

PALM BEACH COUNTY
BOARD OF ADJUSTMENT

Thursday, February 21, 2002
9:00 a.m. - 10:10 a.m.
100 South Australian Avenue
West Palm Beach, Florida

Reporting:

Sophie M. (Bunny) Springer
Notary Public

A T T E N D E E S

Robert E. Basehart, Chairman

Chelle Konyk, Vice Chairman

Mr. Raymond Puzzitiello

Mr. Bart Cunningham

Ms. Nancy Cardone

Mr. Joseph Jacobs

Jon MacGillis, Principal Planner

David Cuffe, Civil Engineer II, Land Development

Amy Petrick, Asst. County Attorney

Alan Seaman, Senior Planner, Zoning

Miradieu Aubourg, Jr., Planner I

Kurt Eismann, Dir. of Contractors Certification

Mary Moody, Secretary

Juanita James, Secretary

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CERTIFICATE OF REPORTER:

P R O C E E D I N G S

CHAIRMAN BASEHART: I'd like to welcome everybody to the February 21st, 2002 Palm Beach County Board of Adjustment Meeting.

First item on the agenda is roll call.

MS. MOODY: Ms. Nancy Cardone.

MS. CARDONE: Here.

MS. MOODY: Mr. Joseph Jacobs.

MR. JACOBS: (No response.)

MS. MOODY: Ms. Chelle Konyk.

VICE CHAIRMAN KONYK: Here.

MS. MOODY: Mr. Raymond Puzzitiello.

MR. PUZZITIELLO: Here.

MS. MOODY: Mr. William Sadoff.

MR. SADOFF: (No response.)

MS. MOODY: Mr. Bart Cunningham.

MR. CUNNINGHAM: Here.

MS. MOODY: Mr. Stanley Misroch.

MR. MISROCH: (No response.)

MS. MOODY: Mr. Jonathan Gerber.

MR. GERBER: (No response.)

MS. MOODY: And Mr. Bob Basehart.

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

Next item is proof of publication. I have a copy of the proof that was published in the Post. We'll just consider this entered into the record.

Under Remarks of the Chairman, the only thing I'd like to do is to -- for those of you that don't visit with us often, I'd like to let you know how we operate the meeting.

The agenda is broken down into -- well, other than withdrawals and postponements -- to two parts. One is the regular agenda. The other is the consent agenda.

The consent agenda consists of items where the staff is recommending approval with or without conditions, and if with conditions the applicant has agreed with the conditions and where there's been no indication of opposition from surrounding property owners or members of the public. If after having read the staff report, the Board members agree with the staff recommendation and if no one shows up to object, then those items will remain on consent. No presentation will be necessary and we'll ask each applicant if they agree with the conditions of approval. Then the consent agenda will be approved as a group.

The second part are items where the staff has recommended denial or denial -- or approval with modifications or where there's been an

indication of opposition from the public. Those items will require a full hearing and a presentation by the applicant and the staff as well, and the Board will ask questions, listen to objectors and then render a decision.

I think that's the only item that I have. Does any other member of the Board have anything they would like to say?

(No response.)

CHAIRMAN BASEHART: All right. Let the record show that Mr. Jacobs has now arrived.

MR. JACOBS: Mr. Jacobs had arrived previously, but the parking --

CHAIRMAN BASEHART: I know; I saw you looking for a space, too.

VICE CHAIRMAN KONYK: Except he didn't say to wait for you; I said to wait for him.

CHAIRMAN BASEHART: Okay. The next item on the agenda is approval of the minutes. We have all received copies of the minutes of the January meeting on disk and we have it in hard copy. Has everybody read them? Any changes?

(No response.)

CHAIRMAN BASEHART: Okay. I guess we're ready for a motion for approval of the minutes.

MR. CUNNINGHAM: So moved.

MR. JACOBS: Second.

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

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Okay. The minutes of the last month are adopted.

Next item is Remarks of the Zoning Director. Jon, do you have anything?

MR. MacGILLIS: No comments.

CHAIRMAN BASEHART: No comments. Okay. That will get us to the agenda.

CHAIRMAN BASEHART: The first items are

those -- there are two items being withdrawn. Withdrawals are matters of rights. I guess we don't have to vote on those; correct?

MR. MacGILLIS: Actually, no, since these two items were postponed, we actually need a motion on these. They were carried over for two prior months. So unless somebody in the public was here and would like it on the record that -- I believe we have Chris here. Are you here for Kilday & Associates to address these?

MR. KERR: Good morning. Chris Kerr with Kilday. I'm just here to formally withdraw both petitions.

CHAIRMAN BASEHART: Okay. So that's BOA2001-075 and 076. So we need to vote on this?

MR. MacGILLIS: Yes.

CHAIRMAN BASEHART: Okay.

VICE CHAIRMAN KONYK: I move that BOA2001-075 and BOA2001-076 be withdrawn as per the client's request.

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

MS. CARDONE: Second.

CHAIRMAN BASEHART: Second by Nancy. All those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Those items are withdrawn.

CHAIRMAN BASEHART: That gets us to the consent agenda. The first item on the consent agenda is BOFA 2002-004. Is the applicant here? Okay. If you could come to the podium and give us your name?

MR. FEDELE: I'm Dean Fedele. I'm the owner.

CHAIRMAN BASEHART: Okay, Mr. Fedele. The staff has recommended approval with four conditions. Are you familiar with them?

MR. FEDELE: Yes, I am.

CHAIRMAN BASEHART: Do you agree with them?

MR. FEDELE: I agree with the conditions.

CHAIRMAN BASEHART: Okay. Is there any member of the public here to speak on this item?
(No response.)

CHAIRMAN BASEHART: Seeing none, any letters, Jon?

MR. MacGILLIS: No, there's nothing on this.

CHAIRMAN BASEHART: Nothing on this. Any member of the Board feel this item needs to be pulled for any reason?

(No response.)

CHAIRMAN BASEHART: Okay. That will stay on consent.

MR. FEDELE: Thank you.

STAFF RECOMMENDATIONS

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

ANALYSIS OF ARTICLE 5, SECTION 5.7.3 VARIANCE STANDARDS

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

YES. There are unique circumstances surrounding this lot and conforming SFD that warrant special consideration when applying the literal intent of the AR Zoning District rear setback and interior side pond setback. The 2.27 acre lot supports a large pond that limited placement of the conforming SFD. The lot must meet AR conforming lot setbacks due to its dimensions of 330 feet in width and 300 feet in depth. The SFD was constructed at the limits of the required rear setback (100 feet), and near the limits of the east side interior setback (50 feet). The property owner proposes to expand the conforming SFD by constructing an addition to the rear of the property. The adjacent property to the rear is separated by a 50 feet canal right-of-way. The proposed rear

setback of 81 feet and the canal right-of-way of 50 feet insure that there will be at least 130 feet of separation from the lot to the rear. The property owner is also requesting a 7 feet side setback variance from the required 15 feet for an interior side pond setback of 8 feet. According to aerial records, the pond was excavated prior to August, 1991, which was when the current ULDC Excavation Standards were adopted in the Unified Land Development Code (ULDC). Prior to this date ponds could be excavated on a single-family residential lot provided a 25-foot setback was maintained from all property lines and no fill was removed from sites. There was no permitting or inspections required prior to 1991. As is indicated by aerial photographs, the lot adjacent to the applicant's lot also supports a large existing pond. Neither pond encroaches on the property line. As site visit concluded that a majority of the pond meets minimum setback requirements, however portions of the pond encroach on required side setbacks. Approval of the side setback variance will allow the property owner to maintain the pond at its current size and shape.

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

NO. This is **not a self-created** hardship. The applicant is proposing to expand a conforming SFD, and vest an existing pond. The current owner purchased the property in its current configuration in November 1996. The existing SFD was constructed at the limits of the required rear setback (100 feet), and near the limits of the east side interior setback (50 feet), due to Code requirements and a large pond. The existing pond requires a side setback variance to allow portions of the pond to encroach on the required 15 feet side 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. The proposed variances **are consistent**

with the Comprehensive Plan and its guidelines for the Rural Residential Land Use. The expansion of a conforming SFD is permitted in the AR Zoning District and is a reasonable use for an SFD. The property owner is unable to meet the required rear setback because the existing SFD was constructed at the limits of the required rear setback (100 feet). The granting of this variance will have little or no impact on surrounding residences. A site visit concluded that a majority of the pond meets minimum setback requirements, however portions of the pond encroach on required side setbacks. Approval of the side setback variance will allow the property owner to maintain the pond at its current size and shape.

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

YES. A literal interpretation and enforcement of the ULDC **would impose** an unnecessary and undue hardship upon this applicant. The lot must meet AR conforming lot setbacks due to its dimensions of 300 feet in width and 300 feet in depth. The SFD was constructed at the limits of the required rear setback (100 feet), and near the limits of the east side interior setback (50 feet). The property owner proposes to expand the conforming SFD by constructing an addition to the rear of the property. The adjacent property to the rear is separated by a 50 foot canal right-of-way. The proposed rear setback of 81 feet and the canal right-of-way of 50 feet insure that there will be at least 130 feet of separation from the lot to the rear. The property owner is also requesting a 7 foot side setback variance from the required 15 feet, for an interior side pond setback of 8 feet. A site visit concluded that a majority of the pond meets minimum setback requirements, however portions of the pond encroach on required side setbacks. The existing pond will not be injurious to the adjacent parcel or the general public.

