

PALM BEACH COUNTY
BOARD OF ADJUSTMENT

Thursday, July 18, 2002
9:00 a.m - 10:00 a.m.
100 South Australian Avenue
West Palm Beach, Florida

Reporting:
Rhonda L. Buxbaum
Notary Public

ATTENDEES

Chelle Konyk, Chairman
Robert E. Basehart, Vice Chairman
Mr. Bart Cunningham
Ms. Nancy Cardone
Mr. Joseph Jacobs
Mr. William Sadoff
Mr. Stanley Misroch, Alternate

David Cuffe, Engineer
Amy Petrick, Asst. County Attorney
Alan Seaman, Senior Planner, Zoning
Miradieu Aubourg, Planner 1, Zoning
Damon Kolb, Planner II, Zoning
Juanita James, Zoning Technician
Michelle Bailey, secretary

I N D E X

Petition	Page
BA 2002-011	5
BA/BATE 2002-030	8
BA 2002-038	12
BA 2002-039	15
BA 2002-040	17
BA 2002-041	22
SD-108	31
CERTIFICATE OF REPORTER	40

P R O C E E D I N G S

MS. KONYK: Okay. I'm going to go ahead and call the meeting to order. If we have a problem with someone's arrival, we'll re-order that if necessary.

I'd like to welcome everybody to the July 18th, 2002, Board of Adjustment Meeting, and we will start with the roll call and Declaration of Quorum.

MS. JAMES: Okay. Mr. William Sadoff.

MR. SADOFF: Here.

MS. JAMES: Mr. Raymond Puzzitiello; Mr. Bart Cunningham; Ms. Chelle Konyk.

CHAIRMAN KONYK: Here.

MS. JAMES: Mr. Robert Basehart; Ms. Nancy Cardone.

MS. CARDONE: Here.

MS. JAMES: Mr. Joseph Jacobs.

MR. JACOBS: Here.

MS. JAMES: Mr. Stanley Misroch.

CHAIRMAN KONYK: We have before me a proof of publication to show that this meeting was noticed on June 30, 2002. I'd like the record to reflect that.

Next item on the agenda is remarks of the Chair.

For those of you who are not familiar with how the Board conducts its business, the meeting is divided into two parts: the consent and the regular agenda.

Items on the consent agenda are items that have been recommended for approval by Staff, either with or without conditions. The applicant agrees with those conditions. There's no opposition from the public and no board member feels this item warrants a full hearing.

If one of those conditions arise, where the applicant doesn't agree with the condition, the Board member feels it warrants a hearing or a member from the public objects, we will pull that item from the consent agenda, and it will be re-ordered to the regular agenda.

Items on the regular agenda are items that have been recommended for approval by Staff, either with or without conditions. The applicant agrees with the conditions. There is no opposition from the public, and no board member feels the items warrants a full hearing.

If your item is on the regular agenda, that is heard after the consent agenda has been adopted.

The item will be introduced by the Staff; the applicant will have an opportunity to give their presentation -- well, hear Staff's presentation. And at that point, we'll hear from the public. After the public's portion of the hearing is closed, we will hear from the board members and vote on the item.

Let the record reflect that Mr. Basehart has joined us.
(Thereupon, Mr. Basehart entered the room)

CHAIRMAN KONYK: The next item on the agenda is the approval of the minutes of the June meeting -- June 20th. Everybody received a copy of those minutes. Does anybody have any corrections or additions?

Seeing none, can we have a motion to approve?

MR. SADOFF: So moved.

CHAIRMAN KONYK: Motion by Mr. Sadoff. Do we have a second?

MS. CARDONE: Second.

CHAIRMAN KONYK: Second by Ms. Cardone. All those in favor?

ALL: Aye.

CHAIRMAN KONYK: Motion carries unanimously.
Next item is remarks of the zoning director.

MR. SEAMAN: And there are no remarks.

CHAIRMAN KONYK: No remarks.

