one parking space. The site is limited in terms of site layout options to support the second tower and equipment building. Communication towers are permitted in IL Zoning districts with DRC approval. The lease compound is 3,358 square feet and was large enough to support the existing 94.2' tower and 10x20' equipment shelter when approved by the DRC in 1999. The BCC and ULDC encourages multiple users on a single tower and as an incentive to provide additional users on older towers, the County created standards which allow additional height to be approved administratively by the DRC. The ULDC allows the height of an existing tower to be increased by a maximum of 20% to accommodate a second user. The applicant is taking advantage of the provisions to increase in the future the height of the existing tower which is permitted by the Code. However, due to the limited depth of the property and existing location of tower and equipment building the applicant cannot meet the required front setback. The proposed 6 foot high equipment boxes will encroach 19 feet into the front setback. With the landscape condition recommended by staff the encroachment will be mitigated from the street.

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

NO. The variance request is not self created. The applicant is proposing 10x14 communication equipment to the south part of the lease compound. The structure will be setback at 36' feet from the rear property line, 32' from the north property line, 47' from the south property line, and 21' from the front property line which is subject of this variance. The lease compound has currently a 6' link fence located at 5' from the proposed structure in the south. The proposed equipment boxes are required by Voice Stream to store the operation equipment for the tower. Also, Nextel Communications will not allow VoiceStream to install its equipment inside the existing 10x20' equipment shelter located on the site for security reasons. Nextel will only allow access to the lease compound for the tower, therefore, the applicant can only locate the equipment boxes in the setback.

3. **GRANTING THE VARIANCE SHALL CONFER UPON THE APPLICANT SPECIAL PRIVILEGE(S) DENIED BY THE COMPREHENSIVE PLAN AND THIS CODE TO OTHER**

PARCELS OF LAND, BUILDING OR STRUCTURES IN THE SAME DISTRICT:

NO. Granting the 19 foot front setback for the proposed communication equipment structure will not grant special privilege to the applicant. The applicant is requesting the minimum variance for the construction of a communication equipment structure. The lease parcel is 3,358 square feet and supports a 12x20' parking space, a 94.2' monopole tower and a 10x20' Nextel equipment shelter setback at 40' from the front property line. The applicant's goal is to construct an equipment structure with a height of 5.9', depth of 14' and width 10'. This structure will be located at 5' from the south lease line. The structure will be used to accommodate the proposed 20' extension intended by VoiceStream. Staff is recommending a condition to upgrade the hedge material along the front property line to mitigate any negative impacts associated with the equipment encroaching the front setback. If the variance is granted the applicant will be able to co-locate on this site, consistent with the general guidelines and provisions of the ULDC Tower ordinance.

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

YES. A literal interpretation and enforcement of the terms and 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. The subject lot located within the Lake Osborne Monopole Site Plan which has a Industrial Light zoning classification and an Industrial Light use designation. The ULDC requires a 1 acre lot size in IL. The subject lot is a legal .07 acres IL lot. The Board of County Commissioners (BCC) has identified the proliferation of communication tower as an issue of concern. Therefore, the Board of County Commissioners has determined that the Unified Land Development Code should provide opportunities for collocation of commercial communication facilities in order to reduce the proliferation of communication towers and reduce aesthetic impacts within the community. Denial of the variance will force the applicant to find another location to construct his own tower which would be an unnecessary hardship and not be in keeping with the Ordinance No. 98-1. Adopted by the BCC on January 1998.

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

YES. Granting this variance **is the minimum** variance that would allow a reasonable use of the lot. The applicant is proposing to place an addition of 20' to increase the existing 94.2' to 114.2'. As previously stated the ULDC allows the height of an existing tower to be increased by a maximum of 20% to accommodate an additional user. Nextel communications will not allow 24 hour, 7 day a week access to its equipment. They will give access only to the lease compound. Therefore, the applicant must construct its own communication equipment structure. The proposed structure will be 10x14' and only .9' in height. The applicant is proposing a setback of 21 feet from the west property line for a 19' variance. The applicant is proposing a setback of 21 feet from the west property line for a 19' variance. Behind the west property line, there is a 40' wide access easement that will mitigate the variance request. Staff has visited the site and notice 3 foot high shrubs along the south line of the lease parcel. When these shrubs grow up, they will screen the impact of the proposed equipment structure.

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

YES. The Tower Ordinance (Ordinance No. 98-1) was adopted by the Board of County Commissioners on January 8, 1998. The Site Plan for the existing tower was approved by the DRC on January 12, 2000. One of the major provisions of the Tower ordinance, as it applies to existing monopole towers, is that additional collocations can be placed on a tower provided setback/separation requirements are met. It was the general intent of the BCC to encourage collocations on existing towers. The setbacks are applied to monopole tower to ensure reduced impact to the adjacent residential properties. According to the aerial map submitted by the applicant, the nearest residential unit of the subject is located at approximately 700 feet from the variance request and is hidden by commercial use. Granting the variance will be consistent with the goals, objectives and policies of the comprehensive plan and the ULDC.

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

NO. The granting of the variance will not be injurious to the surrounding neighborhood. The applicant is requesting a variance for a proposed structure to encroach in the front setback. The ULDC establishes setbacks so all structures will be at consistent distances from the property lines. Behind the west property line there is a 40' road easement and commercial activities. If the variance is granted, the surrounding area would not visually detect the variance request in the front setback due

to the fact that the equipment structure is less than 6' high. Staff is recommending a landscape condition to mitigate any negative impacts from the street.

ENGINEERING COMMENTS

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 July 20, 2002, the applicant shall have obtained a building permit for the tower equipment structures in order to vest the front setback variance approved pursuant to BA2001-063. **(DATE:MONITORING-BLDG PERMIT)**
3. Prior to September 20, 2002, for the final Certificate of Completion on the permit for the tower equipment building on PCN 00434504000007363, the applicant shall upgrade the existing hedge along the west property line with a 48 inch high hedge planted 24 inches on center. Staff recommends a ficus hedge or coco plum hedge to screen the proposed equipment structures from the 40 foot access street adjacent to the west property line. **(BLDG-CO)**

CHAIRMAN BASEHART: Okay. That concludes the regular business of the Board of Adjustment. Anybody have any other items they'd like to bring up or discuss?

(No response.)

CHAIRMAN BASEHART: Seeing none, we're ready for a motion to adjourn.

VICE-CHAIRMAN KONYK: So moved.

MR. JACOBS: Second.

MR. WICHINSKY: The attendance record?

CHAIRMAN BASEHART: Oh, yes, I'm sorry. The attendance record for last month. We had two absences, Mr. Wichinsky was not here

because of a business conflict, and Mr. Puzzitiello the same.
Do we have a motion to approve their absences?

VICE-CHAIRMAN KONYK: So moved.

CHAIRMAN BASEHART: Okay. We don't have a second.

MR. JACOBS: Second.

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

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Then those two absences will be considered excused absences.

And that would be the end of the agenda. Do we have a motion to adjourn?

MR. JACOBS: So moved.

CHAIRMAN BASEHART: Oh, I guess I messed up. We did have one other absence. Mr. Jacobs was on vacation. Do you want to include that in your motion?

MR. WICHINSKY: I do.

CHAIRMAN BASEHART: All three were excused then.

Motion to adjourn?

MR. JACOBS: So moved.

VICE-CHAIRMAN KONYK: Second.

CHAIRMAN BASEHART: Motion and second. All those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Meeting is over.

(Whereupon, the meeting was adjourned at 9:25 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 31, 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 5th day of October, 2001.

Sophie M. Springer