Approval of the side setback variance will allow the property owner to maintain the pond at its current size and shape.

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 will make possible the reasonable use of the parcel of land. The applicant is proposing a rear setback of 81 feet to accommodate a proposed expansion of the SFD. The site layout and floor plan of the house prevent the owner from expanding without a variance. The adjacent property to the rear is separated by a 50 feet canal right-of-way. The proposed rear setback of 81 feet and the canal right-of-way of 50 feet insure that there will be at least 130 feet of separation from the lot to the rear. The existing pond is confined to the applicant's lot, however portions of the pond encroach into the required side setback. The side setback pond variance will allow the applicant to maintain the existing pond at its current size and shape.

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 rear setback is to insure separation between residences. Despite its 2.27 acre size, the lot must meet AR conforming lot setbacks due to its dimensions of 330 feet in width and 300 feet in depth. The SFD was constructed at the limits of the required rear setback (100 feet), and near the limits of the east side interior setback (50 feet). The property owner proposes to expand the conforming SFD by constructing an addition to the rear of the property. The adjacent property to the rear is separated by a 50 feet canal right-of-way. The proposed rear setback of 81 feet and the canal right-of-way of 50 feet insure that there will be at least 130 feet of separation from the lot to the rear. The side setback variance for the existing pond will allow the applicant to maintain the existing pond at its current size and shape.

A site visit concluded that a majority of the pond meets minimum setback requirements, however portions of the pond encroach on required side setbacks. The pond does not encroach on the property line. The existing pond will not be injurious to the adjacent parcel or the general public.

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 rear expansion of the conforming SFD will provide additional living space for the applicant, and will not have an adverse effect on neighbors or the public. The rear property supports dense existing vegetation, and borders a 50 foot canal right-of-way. Approving the variance will still provide 135 feet of separation to the adjacent property to the rear. The side setbacks will not be affected by the expansion. The applicant intends to use the same siding, roof pitch, and roofing materials to maintain the current character of the conforming SFD. The side setback pond variance will allow the property owner to maintain an existing pond at its current size and shape. The pond is confined to the applicant's lot and the adjacent parcel supports a pond of similar size. The existing pond will not be injurious to the adjacent parcel or the general public.

ENGINEERING COMMENT

No comments (ENG)

ZONING CONDITIONS

1. The development order for this particular variance shall lapse on February 21, 2003 one year from the approval date. The applicant may apply for an extension provided they complete the time extension application, prior to the original Development Order expiring. **(DATE: MONITORING-ZONING-BA)**
2. By August 21, 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 (Exhibit 9) presented to the Board, simultaneously with the building permit application.
(DATE:MONITORING-BLDG PERMIT: BLDG)

3. By February 21, 2003, the applicant shall obtain a building permit for the proposed SFD expansion in order to vest the rear setback variance approved pursuant to BA 2002-004. **(DATE:MONITORING-ZONING-BA)**
4. By August 21,2003, or before receiving the Certificate of Occupancy the applicant shall replace the two pine trees and one palm tree removed for the expansion, between the existing SFD and the east property line.
(DATE:MONITORING-BLDG INSPECTION-CO)

CHAIRMAN BASEHART: Next item BOFA 2002-005. Jorge Figueredo. Is the applicant here?

THE INTERPRETER: They are here.

CHAIRMAN BASEHART: Okay.

THE INTERPRETER: I am --

MR. SEAMAN: Actually, she's the translator so the applicant needs to come up.

VICE CHAIRMAN KONYK: They need to come up and say their name in the microphone.

CHAIRMAN BASEHART: Your name for the record?

MS. CUELLAR: My name is Yanella Cuellar.

MR. FIGUEREDO: My name is Jorge Figueredo.

CHAIRMAN BASEHART: Okay. The staff has recommended approval of your variance with one condition. Is the applicant familiar with the condition?

THE INTERPRETER: I read the report on this and it's really nice. Thank you.

CHAIRMAN BASEHART: And you agree with the condition of approval?

VICE CHAIRMAN KONYK: Have them say in the microphone that yes, they agree to the conditions.

MS. CUELLAR: Yes.

MR. FIGUEREDO: Yes.

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

UNIDENTIFIED SPEAKER: Yes.

CHAIRMAN BASEHART: Okay. Are you here to object? All right. Well, there are objectors in the audience then. We're going to have to pull this item from the agenda. So we're going to remove BOFA 2002-005 from the consent agenda and we'll make it the first item on the regular agenda. Okay?

Sir, before we do that do you want to come to the microphone for a second?

Before we remove this from consent, I'd like to know if you have a --

VICE CHAIRMAN KONYK: Name.

CHAIRMAN BASEHART: First your name?

MR. HOFFMAN: My name is Jay Hoffman.

CHAIRMAN BASEHART: And you object to the request on --

MR. HOFFMAN: Yes, I do.

CHAIRMAN BASEHART: On what basis?

MR. HOFFMAN: On the basis of it's a zero lot line building, which we do not have that in our neighborhood. Secondly, they've made it into a multi-family dwelling in a single-family dwelling neighborhood and we object.

CHAIRMAN BASEHART: Okay. Then that's related to what's requested. We'll pull this from consent and it will be heard in just a minute.

MR. HOFFMAN: Thank you.

CHAIRMAN BASEHART: Okay.

CHAIRMAN BASEHART: Next item on the consent agenda is BOFA 2002-006, W. Shannon Jones. Is the applicant here?

MR. MacGILLIS: For the record, Amanda Shields is representing the Rambos. We've got an authorization faxed to us yesterday.

CHAIRMAN BASEHART: Okay. This is a time extension, so it wasn't advertised. The staff has

recommended approval subject to, I guess, the same five conditions that were initially imposed. Do you agree with those?

MS. SHIELDS: Yes.

CHAIRMAN BASEHART: Okay. For the record, anybody in the audience here to oppose this application?

(No response.)

CHAIRMAN BASEHART: Okay. We'll leave it on consent.

COURT REPORTER: Can she state her name on the record?

CHAIRMAN BASEHART: Oh, your name, please?

MS. SHIELDS: Amanda Shields.

CHAIRMAN BASEHART: Thank you.

STAFF RECOMMENDATION

Staff recommends a maximum of 6-month time extension from February 18, 2002 to August 18, 2002, for the development order and two conditions 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 BOFA 2000-069, unless modified herein:

1. 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) Per previous BATE 2001-068 as approved at September 20, 2001 Board of Adjustment.**
2. By February 18, 2002 or prior to the final CO 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)**

Is hereby amended to read:

By August 18, 2002 or prior to the final CO 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 Co of the 4,800 SF building, whichever occurs first, the applicant shall upgrade the north and south property line landscape buffers as shown on Exhibit 9 in the BA2000-069 file. **(DATE:MONITORING-ZONING-LANDSCAPE)**

Is hereby amended to read:

By August 18, 2002, or prior to CO of the 4,800 SF building, whichever occurs first, the applicant shall upgrade the north and south property line landscape buffers as shown on Exhibit 9 in the BA2000-069 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)**

The Development Order for BA2000-069 shall lapse on February 18, 2002, one year from the approval date.

Is hereby amended to read:

The Development Order for BA2000-069 shall be extended from February 18, 2002 to August 18, 2002; an extension of six months from the approval date. **(DATE:MONITORING-ZONING-BA)**

CHAIRMAN BASEHART: Next item also a time extension. BATE 2002-008 is Kilday & Associates. Your name?

MS. AKERS: Cheri Akers with Kilday & Associates.

CHAIRMAN BASEHART: Okay. Ms. Akers, staff has recommended approval with four conditions. You're familiar with them?

MS. AKERS: Yes.

CHAIRMAN BASEHART: Do you agree with them?

MS. AKERS: I agree with them still.

CHAIRMAN BASEHART: Anybody in the audience to oppose this?

(No response.)

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

STAFF RECOMMENDATION

Staff recommends the maximum of **12 month** time extension for **BATE2002-008** From February 17, 2002 to February 17, 2003, consistent with Article 5.7.H.2 of the ULDC, to provide additional time for the petitioner to commence development and implement the approvals.