Are there any changes or additions to the agenda at all?

MR. SEAMAN: There is one condition that needs to be changed.

CHAIRMAN KONYK: No conditions -- I just want to know if there's any items coming up consent or --

MR. SEAMAN: No.

CHAIRMAN KONYK: Okay. All right. We'll do that when we get to that item, okay.

We have no withdrawn items. We have a postponed item previously postponed June 20th to July 18th -- Michael and Donna Erickson. This one's not by right?

MR. SEAMAN: This is not by right.

CHAIRMAN KONYK: Is the applicant present?

MR. SEAMAN: No, they won't be here.

CHAIRMAN KONYK: Okay.

MR. SEAMAN: Staff is supporting this because we're going to re-advertise and actually change the variance.

CHAIRMAN KONYK: Okay.

MR. BASEHART: Well, then I'll make a motion. Is this 30 days?

MR. SEAMAN: Yeah, 30 days.

MR. BASEHART: Make a motion we postpone BA 2002-035 until our August meeting.

CHAIRMAN KONYK: We have a motion by Mr. Basehart.

MS. CARDONE: Second.

CHAIRMAN KONYK: Second by Ms. Cardone. Any objection?

All those in favor?

ALL: Aye.

CHAIRMAN KONYK: Motion carries unanimously.

Next item is the first item on the consent. It's BA 2002-011 -- Kim Juran, agent for Trump International Golf Course, to allow an existing ficus hedge to exceed the maximum height. Is the applicant present?

Would you come forward and give us your name for the record, please?

MR. BLACKMAN: Yes, good morning I'm not Kim Juran. I'm Wes Blackman. I'm director of projects with the Trump organization.

CHAIRMAN KONYK: Okay. The Staff has recommended three conditions. Do you understand and agree with those conditions?

MR. BLACKMAN: Yes, we do.

CHAIRMAN KONYK: Okay. Are there any letters?

MR. SEAMAN: There are two letters, and they are in support and we also have a consent for Mr. Wes Blackman to represent them.

CHAIRMAN KONYK: Okay. Is there any member of the public to speak on this item?

Is there any member of the Board that feels this item warrants a full hearing?

Seeing none, this item will remain on the consent.

MR. BLACKMAN: Thank you.

STAFF RECOMMENDATIONS

Approved 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 STRUCTURE, THAT NOT APPLICABLE TO OTHER PARCELS OF LAND, STRUCTURES OR BUILDINGS IN THE SAME DISTRICT:

YES. Special circumstances and conditions **do exist** that are peculiar to this parcel of land that are not applicable to other parcels within the same zoning district. The golf club has been open for several years and measures must be taken to protect pedestrians and motorists from errant golf balls that travel over the existing 12-foot hedge and into the adjacent streets. The applicant is concerned about liability associated with the certainty. The higher hedge is aesthetically pleasing and the desired choice over high nets when considering a means to prevent wandering golf balls. The County code, however, restricts the height of this type of hedge to 12 feet. The applicant is requesting a variance that will allow the existing 12-foot hedge to grow and eventually be maintained at a maximum height of 22 feet.

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

NO. The variance request **is not** self-created. The property owner may install a protective fencing or netting up to 30 feet but has, however, chosen to request a variance to allow an increase in the height of the existing landscape buffer ficus hedge from 12 feet to 22 feet; a variance of 10 feet. The higher hedge is aesthetically pleasing and the desired choice over high nets when considering a means to prevent wandering golf balls. The County code, however, restricts the height of this type of hedge to 12 feet. The applicant is requesting a variance that will allow the existing 12-foot hedge to grow and eventually be maintained at a maximum height of 22 feet.

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 of the 10-foot increase in hedge height from 12 foot to 22 foot along Summit, Kirk, and Congress Roads **will not** grant any special privilege denied by the Code. The code requires ficus, when used as a hedge, not to exceed 12 feet in height for reasons of maintenance and aesthetics as well as safety and welfare of the residents of Palm Beach County. The intent of the code is to ensure aesthetics and safety to residents of Palm Beach County. The height increase will not compromise the intent, since the facility receives quality maintenance year round. The higher ficus hedge will further protect the welfare and safety of passing residents, pedestrians or autos by preventing errant golf balls from leaving the site. Higher trees, in addition, would be more pleasing to the eye than the use of vertical netting on poles to catch balls. Granting the increased tree height would have a positive visual impact through landscaping that helps to harmonize and enhance the natural

and built environment.

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

YES. An enforcement of the literal intent of the ULDC (ficus hedge) would place a significant aesthetic hardship on the applicant. The applicant is requesting a variance to allow him to increase the height of an existing hedge in an existing landscape buffer in lieu of installing a 30-foot protective fence or netting to capture errant golf balls. The increase in the height of the ficus by 10 feet is visually more desirable than a draped netting or fencing and is, therefore, supported by staff.

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

YES. This **is** a minimum variance that will ensure a reasonable use of the existing ficus hedge in lieu of a less attractive protective fence or netting for errant golf balls, as well as meet the general intent of the ULDC. The subject property's proximity to motorists, pedestrians, and bicyclists does warrant a protective barrier of some kind for airborne balls and the existing ficus hedge and its height increase would make a suitable and more desirable barrier than netting or fencing.

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

YES. Granting the variance to allow the hedge to increase in height from 12 feet to 22 feet in a sheared and neatly clipped fashion (in lieu of possibly constructing a 30-foot protective fence or net) **will meet** the goals and objectives for encouraging innovative and cost-efficient approach to design, installation, and maintenance of landscaping.

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

NO. Granting of the 10-foot increase in hedge height from 12 foot to 22 foot along Summit, Kirk, and Congress Roads **will not** be injurious or detrimental to the surrounding area. The Code requires ficus, when used as a hedge, not to exceed 12 feet in height for reasons of maintenance and aesthetics, as well as safety and welfare of the residents of Palm Beach County. The height increase will not compromise the intent of the code, since the facility receives quality maintenance year round. The higher ficus hedge will further protect the welfare and safety of passing residents, pedestrians or autos by preventing errant golf balls from leaving the site (see attached letter from Timothy J. Coolican PGA, CMAA). Higher trees, in addition, would be more pleasing to the eye than the use of vertical netting on poles to catch balls. Granting the increased tree height would have a positive visual impact through landscaping that helps to harmonize and enhance the natural and built environment.

ENGINEERING COMMENT(S)

No comments.

ZONING CONDITIONS

1. By November 18, 2002, the applicant shall submit a revised landscape plan to Zoning staff denoting the ficus hedge may not exceed a maximum height of 22 feet. **(DATE: MONITORING LANDSCAPE).**
2. By November 18, 2002, the applicant shall submit a revised site plan to DRC reflecting that the ficus hedge may not exceed a maximum height of 22 feet; and that the hedge shall be kept trimmed/clipped in a formal-fashion displaying flourishing foliage from ground to top of hedge. **(DATE: MONITORING LANDSCAPE DRC).**
3. The ficus hedge shall not exceed a maximum height of 22 feet; and shall be kept trimmed/clipped in a formal-fashion displaying flourishing foliage from ground to top of hedge. **(ONGOING LANDSCAPE).**

CHAIRMAN KONYK: Next item on consent is BA 2002-030.

MR. SEAMAN: It's a Bate and a B of A.

CHAIRMAN KONYK: I can't see that because of the staples so hold on -- B of A/B-A-T-E 2002-030. Ken Kruger, agent for R.B. Graves & Son, 12-month time extension for Development Order.

Okay. So there's no advertising on the time extension.

MR. SEAMAN: No, but there was for the --

CHAIRMAN KONYK: For the other thing.

MR. SEAMAN: Yeah.