The applicant shall comply with all previous conditions of BA2000-009, unless modified herein:

ZONING CONDITIONS:

1. Board of Adjustment conditions must be attached to the site plan submitted for BCC approval and final DRC site plan certification. **(ZONING- Zoning Review/DRC). Completed, Site Plan approved September 27, 2000.**
2. Site plan submitted for BCC approval and final DRC certification shall be consistent with the general intent of the Site Plan reviewed by the Board of Adjustment. Any modifications shall be reviewed by the BA staff to ensure consistency with the intent of the Board approval. **(ZONING) Completed, Site Plan approved September 27, 2000.**
3. The required landscape buffer along the southern edge of the property bordering the RM Zoning districts (approximately 274' of the southeast property line) shall be upgraded as follows:

- a) 10 foot wide landscape buffer
- b) 1.5 foot high berm; and
- c) 1 additional palm or pine tree every 30 linear feet. **(ZONING-LANDSCAPE)**

4. The development order for BA2000-009 is hereby extended to February 17, 2003. The applicant shall have commenced construction by February 17, 2003, in order to vest the variance. No further time extensions are permitted for the development order. **(DATE:MONITORING-ZONING-BA)**

CHAIRMAN BASEHART: That gets us to SD 105, petition of Loretta Causey. Is the applicant here?

MS. HOWARD: Agent.

CHAIRMAN BASEHART: Okay. Good morning.

MS. HOWARD: For the record, my name is Christina Howard (phon.).

CHAIRMAN BASEHART: Okay.

MS. HOWARD: I'm the agent for the owner.

CHAIRMAN BASEHART: Okay. Christina, the staff has recommended approval of this item. I don't see anything about conditions.

MR. CUFFE: The recommendation was without conditions.

CHAIRMAN BASEHART: Okay. Any member of the public here to oppose this item? One in the back?

Come forward, sir. If you could step to the microphone and give us your name?

MR. SCHULTZ: My name is Joe Schultz and I oppose this variance being granted because my property abuts up to that property and it's been in code violation for a year now. I'm sitting on several tons of debris that was cleared and has just been left there.

CHAIRMAN BASEHART: All right. Any objection to a variance that's being proposed in front of this Board has to relate to the variance itself. The fact that there may have been debris there, there may be alleged code violations is a matter for the Code Enforcement Board.

Are you objecting to the lot split that's being proposed as a part by this variance -- by this variance?

MR. SCHULTZ: I'm not objecting to the variance. I would just like to see that the property be cleared and I feel as though they're doing everything they can to avoid clearing it.

CHAIRMAN BASEHART: Okay. What I would suggest that you do is get with Alan and let him take you to Terry Verner's office and get Code Enforcement involved in anything that, you know, might be a violation of the code.

MR. CUFFE: My understanding is that there actually is an active violation. There's a case on it right now where they have until -- in fact, I just found out about it yesterday afternoon when Mr. Schultz called my office.

The violation is actually for debris and rubble on the property, and there's a compliance date of March 15, 2002.

CHAIRMAN BASEHART: Okay. Ms. Howard?

MS. HOWARD: It's being complied with.

CHAIRMAN BASEHART: It's being taken care of? Okay. You do not object to the actual variance being sought, sir?

MR. SCHULTZ: No, sir.

CHAIRMAN BASEHART: Okay. Anybody have any problem with leaving this on consent?

(No response.)

CHAIRMAN BASEHART: We'll leave this on consent then.

MS. HOWARD: What does that mean?

CHAIRMAN BASEHART: That means that you don't have to make a presentation and this will be approved in about two minutes.

MS. HOWARD: Thank you.

CHAIRMAN BASEHART: Okay. That ends --

MR. MacGILLIS: Mr. Chairman, I should have announced at the beginning, the appeal BAA 2002-007, the agent requested a 30-day postponement on this item and it will be time certain to March

21st, 2002 meeting.

CHAIRMAN BASEHART: Okay. You have no problem with that?

MR. MacGILLIS: No, actually Bill Whiteford agreed on postponement. They're going to hopefully work this issue out.

CHAIRMAN BASEHART: Okay. Any member of the Board have a problem with postponing that item for 30 days?

(No response.)

CHAIRMAN BASEHART: We'll look forward to that next month. That ends the discussion on the consent agenda.

CHAIRMAN BASEHART: We have one item pulled, BOFA 2002-005. Other than that, the consent agenda remains as printed. I guess we're ready for a motion.

VICE CHAIRMAN KONYK: I make a motion to approve BOFA 2002-004, BATE 2002-006, BATE 2002-008 and SD 105 as consent items with the staff report becoming part of the record.

MR. PUZZITIELLO: Second.

CHAIRMAN BASEHART: We have a motion by Ms. Konyk, second by Mr. Puzzitiello to approve the consent agenda as amended.

All those in favor indicate by saying aye?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Motion carries unanimously.

CHAIRMAN BASEHART: That will get us to the new first item on the regular agenda. We'll take about a 30 second break here and anybody that's been approved is free to leave.

What I'd like to do, we're now entering the regular agenda. All testimony must be sworn testimony, so what I'd like to do is have anyone in the audience, applicants or members of the public, that intend to speak on any item on the agenda to please rise and be sworn in.

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

CHAIRMAN BASEHART: And each member or each person that comes to the podium to speak, if you'll please introduce yourself and tell us that you have been sworn in. Anybody that comes into the room subsequent to the swearing in will have to be sworn in before they can speak.

That gets us to the first item, BOFA 2002-005. If the staff would read this into the record, we'll get it going.

VICE CHAIRMAN KONYK: Introduce the item.

MR. SEAMAN: This situation requests a side interior setback and what was required is 7.5 and what is proposed is 2.2, which is a variance of 5.3.

Jorge and Yanella purchased this property recently in the configuration that it is today, and that configuration includes an existing carport. You can look on page 13. An existing carport, the utility shed and the smaller square to the right of the utility shed is a pool and cabana. And they had an inspection for a window or door that was installed, and in doing so the inspector noticed that the structures were not meeting setback requirements. So they were asked to come in and request a variance to bring the site into compliance with today's code.

And of course, the only way to be able to do that is to ask for a variance to allow the structure to remain at a 2.2 setback rather than a 7.5.

So the point I'm trying to make is the structures were like this when they purchased them, and they're simply trying to clean up the site by getting a variance to allow the structures to remain, as they have been for many years.

CHAIRMAN BASEHART: Okay. According to the staff report, that building has been there for 27 years?

MR. SEAMAN: The original building and carport were constructed, I believe, back in 1957,

'58.

CHAIRMAN BASEHART: Is there any indication there was a permit on it or -- well, the first building code was adopted in 1957. Was this built before there was building permits?

VICE CHAIRMAN KONYK: '74, not '57.

MR. SEAMAN: Page 14 has the actual permit that shows the building was constructed.

CHAIRMAN BASEHART: So it was permitted?

MR. SEAMAN: It was permitted.

MR. MacGILLIS: I think what happened as well, I mean, there was a final done on the building, and we can't find any records because it's so old of why -- nothing has changed from the surveys on that point, how it got that setback. We checked back through our codes.

I mean, the setback is similar to what it is today. So we can't understand that somehow the inspection got passed on this structure back in '74 in its exact location.

VICE CHAIRMAN KONYK: Were you working for the County then?

CHAIRMAN BASEHART: No, it was before me so don't blame me, Chelle. I got here in '78.

Why don't we start because of the language issue, why don't you make the staff presentation first and then we'll have the applicant --

VICE CHAIRMAN KONYK: No. Why don't we just hear from the applicant?

CHAIRMAN BASEHART: Or was that your staff report?

MR. SEAMAN: That was my staff report.

VICE CHAIRMAN KONYK: That was it.

CHAIRMAN BASEHART: All right. Then if the applicant can step forward.

MR. SEAMAN: I probably should just state for the record that Maria is the translator; she's not the agent.

CHAIRMAN BASEHART: We understand that, yeah.

VICE CHAIRMAN KONYK: Can we get her name?

COURT REPORTER: I need a last name for Maria.

MS. DELVAL: My name is Maria DelVal. I'm just a translator for my friend.

VICE CHAIRMAN KONYK: Can you spell that?

MS. DELVAL: Yes. I speak kind of fast. Maria DelVal.

VICE CHAIRMAN KONYK: That's slower? Do you want her to spell it?

COURT REPORTER: She's sworn.

VICE CHAIRMAN KONYK: I said do you want her to spell it?

COURT REPORTER: Oh, yes. Could you spell your last name?

VICE CHAIRMAN KONYK: Spell your name.

MS. DELVAL: Of course. D-E-L-V-A-L. Thank you.

VICE CHAIRMAN KONYK: That was pretty easy.

MS. DELVAL: May I speak now?

CHAIRMAN BASEHART: Yes, you may.

MS. DELVAL: I want to tell them what we're doing, okay?

(Interpreter speaks in Spanish to property owners.)

MS. DELVAL: When they bought the house and they changed the glass door to a solid door, they had no idea they needed a permit. Okay? That was a mistake. They know that.

The neighbor complained because they say they were walking on his property. That wasn't true. They never walk on his property. Maybe they walk for two minutes. The variance is on the north side of the property, it's not on the south side where the glass door was changed into a solid door.

We don't understand why this neighbor objects of a building that has been there for 27 years and is a utility room, and the staff when they were there they took a picture. It's a normal lot and it's RM anyway, but there's only one family living there. There's not two or three families. They bought it like that and it's been there forever.