CHAIRMAN KONYK: Is the applicant present?

MR. BASEHART: In reading the staff report, it seems that since the original variance was approved, the plan didn't change but you found another variance.

MR. SEAMAN: There was a variance but it was -- when they reduced the setback for the structure, they should have also reduced the landscape buffer.

CHAIRMAN KONYK: Is this condition a new condition or is this condition one of the previous conditions?

MR. SEAMAN: It's not a previous condition, but it's a condition that was forgotten.

CHAIRMAN KONYK: No, I'm saying the condition. It says, One condition for approval. I realize the variance -- portion of the variance was forgotten but where it says the condition.

MR. SEAMAN: The condition is -- it's a new condition. It says, the previous conditions do apply, however, there's some modification to condition 4 in the Development Order.

CHAIRMAN KONYK: Okay.

MR. BASEHART: Do you know if the applicant finds that an acceptable condition?

MR. SEAMAN: They do. I talked to them last night.

MR. BASEHART: Okay.

CHAIRMAN KONYK: Well, okay. Does any member of the

public wish to speak against this item?

Are there any letters?

MR. SEAMAN: There are no letters.

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

Seeing none, BA/BATE 2002-030 will remain on the consent.

STAFF RECOMMENDATIONS

Approved 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 STRUCTURE, THAT NOT APPLICABLE TO OTHER PARCELS OF LAND, STRUCTURES OR BUILDINGS IN THE SAME DISTRICT:

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

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

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

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

Therefore, the granting of the variance, is not self-created and is more a result of the lot size and redevelopment of this existing use.

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

NO. The granting of this variance **will not confer** any special privilege on the applicant. Staff did recommend the applicant maintain at least a 10-foot wide buffer along Okeechobee Blvd. For two reasons, the original site plan approved in 1984 indicated 10 feet and the current code requires 20 feet. Also, this site is located along a major commercial corridor where the County is trying to ensure some consistency in the landscape appearance from the street. The site supports considerable amount of pavement and vehicular activity that needs to be screened to the greatest extent possible from the street.

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

YES. The applicant has limited the variance necessary to allow for the redevelopment of this existing uses. The lot size is .82, which is less than the 1 acre required for the CG zoning district. However, as the result of Okeechobee Blvd. widening over the years, the property owner has dedicated land for this cause. The site layout is typical to other gas stations being redeveloped in PBC. Many of the older service stations constructed in the 1980's are now currently outdated and do not meet industry standards or user needs. In order to maintain a franchise, the owner is required to comply with industry upgrades in order to continue to utilize the company name. Also, users now expect a wider range of goods when they get gas and visit the convenience store. Therefore, the service station part of the older gas stations have been eliminated making way for larger C-stores.

The applicant is requesting an additional variance that staff inadvertently did not include in the BOFA 2001-050 application. The variance will support the best use of this property and encourage the redevelopment. It is the County's goal to encourage property owners to invest money in the properties to bring them up to current code. This redevelopment encourages other property owners in the area to re-invest in their properties so everyone can benefit from this project.

5. THE APPROVAL OF VARIANCE IS THE MINIMUM VARIANCE THAT WILL

ALLOW A REASONABLE USE OF THE PARCEL OF LAND, BUILDING, OR STRUCTURE:

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

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

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

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

NO. Granting the variance **will not be injurious** to the surrounding area. In fact, the redevelopment of this site will benefit the surrounding community. The improvements and investment by the owner in this property will benefit the County, other commercial properties adjacent to it, as well as future users of the site. The improvement will be to provide a modern convenience store, improve vehicular circulation, queuing, parking, loading, landscaping, and signage.

ENGINEERING COMMENT

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

ZONING CONDITIONS

1. All previous BA 2001-050 conditions approved by the Board of Adjustment on June 21, 2001, shall remain in effect with the exception of the Development Order and Condition #4 which have been amended to read:

The development order for this particular variance shall lapse on June 21, 2002, 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.

Shall be amended to read:

The development order for this particular variance shall lapse on June 21, 2003.

Condition #4: By April 21, 2002, the applicant shall obtain a building permit for the 2,560 sq/ft convenience store in order to vest the variance subject to BA 2001-050.

Shall be amended to read:

Condition #4: By April 21, 2003, the applicant shall obtain a building permit for the 2,560 sq/ft convenience store in order to vest the variance subject to BA 2001-050.

CHAIRMAN KONYK: Next item on consent is BA 2002-038, Interstate Signcrafters, to allow a point of purchase sign for Washington Mutual. Is the applicant present?

MS. GLASKASKER: I'm Kim Glaskasker (ph.) with Ruden, McClosky. We're here on behalf of Washington Mutual.

CHAIRMAN KONYK: Okay. The Staff has recommended three conditions. Do you understand and agree with those conditions?

MS. GLASKASKER: We do.

CHAIRMAN KONYK: Is there any member of the public to speak against this item?

Are there any letters?

MR. SEAMAN: One letter for clarification.

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

Seeing none, BA 2002-038 will remain on consent.

STAFF RECOMMENDATIONS

Approved 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 STRUCTURE, THAT NOT APPLICABLE TO OTHER PARCELS OF LAND, STRUCTURES OR BUILDINGS IN THE SAME DISTRICT:

YES. The applicant is requesting this variance in order to allow an existing Point of Purchase sign to encroach in the required front setback along with

west property line. The subject parcel #2 supports a 5,000 square foot one-story building (Washington Mutual Bank). The lot is surrounded by commercial uses to the north and west, and residential zoning district to the south and east. The applicant is proposing to utilize an existing unused platform on site to relocate the existing sign currently in the right-of-way. The new location will encroach 3.62' in the 5' required by Code. The applicant states that existing trees make visibility impossible from other locations.

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

NO. The applicant applied for and was granted a sign permit in 2000 (B00015763). However, during the installation, the sign was located within the right-of-way (Jog Road) along the west property line. The applicant is requesting a variance in order to relocate the existing sign out of the right-of-way upon an existing platform inside the property line. The new location will conform to County regulations with the exceptions to setback. The existing unused sign platform was originally used for a previous Point of Purchase sign. However, with the widening of Jog Road, the sign platform no longer met the 5' requirement setback. Since no previous sign permit could be located through records to vest the sign platform, the only recourse was to request a variance that would bring the old sign platform into compliance with the Unified Land Development Code (ULDC).

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. The applicant is requesting the right-of-way sign setback variances in order to place the Point of Purchase signs in the existing location for visibility to passing vehicles. The existing sign is currently located into the right-of-way and in code violation (C000801009). Other locations would limit visibility further since vegetation already limits visibility from the streets. By granting the variance, this will allow the subject site to promote its business to the same extent as the adjacent businesses in the shopping center do.

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

YES. The Unified Land Development Code requires that the Point of Purchase sign by setback 5' from the existing right-of-way. The applicant states that due to existing foliage as well as utility generator the visibility of the bank is limited. The applicant intends to utilize an existing platform inside the property line with no visibility obstruction in order to promote the business. Visibility from right-of-way and customers is very important to the property owner.

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

YES. The approval of the variance is the minimum variance that will allow a

reasonable use of the parcel of land, building, or structure. Allowing the applicant to relocate the existing sign and utilize the existing platform on site is the minimum variance that would allow a Point of Purchase sign to be placed directly adjacent to the west property line. The proposed location of the 100 square feet sign will not be hiding by any vegetation or other structures on the lot.

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

The intent of the setback is to ensure that the sign is setback a minimum of 5' from the established base building line. The 5' setback is intended to allow the sign to fall on the property and not on the sidewalk or street. The applicant is proposing to relocate the existing sign in code violation from the right-of-way. In addition, the request is consistent with the intent of the ULDC since no residential area will be impacted by the approval of the variance.