And the records show that there is a permit for that in 1974. Why now after so many years is the neighbor complaining, the other side? It's doesn't make any sense. So that's what we want to say. Thank you.

CHAIRMAN BASEHART: Thank you. This is a public hearing. I guess there's one individual wishing to object in the audience? If he could step forward.

MR. PUZZITIELLO: No, no.

CHAIRMAN BASEHART: Oh, there we are. There's three? Okay. If you could step forward and give us your name and indicate whether you've been sworn in and give us your --

MS. DELVAL: Do you want us to move?

CHAIRMAN BASEHART: Yes, you can sit down.

MS. KILPATRICK: I'm Genevieve Kilpatrick and I have been sworn in.

MR. HOFFMAN: Jay Hoffman and I have been sworn in.

MR. ROCKENSTEIN: Phil Rockenstein and I've been sworn in.

CHAIRMAN BASEHART: Okay. Do each of you

wish to speak or is there one that's going to speak for the group?

MR. HOFFMAN: We each probably have something to say.

CHAIRMAN BASEHART: Okay. Well, then the first one can step forward and speak.

VICE CHAIRMAN KONYK: To the variance only.

CHAIRMAN BASEHART: Now remember this is a request for a side setback variance. Issues not related to the granting of the variance, like I think Mr. Hoffman mentioned that more than one family may be living in the house. That's not what's before us today.

We're not the Zoning Board. We're not the Code Enforcement Board. Those issues need to be taken up with the code enforcement office. What we need to know is why you object, the reasons, the legitimate reasons why you object to the granting of the side setback variance. Okay.

MS. KILPATRICK: Well, for one reason, it's on the seven feet of easement. That's where the building is. If somebody next door decides they want to put something on their seven feet, then there's no way for anybody to get to the back of the area for electricity or cable, whatever we need.

And if we set this precedent, then we're going to have a lot more in that neighborhood that's like that, which is not right. It's just -- I can't understand how somebody -- a realtor could have sold that property to her -- to these people knowing that that's not right.

VICE CHAIRMAN KONYK: Thank you.

CHAIRMAN BASEHART: Thank you. Next?

MR. HOFFMAN: Yes, basically I have the same problem.

CHAIRMAN BASEHART: For the record, you're Mr. Hoffman?

MR. HOFFMAN: I'm Jay Hoffman. And I guess I've been sworn in, and yes, when I enclosed my carport I had to go through permitting. I had to use my setbacks and my easements.

We do have utility easements running between the yards of adjoining back street neighbors. We have a gas main back there. We have our utilities back there, our cable, everything is back there with the exception of water and sewer. And I had to use all my permitting and I was restricted to my setbacks and I've objected to this since day one.

There's a number of other violations that, as you said, we will not get into at this time. This is setback problems only. And they did build on a zero lot line and left no easement, utility

rights easement of any type whatsoever on this whole thing.

CHAIRMAN BASEHART: Okay.

MR. CUNNINGHAM: Question.

CHAIRMAN BASEHART: Sir? Mr. Cunningham has a question for you.

MR. CUNNINGHAM: Mr. Hoffman, when you say that they built, are you referring to the present owners or previous owners?

MR. HOFFMAN: The previous owners, not the present.

MR. CUNNINGHAM: Thank you. That's what I thought.

VICE CHAIRMAN KONYK: Twenty-seven years ago.

CHAIRMAN BASEHART: Sir?

MR. ROCKENSTEIN: Phil Rockenstein. My main concern --

CHAIRMAN BASEHART: You've been sworn in?

MR. ROCKENSTEIN: I've been sworn in. My main concern was basically it looked like they were starting to use it for a multi-family dwelling, and I guess I have to worry about the violations. That's it.

Let me ask you a question. If they are using it for, like, a triplex then we have to go to Code Enforcement?

CHAIRMAN BASEHART: Yeah, it appears that the building does not meet building code requirements to be used as a dwelling, you know, so that would be an issue and the zoning wouldn't permit it as well, so if the owners of the property are using the building as a multi-family or as a second unit on the property, then the Code Enforcement Office would -- if you complain to them, you'd want to call Terry Verner who's the Code Enforcement Director. He'd send a code enforcement officer out there.

If there is an appearance that it's in violation, they'll cite him. They'll go to the Code Enforcement Board and it will be handled that way. This Board is not empowered to grant or consider those kinds of issues.

MR. ROCKENSTEIN: This is just on the setbacks?

CHAIRMAN BASEHART: This is just on the setback, right.

MR. ROCKENSTEIN: Okay. Thank you.

CHAIRMAN BASEHART: Okay. Sir?

MR. HOFFMAN: I do have one other thing. The statement was made that these people were not using my property to walk back and forth. I know it goes back to the same thing, but yes, they walk

between my vehicles, they use my driveway, they push me out of the way literally to get by my trailer that I have sitting on the side as an enclosed trailer to use my property as their walkway to their home.

CHAIRMAN BASEHART: This is in the area where the building setback problem is or it's on the other side of the property?

MR. HOFFMAN: This is on the other side. So it does go to Mr. Terry Verner?

CHAIRMAN BASEHART: Absolutely.

VICE CHAIRMAN KONYK: Actually, you don't even have to call Terry. You just call Code Enforcement, give them the address and they'll connect you with the code enforcement officer that's in charge of that community.

MR. HOFFMAN: And I thank you very much.

MR. CUNNINGHAM: Question, Mr. Hoffman.

MR. HOFFMAN: Yes, sir.

MR. CUNNINGHAM: When you said "they pushed", the present owners or the previous owners?

MR. HOFFMAN: No, the present owners, the people that were living in the present owners' home at that time through their back entrance. They took out a sliding glass door and made an outside/inside exit/entrance and that was to the south side of their building coming on to my property.

MR. CUNNINGHAM: Okay. What was your relationship with the previous owners who built this back in '74? I'm curious to know.

MR. HOFFMAN: So-so. We spoke, we said hi. That's about it. There was no great love or anything, you know, it's --

MR. CUNNINGHAM: Okay. Thank you.

MR. JACOBS: Excuse me, Mr. Hoffman, how long have you had your property?

MR. HOFFMAN: We bought our property -- we've been there for 16 years.

VICE CHAIRMAN KONYK: So you weren't even there in 1974 when this laundry room was added on, and when you bought your property the laundry room --

MR. JACOBS: Was there.

VICE CHAIRMAN KONYK: -- was already there?

MR. HOFFMAN: Right. So that's why I have nothing there.

VICE CHAIRMAN KONYK: Okay. Can we move forward?

CHAIRMAN BASEHART: Have you got a date or something?

VICE CHAIRMAN KONYK: Yeah.

CHAIRMAN BASEHART: Any other member of the

public like to speak on this item?

(No response.)

CHAIRMAN BASEHART: Does the applicant wish to do any rebuttal or are you ready to move on?

MS. DELVAL: Okay. Can I speak for them now?

CHAIRMAN BASEHART: Yes.

MS. DELVAL: Okay. At the time his mother and his father are living there because they sold their condominium on Forest Hill, and they are waiting to move into the house on Maypop that they bought. They will close at the end of the month.

So they call that as using that as a triplex, they are wrong, because that is his mother. If you want we can bring the driver's license or some kind of proof that that is his mother; it's the same name, Figueredo.

CHAIRMAN BASEHART: Okay. So his parents are living there temporarily?

MS. DELVAL: Yeah, right now because they are waiting because the condo at 1664 Forest Hill, it was sold, and the mother and the father, they are waiting now for the other house on Maypop -- I don't remember the name of it, the number. Anyway, they are in the process of waiting. But it's family.

MR. PUZZITIELLO: It doesn't matter. That's not what's before us today.

MS. DELVAL: But it's not triplex.

MR. PUZZITIELLO: That's not what's in front of us today so we can't --

MS. DELVAL: I know, but they are complaining about that, too, you know.

VICE CHAIRMAN KONYK: Thanks.

MS. DELVAL: Thank you.

CHAIRMAN BASEHART: Okay. Any other questions from members of the Board? Jon?

MR. MacGILLIS: Staff has drafted up a condition regarding that space because it was partly our concern when we saw the pictures when they actually came in. We actually sent one of the planners out there to look at the inside of that structure to make sure it wasn't used as a granny flat or something. Her parents are not living in there.

Apparently, Alan says they're living in the main house, but the way that structure is set up, we don't want them coming back here through Code Enforcement that it was a misunderstanding that we granted this variance. It's supposed to be used as a laundry room, storage shed. No habitation.

CHAIRMAN BASEHART: Okay.

MR. MacGILLIS: So we would like a condition

put on this variance so there's no misunderstanding that this Board was just approving that shed as an existing and recognizing the existing situation.

CHAIRMAN BASEHART: Okay. You want to read the condition into the record?

MR. SEAMAN: Okay. On page 18, under "Zoning Conditions" there was one. Now we're going to add a number 2. The second condition would read: "The utility shed dimensioned at 21.5 X 11.7, and the pool cabana dimensioned at 12.2 X 12.2, shall not be used for habitation."