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 area involved or otherwise detrimental to the public welfare. The proposed variance will allow the existing sign to be relocated out of the right-of-way and remain visible to passing vehicles.

ENGINEERING COMMENT

The requirement that the Base Building line for the above-described property be 40 feet beyond the existing right-of-way line of the subject street is hereby waived.

The above waiver is contingent upon the Base Building Line being established at the existing east right-of-way line, being also the west property line of the above-described parcel as platted.

ZONING CONDITIONS

1. The development order for this particular variance shall lapse on July 18, 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)**
2. By September 19, 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 January 20, 2003, the applicant shall amend the site plan (Pet: 1986-008) to reflect the location of the Point of Purchase sign approved by the Board of Adjustment (BA2002-038) **(DATE: MONITORING -ZONING).**

CHAIRMAN KONYK: Next item on consent is BA 2002-039, Michael and Robin Barkes, owners, to allow a proposed swimming pool to encroach into the required side and rear setback.

Is the applicant present?

Would you come forward and give us your name for the record?

MS. BARKES: My name is Robin Barkes.

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

MS. BARKES: Yes.

CHAIRMAN KONYK: Okay. Any member of the public to speak against this item? Any letters?

MR. SEAMAN: There's one letter in opposition, and their fear is there will be noise, and it will lower their property value.

CHAIRMAN KONYK: Okay. Are you a noisy family?

MS. BARKES: I have two boys but, no.

MR. BASEHART: Do they make any more noise in the pool than they would otherwise?

MS. BARKES: No.

CHAIRMAN KONYK: Any member of the board feels this item warrants a full hearing?

Seeing none, this item BA 2002-039 will remain on consent.

STAFF RECOMMENDATIONS

Approved 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 STRUCTURE, THAT NOT APPLICABLE TO OTHER PARCELS OF LAND, STRUCTURES OR BUILDINGS IN THE SAME DISTRICT:

YES. There are **unique circumstances** surrounding this lot that warrant consideration. The subject lot is a conforming lot that meets all required RS setbacks. The dwelling under construction forms an open air courtyard on the south side of the SFD. The home design limits placement of a swimming pool, a typical Florida amenity. In order to meet required setbacks, the property owner would have to construct the swimming pool next to the SFD under construction, or install a pool significantly smaller than typical (15 X 30). The application has requested that the courtyard be surrounded by a 6 foot wall that will insure privacy and safety for the subject lot and adjacent property owners. In addition, the rear property line borders a landscape buffer that has an existing 6' foot wall and existing hedge over 8' foot tall.

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

NO. The courtyard home under construction utilizes RS setbacks, however, the design style places emphasis on a side-yard Acourtyard@, rather than a more traditional SFD Abackyard.@ The SFD rear yard setback of 15 feet does not leave room for a pool after applying the required 10.5 foot required setback to the waters-edge of the pool. The applicant would like to maintain a deck of at least 3 feet between the SFD and proposed swimming pool to allow pedestrian movement. In addition, the SFD has several sets of doors

that open onto the courtyard that will open into the swimming pool if the required setbacks are applied.

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

NO. The ULDC permits swimming pools as an accessory use to a SFD. The applicant is unable to accommodate the required rear and side setbacks of 10.5 feet due to the existing layout of the SFD. The applicant will meet the intent of the ULDC in preserving privacy and safe access to the pool area. The rear property line is adjacent to a landscape buffer, and the nearest building is over 50 feet away. The applicant has requested that the courtyard be surrounded by a 6 foot wall that will insure privacy and safety for the subject lot and adjacent property owners.

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

YES. A swimming pool is an accessory use to a SFD and typical amenity to a Florida home. Denial of the variance will limit the available area for a pool to 10 X 32. In addition, the available space would be immediately adjacent to the SFD. If the pool was constructed in this area, several sets of doors would open into the swimming pool. The applicant would also like to insure adequate pedestrian access to the pool area by providing a 3 foot patio around the pool. The applicant has requested that the courtyard be surrounded by a 6 foot wall that will insure privacy and safety for the subject lot and adjacent property owners.