How's that?

VICE CHAIRMAN KONYK: Very good.

CHAIRMAN BASEHART: Okay.

VICE CHAIRMAN KONYK: Did you tell them and do they understand that?

MS. DELVAL: Oh, yes, they do.

CHAIRMAN BASEHART: Very good. Any other questions, comments? Nancy?

MS. CARDONE: I have a question of the attorney.

VICE CHAIRMAN KONYK: Attorney? There is no attorney. Oh, our attorney.

MS. CARDONE: Our attorney. Anyway, I have a question for you because I have a bit of a problem, and some of these have come up before us, whereby it seems that if someone put something up that should not have been there and it did not get caught, and they are able to sell the property to someone who had absolutely nothing to do with all of these errors, then we're faced with a decision whereby you know, it doesn't necessarily meet all those criteria.

Would it be giving them something that other people don't have? Yes, it really would. But it's not their fault and you know, so we have to play with this and obviously it's not right to penalize somebody when they were not in error.

Do they have any recourse? I mean, let's say we find they can't -- they don't meet the criteria and for those reasons should not be given a variance. However, they didn't do anything to create this problem. They really did not. What recourse would somebody have?

MS. PETRICK: Well, it depends in large part on the nature of the deed. If somebody purchases a piece of property with a Warranty Deed, often that deed will represent that it meets existing code requirements, and if that's the case then you may have an action for misrepresentation.

In other circumstances the contract for sale will often contain indemnification language in which case you'd have a cause of action under that

clause. So they very well might have some type of, you know, action against the previous owner.

But in that case the possible defense may be that they were allowed to do it at the time that they did it, that they were acting under a good faith permit

and so it is more complicated than just action between two private parties because of the apparent acquiescence of the Building Department.

So I'd have to see more documents to give you a really good answer, but there is a potential cause of action.

CHAIRMAN BASEHART: It even goes beyond, you know, the situation of the one owner. I mean, it's obvious that the owners before them and maybe two or three or four owners before them all felt that they had a legitimate structure there because a building permit was obtained, the inspections were made and the County issued the certificate of occupancy.

So I don't know if this falls into what the lawyers call an area of equitable estoppel, you know, where people have spent time and money and relied on government approvals for 27 years, and all of a sudden for a violation -- knowledge to come out of the woodwork and require them to do something about it doesn't seem real equitable to me.

MS. PETRICK: Well, there is actually a case in Florida that says that if a building permit is illegal at the time that it was issued, it may at any time thereafter be revoked and the person cannot rely on equitable estoppel because the building official or the building department didn't have the power at the time to change the Zoning Code.

So you can't rely on a legal building permit, but again we'd have to go back and see what the law was at the time that it was issued and see what, you know, it's more fact specific than that. But you know, there is a potential cause of action there.

CHAIRMAN BASEHART: Okay. Any other questions by members of the Board?

MR. MacGILLIS: There were only two letters on this thing that the staff addressed. They were requests for information.

VICE CHAIRMAN KONYK: Okay.

CHAIRMAN BASEHART: Okay.

MR. PUZZITIELLO: I'd like to make a motion that we approve BOFA 2002-005. I do believe they've met the seven criteria. They are not encroaching on any easements for utilities or

anything else, and it's been there for 27 years. I'd like to also make the staff report as part of the record.

CHAIRMAN BASEHART: Okay. Motion by Mr. Puzzitiello. Do we have a second?

MR. JACOBS: Second.

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

MR. MacGILLIS: With the revised conditions.

CHAIRMAN BASEHART: And that's with the additional condition?

MR. PUZZITIELLO: Yes, absolutely.

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

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no?

(No response.)

CHAIRMAN BASEHART: Motion carries unanimously. Okay. Your variance has been approved.

MS. DELVAL: Thank you so much, sir.

MR. MacGILLIS: We'll have to revise your letter, so if you want to call later today we'll have your letter ready for you.

MS. DELVAL: You want me to call you back?

MR. MacGILLIS: Yeah, this afternoon we'll have the letter, you'll need the letter.

MS. DELVAL: Thank you very much.

CHAIRMAN BASEHART: Okay. Do we have another item?

VICE CHAIRMAN KONYK: Yeah, first one on the agenda. The real one.

CHAIRMAN BASEHART: That's right.

STAFF RECOMMENDATIONS

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

ANALYSIS OF ARTICLE 5, SECTION 5.7.E VARIANCE STANDARDS

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

YES. The property is located at 1902 East Chatham Road within the Forest Hill Village subdivision and has a land use designation of MR5 and zoning classification of RM. The subject property is .17 acres in size with a depth of 100.0 feet and 73.0 feet width. The lot supports a 1134 sq/ft single-family residence with screen porch and a pool. The lot is typical to other lots in this residential subdivision. Single-family dwellings constructed in the neighborhood generally were constructed in the past 35 years with utility room additions. The Code Enforcement officer was responding to a complaint made by a neighbor for using the neighbor's entrance to make improvements to the subject property. Code Enforcement officer cited the applicant for improvements made without permits in the south side of the single-family dwelling and at the same time cited the owner for the existing utility room encroaching into the required side setback.

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

NO. The variance request **is not self-created**, but the result of the fact that the structure is existing and cannot be relocated to comply with current setback. The applicant purchased the property in August 2001, and therefore did not construct any of the existing structures on the lot. The applicant would like to make the same use of the structure, which will be for a laundry room and storage purpose. There will not be any existing impact to the surrounding area because the structure already exists.

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, BUILDINGS OR STRUCTURES, IN THE SAME DISTRICT:

NO. Granting this variance **will not** grant special privilege to the applicant. The structure has been there for 28 years. The applicant is not proposing to modify the exterior of the structure and therefore the surrounding residents will not see a

noticeable change in the structure.

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

YES. A literal enforcement of the terms of the accessory structure setback would result in the applicant not being able to use the existing structure for storage and laundry room purpose. If the variance is granted the applicant would be able to utilize the structure for a storage and laundry room. Denial of the variance would work an unnecessary and undue hardship. The existing utility room structure was legally permitted and constructed in 1975 with a building permit (B75641), plumbing permit (15823), and electrical permit (13711).

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 be a reasonable use of the land. The previous owner legally constructed the structure. The utility room was constructed in 1974 and side setback for RM Zoning District was 7.5', which is the same setback currently used by the present ULDC. For reason that staff is unaware the side setback was not met when the building permit (B75641) was issued in 1975 for the carport to be enclosed and used as a utility room. Staff has visited the site and noticed that the utility room was used for laundry and storage purpose. The applicant is not proposing any exterior modifications to the building, therefore, there will be no noticeable change to the structure by the neighbors.

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

YES. Granting of the requested side setback

will allow the existing utility room to remain at the present location and serve the owner's needs. Granting the requested variance **will also meet** the general intent of the Code. The ULDC establishes setbacks for principal and accessory structures. The variance is not based on self-created hardship and unique circumstances. In this particular situation, the structure was permitted 28 years ago and the current owner cannot reasonably relocate this 252 square foot utility room without affecting the single-family dwelling in order to comply with the code requirements. The immediate surrounding lots along Chatham East Road are similar in size and support single-family residences with utility rooms under the carports. The applicant does meet these requirements. Granting this variance will allow this utility room to remain at the same location and be consistent with other structures along Chatham Road.

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

NO. If the variance is granted, it will not be injurious to the surrounding area. The structure has existed for 28 years and Code Enforcement recently notified the applicant of the encroachment. Granting the variance will therefore not be detrimental to the public welfare.

ENGINEERING COMMENT

No comments (ENG)

ZONING CONDITIONS

1. The variance is only for the side setback for the existing utility room addition. Any further improvements must adhere to required setbacks. (ONGOING)

MR. MacGILLIS: The next item, staff, which is BOFA 2002-003, staff would like to request a postponement on this item. We already spoke to the agent who has an attorney representing him. We're concerned we've been going back and forth with this case. Staff is recommending denial on it. It's a pool that's encroaching into a landscape buffer.

We've had numerous meetings with the agent and the attorney. County staff -- we also have Kurt and Bill here from contractor certification if you have any questions related to the pool company.

We're concerned. We have some backup material here as well on other pools that were done by Perma-Built that had setback problems with, and as of yesterday staff sat down and we had spoken to Dave Cuffe with engineering regarding the landscape buffer that's in the back yard of this lot.

Up until 19 -- we amended the ULDC, you could actually include a landscape buffer that's required around the PUD in the lots, and that's partly what's causing the problem in this case.

CHAIRMAN BASEHART: Yeah, for a single family lot.

MR. MacGILLIS: Correct. We've since amended that. Now it has to be a separate tract outside the lot so people aren't confused that they can use that land and stuff.

But in this particular case after sitting down with it yesterday, we looked at when the site plan was approved and it was approved in '89. So we still need extra time to research whether that buffer was actually required.

It's actually labeled on the plat as an easement, and the way our code says our setbacks and stuff are taken from only inside a buffer, not an easement. So we've spoken to the attorney and requested additional time so we can work out -- Amy as well has spoken to the attorney regarding the taking a 30 day postponement and see if staff can actually work out abandoning part of that buffer.

It either needs to be abandoned and we can eliminate the need for a variance on this lot, but since the agent -- on the dedication sheet that easement is dedicated to the homeowners' association, and it's part of that person's lot. There's issues that we can't resolve at this point.

And we really don't want this variance going forward, but it's up to the pleasure of the Board if you want to hear it, but staff is strongly

opposed to allowing any types of pools or permanent structures in our landscape buffers, which are intended clearly for landscaping and the root system and stuff.

We had a long discussion on one about two years ago, that Perma-Pool actually was -- almost at the same stage as this pool where it was six inches into the buffer and the Board here recommended that they would only allow the deck and they had to actually do something to the pool to take the six inches out of there.

So there's no precedent that ever set that we've allowed a variance for a pool in a buffer, and we would like that to continue. So staff would like this item postponed and not be heard this morning.

CHAIRMAN BASEHART: Okay. And the applicant doesn't object to that?

MR. COHEN: Well, good morning, Mr. Chair and members of the Board. My name is Steven Cohen and I have been sworn. I'm counsel for the Testais who are present as well, and they have been sworn, just so you have that for the record.

I did pose a question to Ms. Petrick yesterday afternoon when we last spoke, and we did not have a chance to speak this morning as to the limited issue of a postponement, and if I could just address that without getting into the merits of the application. And apparently there is a representative here from Perma-Built.

We have, and when we go to a hearing I can present copies of letters that I have sent to them and after they retained counsel to their counsel simply requesting what relief they're prepared to give.

And staff is correct. I've met with Mr. Seaman and Mr. Aubourg on a number of occasions. I first appeared on January 28th at a meeting that was previously scheduled. Since that time we've been looking to Perma-Built for some relief, just tell us what you're going to do. We've yet to get a response from either Perma-Built or their counsel.

So with respect to the issue of postponement, our concern is this pool is literally ready just to have the marcite put up and water put in. And forgetting, and I'm not trying to be trite, but forgetting the alleged violation right now. But that's the stage of construction. And this has been on hold now for over four months.

The question I had asked from Ms. Petrick is late yesterday -- because this issue of the dedication of the buffer easement if it's

public/private, if it's required under the ULDC was first raised to me yesterday. So I don't want you to think -- I'm not finding fault with anyone here and I don't want the Board to find fault with us for sitting on it, and that's why this issue of postponement is a last minute thing.

And the question I asked of Ms. Petrick was, is it possible to go forward today with the understanding, and I would represent for the record and stipulate for the record that if the relief was granted the applicants and it was later discovered by staff that this was a private easement and not required under the ULDC, because we have a couple of possibilities, and staff can certainly correct me if I misstate it, if we could have a dedication of this easement to the public, if we could have the dedication of this easement in a private sense, that is to the homeowner's association, but it still may have either been required under the ULDC or not required. If not required, all you need is a release of that easement from the homeowners association in favor of the homeowners, but if it was required under the ULDC, we would still need to come back for some relief from a governmental authority.

So the question I posed to Ms. Petrick was-- and she was unsure of the answer at the time when we raised it at 5:00 o'clock yesterday -- was whether we could go forward with the understanding that we would stipulate if the relief was obtained and then it was discovered that this was a matter that did not need to come before this Board, we would withdraw -- stipulate to withdraw the application and any findings because I'm not asking the Board to grant relief in the situation where it wasn't required.

On the other hand, I'm simply trying to prevent any further delay to this couple. I know it's kind of a long explanation on the issue of just postponement, but this pool has been sitting in this state for months now and we've not been able to get any relief from our pool contractor, we've had continuous discussions with the staff, and staff trying to look into the pool contractor, and I'm just trying to get this pool completed on behalf of these homeowners and let them and their children get in their pool. And that's why.

If staff needs some additional time, you know, I simply -- I asked the question of Mr. Seaman and he didn't have an answer and I'm not being critical of that when we spoke late yesterday, and that was how much time do you need and he said he doesn't know. I just don't want the

uncertainty of all this to work to the further disadvantage of the Testais.

If you look at the report, there's a major issue as to the survey that was submitted together with the application. And again, I'm not trying to get into the merits of the application or not.

VICE CHAIRMAN KONYK: Who provided the survey?

MR. COHEN: Well, there are two versions and I'm trying to be open and candid. The version of my clients' is they provided the pool contractor with an original sealed survey that shows the easement, okay, that -- and I'll try to give you the two minute version.

The pool contractor claims that they provided him by fax with a survey that does not show the easement.

VICE CHAIRMAN KONYK: But there was no new survey done? There was no location of the corners?

MR. COHEN: There has been a survey done, Ms. Konyk, after the Testais came in to meet with Mr. Seaman --

VICE CHAIRMAN KONYK: No, I'm not talking about that. Was there a new survey done before this pool was dug?

MR. COHEN: No.

VICE CHAIRMAN KONYK: Were the corners of the lot located?

Jon, correct me if I'm wrong, but I think in the past we've told this contractor that he needs to locate the corners of the lot currently, not rely on an old survey.

MR. MacGILLIS: I believe we have the verbatims here from the petition that went before you in '97 and there was a lengthy discussion between Mr. Puzzitiello and Ms. Konyk regarding the survey and where it was taken, because that was the whole discussion that was in here where staff was opposing this variance, and I believe the gentleman in the audience was actually the person who was here at that time.

And there was a whole lengthy discussion in here regarding where the setbacks were taken. They took them from the house and the Board's discussion was why didn't you take them from the actual markers of the lot, and there was discussion that there were no markers and typically the house is located in the correct place, and that's where they measured it from.

VICE CHAIRMAN KONYK: Okay, just curious.

MR. COHEN: Now there is certainly a belief on our part, our being the Testais and myself, that this contractor apparently -- and I went to look at

the file and apparently these reports have been pulled in preparation for today, so I haven't had the opportunity to see them. But has had problems in the past.

The Testais certainly didn't know that at the time they contracted to have this pool done. There were the regular inspections all the way along the line until this inspection back in the fall. After the deck was in, after the pool was sprayed, like I said, it's ready to be marcited and water to go into the pool, and that's when the issue was raised by the inspector of this 30 foot buffer easement. We have repeatedly attempted to address this.

Candidly, my clients are more than prepared and will represent to this Board that they will take whatever action is appropriate administratively, forget civil issues, with respect to this pool contractor.

I became involved because I just don't want to see them victimized again by, you know, a contractor that may have, you know, done something that we don't feel is appropriate if the Board agrees with our version of what occurred, the Board would not approve of as well.

But we have -- the Testais have met repeatedly before I was retained with the Board -- with staff, excuse me, with staff trying to do whatever was suggested. This application was submitted based upon the suggestion and before I was retained, based upon the suggestion of it.

But it's our belief that we've got a contractor here and I know he's present, but we have a contractor here that just in flagrant disregard of all the rules that apply who is signing contracts and starting construction, and then the homeowner gets caught in this horribly awkward position.

The only reason they found out about it was he didn't even tell them -- construction stopped for a period of time, an extended period of time. They didn't get a response and then got a response that it was a problem with the homeowners association. So Mrs. Testai called the homeowners association asking what's the problem, and they said we're not aware of any problem, and in fact we have a letter and we have given a copy to the staff from the homeowners association; they have no objection to the pool as constructed. And I have copies for the Board if we get into the substance of it, but I just wanted to by way of background in terms of historically how this has ended up here.

The Testais then contacted the County to

find out what was wrong and staff contacted -- returned the call and advised them what had occurred. And Mrs. Testai came in immediately to start meeting with staff to find out what's wrong and what do we do.

The pool has an irregular shape so it's simply not a question of moving a wall in by 18 inches. If you had a simple rectangle, you can do that without really affecting the symmetry of the design, but you don't have that here.

Candidly, if this pool needs to be modified in terms of dimension or location, you will probably need to rip this existing pool out and start all over again. And so that's the historical state. And you asked the question, you know, how did it end up? This is historically what occurred.

VICE CHAIRMAN KONYK: You have to understand, though, that this Board is on the record as having told this contractor that they better not rely on information that's not current or correct. So it puts us in a very difficult position.

MR. COHEN: I recognize that and I've had very candid conversations with staff on that issue, and it is not a pleasant position that you find yourselves in and I recognize that.

I'm a former judge and there were plenty of times that I was asked to make a call that, you know, you sit there looking at the rules that apply and it's really an uncomfortable situation. I recognize that.

There is a serious problem apparently with this contractor historically, and you have the records in front of you. I was not aware that apparently back in the late '90s there was this dictate from the Board to Perma-Built. The Testais would have no way of knowing that.

Our concern is simply to try to remedy the situation for the Testais and both administratively and civilly to pursue whatever claims there may be against Perma-Built.

VICE CHAIRMAN KONYK: Okay. Jon, so if you're going to in the next 30 days what you'd like to see if you could resolve this issue without even needing a variance?

MR. MacGILLIS: Correct.

VICE CHAIRMAN KONYK: I really personally would feel that that would be in the best interest of the client -- of your client. I realize that their pool will not be used for another month, but in the long run what you'll get is a pool that can be used, period.

I mean, you're not going to have a nightmare

trying to hold the contractor to pulling out your pool and all those other things. From what Jon is saying, it seems to me like there might be a solution that can be worked out without having to go through a lawsuit against your contractor, try to force him to comply with getting it right. And even though it's a 30 day postponement and you've been waiting several months to get into your pool, in the long run I think you're going to be better off if you wait the 30 days and I'm just making that suggestion to you.

MR. COHEN: Just so the Board is aware, I had a very frank discussion with Mr. Seaman because as I said, it all came up late yesterday and that is I couldn't -- obviously my job as counselor is to tell the Testais what the options are, but I couldn't make a recommendation to them simply because it all came up at the last minute and we don't know what it is --

VICE CHAIRMAN KONYK: That's why they're recommending a 30 day postponement in order to be able to examine the issue more clearly.

MR. COHEN: Exactly, and that's why I did pose the one question I mentioned to Ms. Petrick, and that is about, you know, the possibility of you know, seeking relief but with the understanding that we would withdraw the application and any findings.

My one concern is if we are back here in a month approximately because we still need a variance, and I'm not asking you to commit what would occur then. Please understand that. My clients are just in no better, theoretically slightly worse position than they are right now.

CHAIRMAN BASEHART: I think it's your decision as to whether or not you want to go forward today or not, but I'm sure you recognize if we move forward today, it's based on the facts as we know them today and you're sitting here looking at a variance being necessary because of a mistake made by a contractor that's been here before and done this before and been warned before, and a staff recommendation for denial based on the facts as they were originally known.

MR. JACOBS: Additionally, I'm very uncomfortable with the concept of contingent relief.

MR. COHEN: I understand and I wasn't trying to mandate it. Please understand that. I simply asked Mr. Petrick if it was a possibility. It was not -- that's all I asked.

And please understand I was thinking out loud with Ms. Petrick late yesterday afternoon. I

hopefully -- her nod is in agreement, because this was all occurring at the last hour. It was not because, you know, everyone sat around for months and waited and said, oh, wait a minute, it's tomorrow morning. Let's talk about this.

Mr. Seaman was kind enough to call me first yesterday morning to raise the issue of a possible abandonment, and I believe he mentioned five feet of that easement. That was the first discussion we had yesterday and then --

VICE CHAIRMAN KONYK: Okay.

MR. COHEN: -- it was about 3:30 when I got a phone call from Mr. Seaman. So I truly want the Board to understand this was not something --

VICE CHAIRMAN KONYK: We understand that, believe me. We understood it five minutes ago.

MR. COHEN: Well, I'm not trying to be difficult.

VICE CHAIRMAN KONYK: Okay.

MR. COHEN: I truly am not.

If I could just have a moment to speak with the Testais.

CHAIRMAN BASEHART: Sure, and in the meantime -- go ahead. In the meantime --

MR. COHEN: If you want to hear -- apparently there's a gentleman from Perma-Built here. I have not spoken to him today. He has counsel, I'm not authorized to speak to him.

VICE CHAIRMAN KONYK: Thank you.

CHAIRMAN BASEHART: While they're --

MS. PETRICK: He did ask me the question, I have researched it and it seems like you all know that you can move forward and consider the variance and grant the variance with the evidence that you have in front of you. I just want to let you know that I did research it and I have it --

VICE CHAIRMAN KONYK: Right.

CHAIRMAN BASEHART: Or deny it.

MS. PETRICK: Well, you have that choice to consider it today, so.

VICE CHAIRMAN KONYK: Yeah. We knew that.

MR. COHEN: I wasn't trying to be rude, if I could step out for just a second.

CHAIRMAN BASEHART: Well, while we're waiting I think Ms. Konyk has a question of Mr. Eismann. If he would step forward.

MR. EISMANN: I haven't been sworn in.

VICE CHAIRMAN KONYK: It's never too late.

CHAIRMAN BASEHART: I think she wanted to talk about the color of your shirt. I think that's what it is.

MR. EISMANN: It's raspberry. It's not pink. (Whereupon, Mr. Eismann was sworn in by Ms.

Springer.)

VICE CHAIRMAN KONYK: I'm just curious as to what the normal procedure is when something like this happens and someone wants to get information about a contractor, how does that process work usually?

MR. EISMANN: Well, our records are --

COURT REPORTER: Wait, I need your name for the record.

MR. EISMANN: Kurt Eismann, E-I-S-M-A-N-N. I'm the director for the Palm Beach County Contractors Certification.

We have public records and people can come in and look at our files. We have master files and we have complaint files, and I think actually Mr. Brode (ph) looked at the file here, and although we did see that there were some complaints in there, there wasn't anything concerning any setback issue.

Evidently when this happened in '97, we didn't get a copy. There wasn't really a complaint sent in to us regarding Perma-Built in that case.

VICE CHAIRMAN KONYK: Okay. Just curious. Thank you.

MR. EISMANN: Yeah, we invite people to come down. We try not to give that information out on the phone. We'll just confirm that there is a file.

VICE CHAIRMAN KONYK: Okay. Thank you.

MR. COHEN: I have had a chance -- thank you for the opportunity to speak to the Testais, and they will agree to a 30 day postponement at this stage, and you know, hopefully we'll be able to figure out a solution to this and that we won't have to appear in front of you -- not as a personal thing, but simply it's just a very awful position they find themselves in as I'm sure you understand.

I'm just trying to get this resolved for them as easily and expeditiously as possible. I'll continue to work with the staff in any way I can.

VICE CHAIRMAN KONYK: Okay.

CHAIRMAN BASEHART: Okay, yeah. I mean, best case scenario for everybody is that a solution is found and you don't have to look at us again.

MR. COHEN: Right, and I don't take that personally. As I used to tell people in my former life, you never wanted to meet me professionally.

VICE CHAIRMAN KONYK: Jon, can I ask you a question just out of curiosity? Let's say you resolve the issue without them needing a variance; what happens to what they paid for the variance? Is that just too bad? It's gone?

MR. MacGILLIS: Yeah. Our refund policy --

MR. COHEN: It was actually a question Mrs.

Testai had of me and that's --

COURT REPORTER: Wait a minute. One at a time.

MR. COHEN: I'm sorry. I apologize.

MR. MacGILLIS: Our refund policy is once a certain part of the application is done, I mean, all the research is done.

VICE CHAIRMAN KONYK: Correct.

MR. MacGILLIS: We found this irregularity I think yesterday morning when we were looking at it. Whether that was -- should staff have caught it earlier, I don't know.

VICE CHAIRMAN KONYK: Probably not.

MR. MacGILLIS: Probably not.

VICE CHAIRMAN KONYK: I don't think it's an issue that -- I think it's lucky for the Testais that this issue came up. I mean, I think it's probably the only way that they're going to be able to resolve this issue quickly.

But I just was curious as to -- since it was determined that a variance wasn't needed, if they would be entitled to a refund, and I figured I would get that out right now so that next month if they're not here, the question doesn't come up, so.

MR. MacGILLIS: The legal ad was done, the entire report was worked up, all the research, staff has spent numerous hours on this case.

VICE CHAIRMAN KONYK: Okay. So then they have actually the opportunity to find this information? They were just lucky that you did?

MR. MacGILLIS: Whether the average person could have found this. I mean, I just happened to come across it when I was looking at the case, preparing this case yesterday, so.

VICE CHAIRMAN KONYK: Good work, Jon, good work. Okay. Thank you.

MR. MacGILLIS: Hopefully in the next week or so we're going to diligently work on this, I mean, you know, with Amy to make sure, because a lot of the stuff is legal issues, so hopefully, you know, in a week or so we can have it resolved.

MR. COHEN: That's fine. I've not had the opportunity to meet or speak with Mr. MacGillis prior to today, I had a meeting with Mr. Seaman and Mr. Aubourg. And I'll continue to work with staff. I mean, there has been full and open discussion and communication, I just wanted to let the Board know that. It's been a very positive thing in terms of the -- what's otherwise a horrible experience.

VICE CHAIRMAN KONYK: Okay. Do we need a motion for this?

CHAIRMAN BASEHART: Before we have a motion, we need to find out if there's anybody else in the

audience that came here to address this matter?

MR. COHEN: We have two letters, but I won't bother the Board with them now in favor of --

CHAIRMAN BASEHART: Okay. Sir, if you can step forward. The issue is to whether or not we postpone at this point. We're not taking testimony on who did what to who.

MR. KONDENAR: Well, I --

COURT REPORTER: Wait, I need your name.

MR. KONDENAR: I wasn't sworn in, either.

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

MR. KONDENAR: My name is Robert Kondenar and I'm with Perma-Built Pools. I kind of resent some of the stuff I've been hearing here this morning.

I did have a problem two years ago with a setback. At that point I did not know a landscape buffer easement was different from a utility easement, and I encroached on it. The utility easement I can go dead on, but with the landscape buffer there is a setback, which I did not know. And that's how that particular item came into play.

This particular job, I was given a survey that was faxed to me that I worked off of, showing me 60 feet of property in the back yard. My pool was only going out 30 feet. I had no reason to doubt this survey or to check and measurements to the back yard when the survey is showing 60 feet.

I've had five jobs in Lake Charleston in the last year that have gone for variances or pools that have been moved and in Winston Trails. 'Cause since I've had that problem, I do not -- did not ever want to come back here again because I caught hell, excuse my expression, that day, all right. And this was not done maliciously or by any means. All right. I have a survey that was faxed to me and that's what I worked off of.

VICE CHAIRMAN KONYK: Okay. But you were told in 1997 not to rely on a survey. You were told to locate the corners of the lot.

MR. KONDENAR: I do, but --

VICE CHAIRMAN KONYK: That's what we told you, we told you --

MR. KONDENAR: Yes.

VICE CHAIRMAN KONYK: -- to have a surveyor locate the corners of the lot.

So don't tell me you relied on a survey because we told you not to rely on a survey.

MR. KONDENAR: But it's a survey showing me 60 feet of property --

VICE CHAIRMAN KONYK: We told you not to rely on it, though. We said don't do it. Add the

\$150 or whatever it would cost to have someone come out and locate all these things for you and get it done right and do it once, and don't come back before this Board again. That's what we told you. I remember it.

MR. KONDENAR: Well, if there is a problem and I think there is a problem, I do do that, or I change it, but when I'm showing 60 feet --

VICE CHAIRMAN KONYK: Well, obviously you didn't do it this time.

MR. KONDENAR: -- and I'm only going 30, I mean, I would have no reason to say, well, you know, there's a 30 foot area there beyond the pool.

VICE CHAIRMAN KONYK: Right. Do you object to the postponement?

MR. KONDENAR: No, I don't.

CHAIRMAN BASEHART: Okay. Ready for a motion to postpone this item for 30 days.

MR. PUZZITIELLO: Motion to postpone.

CHAIRMAN BASEHART: Motion by Mr. Puzzitiello.

MR. JACOBS: Second.

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

(No response.)

CHAIRMAN BASEHART: I didn't think so. All those in favor, indicate by saying aye?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no?

(No response.)

CHAIRMAN BASEHART: Motion carries, 30 days.

CHAIRMAN BASEHART: Okay. That completes the applications on the agenda today.

Jon, it seems like there's one thing missing. February of every year is the month that we're supposed to have our election of officers.

VICE CHAIRMAN KONYK: Duh.

MR. PUZZITIELLO: You trying to get out of the position?

MR. MacGILLIS: I apologize for that totally. I've been -- I've taken over the Code

Revision in the last month, and we had elections there. So I totally was confused.

CHAIRMAN BASEHART: You guys want to do it next month? Okay. We'll do it next month.

MR. PUZZITIELLO: Why? You want to campaign?

VICE CHAIRMAN KONYK: He can't do it.

CHAIRMAN BASEHART: No, you can only be Chairman two years in a row, and I've done that, so I'm out.

MS. CARDONE: Do you need an official motion to postpone that till next month? Is that a regulation or by-law or policy?

CHAIRMAN BASEHART: It's in the Code.

MR. MacGILLIS: It is in the Code that you're supposed to have your elections --

VICE CHAIRMAN KONYK: Why don't we just do it and get it over with?

MR. MacGILLIS: As long as we do it at the beginning of the meeting.

VICE CHAIRMAN KONYK: It's hard to do it when people are here, though.

CHAIRMAN BASEHART: Then why don't we do now? Anybody want to do it now?

VICE CHAIRMAN KONYK: Yeah, get it over with.

CHAIRMAN BASEHART: Okay. Let's do it now. The floor is open for nominations for Chairman.

Do we have any nominations?

MS. CARDONE: Can I just ask, are you eligible?

CHAIRMAN BASEHART: No.

MS. CARDONE: You are ineligible?

CHAIRMAN BASEHART: The Code says that the Chairman can serve two consecutive years, and I've done that, so I'm not eligible.

MS. CARDONE: So you are ineligible.

CHAIRMAN BASEHART: Yes.

MR. CUNNINGHAM: I'd like to nominate our Vice Chair, Chelle, to be the new Chair.

MR. PUZZITIELLO: Second.

CHAIRMAN BASEHART: We have a motion on the floor and a second.

Are there any other nominations?

(No response.)

CHAIRMAN BASEHART: Then we'll close nominations and I guess we don't need to vote because there aren't any other candidates. Congratulations.

VICE CHAIRMAN KONYK: Do I have to accept the nomination?

MR. MacGILLIS: You have to accept it first.

VICE CHAIRMAN KONYK: I'll accept the

nomination.

CHAIRMAN BASEHART: Okay. Well, now you're the Chairman, so I guess you need to do a Vice Chairman.

VICE CHAIRMAN KONYK: Well, I'm not Chairman officially until the next meeting; right?

CHAIRMAN BASEHART: I thought you were Chairman as soon as you got elected?

CHAIRMAN KONYK: Am I? Okay. All right. So now we need a motion --

VICE CHAIRMAN BASEHART: There's no waiting period.

MR. PUZZITIELLO: Bob wants out, he wants out now.

MR. CUNNINGHAM: I'd like to nominate Robert Basehart for Vice Chair.

MS. CARDONE: Second.

CHAIRMAN KONYK: Do you accept the nomination?

VICE CHAIRMAN BASEHART: Yes.

CHAIRMAN KONYK: All those in favor?

BOARD: Aye.

CHAIRMAN KONYK: Motion carries unanimously. Thank you.

VICE CHAIRMAN BASEHART: Thanks.

MS. CARDONE: So every two years you guys just change seats?

CHAIRMAN KONYK: Yeah.

VICE CHAIRMAN BASEHART: Okay. You've got to do the rest of the agenda.

CHAIRMAN KONYK: Oh, I have to get us out of here?

VICE CHAIRMAN BASEHART: Yes.

CHAIRMAN KONYK: Do we have the attendance?

VICE CHAIRMAN BASEHART: Yes, we do.

MS. CARDONE: So does your salary increase?

CHAIRMAN KONYK: Yeah, I get double. Double pay.

MR. PUZZITIELLO: Double zeros. And parking.

MS. CARDONE: Give us parking spaces.

VICE CHAIRMAN BASEHART: Then there'd be competition.

CHAIRMAN KONYK: We have one absence last month with our new member from District 5, Mr. Sadoff was ill, and I believe he's ill again today.

MR. MacGILLIS: Oh, yes, I'm sorry. He did call this morning and apologized. Apparently, he's very sick.

CHAIRMAN KONYK: Has he been sick all this time?

MR. MacGILLIS: Apparently so.

CHAIRMAN KONYK: Okay. So that would be our

only absence.

I would suggest -- not that I not want to see him serve on the Board, I never met the man, but if he really is that ill maybe the commissioner needs to know that so --

MR. MacGILLIS: Apparently he's sat on Code Enforcement and never missed a meeting, so I think it's very unusual.

CHAIRMAN KONYK: I know, but I mean, like is he terminal or something?

MR. MacGILLIS: Oh, no. He's got some type of flu.

CHAIRMAN KONYK: Okay. So Mr. Sadoff was ill. Do we have a motion for an excused absence? I'm sorry, Nancy?

MS. CARDONE: Yeah. I was going to say that.

CHAIRMAN KONYK: I didn't even notice that. Nancy was also absent for business or she was on a bus. I don't know what you mean. It says "bus".

MS. CARDONE: Being bused out.

CHAIRMAN KONYK: Okay. Mr. Jacobs couldn't be here because he was not reappointed, and Glen resigned. So we do have two absences.

Mr. Sadoff was ill and Nancy was on business, right?

MS. CARDONE: Yes. It was business.

VICE CHAIRMAN BASEHART: She wasn't under the bus. All right.

I'll make a motion that both absences be considered excused absences.

CHAIRMAN KONYK: Okay. Do we have a second?

MR. PUZZITIELLO: Second.

CHAIRMAN KONYK: Second by Mr. Puzzitiello. All those in favor?

BOARD: Aye.

CHAIRMAN KONYK: Motion carries unanimously. Do we have a motion to adjourn?

MS. CARDONE: So moved.

MR. PUZZITIELLO: Second.

CHAIRMAN KONYK: Motion by Ms. Cardone, second by Mr. Puzzitiello. Any objections?

(No response.)

MR. MacGILLIS: We're working on the annual workshop. Whether or not -- I think we have a heavy agenda next month, we were going to do it next month, so maybe we'll see if we can pull out stuff on the consent agenda.

CHAIRMAN KONYK: Okay.

(Whereupon, the meeting was adjourned at 10:10 a.m.)

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C E R T I F I C A T E

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 41, 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 13th day of March, 2002.

Sophie M. Springer, Notary Public.