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

YES. The requested variance is the **minimum variance necessary** that will make a swimming pool possible. The applicant has considered several design alternatives, however, the courtyard layout of the SFD limits swimming pool locations. The applicant has reduced the need for a variance by proposing a smaller than typical pool (12' X 28' vs. 15' X 30'). The applicant will meet the intent of the ULDC in preserving privacy and safe access to the pool area. The rear property line is adjacent to a landscape buffer, and the nearest building is over 50 feet away. The applicant has requested that the courtyard be surrounded by a 6 foot wall that will insure privacy and safety for the subject lot and adjacent property owners.

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

YES. The ULDC permits swimming pools as an accessory use to a SFD. The intent of the pool setback provision is to insure privacy for adjacent property owners and safe access to the pool on the subject lot. The

applicant will meet the intent of the ULDC through proposed improvements on site. The applicant has requested that the courtyard be surrounded by a 6 foot wall that will insure privacy and safety for the subject lot and adjacent property owners. The rear yard is screened from the neighboring parcel by an existing wall and 8 foot hedge.

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

NO. A swimming pool is an accessory use in the RS zoning district and a typical amenity of a Florida home. Granting the requested variance **will not be injurious** to the surrounding area. The subject lot borders a landscape buffer that separates the subject lot from the adjacent condominiums over 50 feet away. The adjacent buffer supports an existing hedge over 8 feet in height. The applicant has requested that the courtyard be surrounded by a 6 foot wall that will insure privacy and safety for the subject lot and adjacent property owners.

ENGINEERING COMMENT

Note that the proposed paver block pool deck encroaches in the 10 feet drainage easement centered on the south property line of the subject lot. The deck must be constructed and graded at an elevation consistent with the side-lot swale grading along the property line so as not to divert rear yard runoff into the abutting Lot 24 to the south (ENG).

ZONING CONDITIONS

1. The development order for this particular variance shall lapse on July 18, 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)**
2. By October 20, 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)**
3. By January 17, 2003, the applicant shall obtain a building permit for the proposed swimming pool in order to vest the variance approved pursuant BA 2002-039. **(DATE: MONITORING-BLDG PERMIT).**
4. This variance request is only for the rear and side interior setback for the proposed swimming pool. Any additional improvements must meet required setbacks. **(ONGOING).**

CHAIRMAN KONYK: Next item on consent is BA 2002-040, Land Design South, agent for Piper-s Glen to allow vehicular access to commercial facilities from an arterial or collector road.

Name for the record, sir.

MR. LALONIK: Good morning, Joe Lalonik, from Land Design South.

CHAIRMAN KONYK: Staff has recommended two conditions.

Do you understand and agree with those conditions?

MR. LALONIK: Actually, the conditions, according to Staff, they were to revise on the date on the 1st to be July 18, 2003.

MR. SEAMAN: Condition number two -- we had prior to July 18th, 2003, but it should read prior to -- I'm sorry. Let me reverse that. It should read, Prior to July 18th, 2003, not January 20, 2003.

CHAIRMAN KONYK: So you're --

MR. LALONIK: We're acceptable with that revised date.

CHAIRMAN KONYK: Okay.

MR. LALONIK: It's just to give us enough time for permitting.

CHAIRMAN KONYK: Okay. Is there any member of the public to speak against this item? Any letters?

MR. SEAMAN: No, five calls for clarification.

CHAIRMAN KONYK: Any member of the board feel this item warrants a full hearing?

Seeing none, BA 2002-040 will remain on consent.

STAFF RECOMMENDATIONS

Approved 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 STRUCTURE, THAT NOT APPLICABLE TO OTHER PARCELS OF LAND, STRUCTURES OR BUILDINGS IN THE SAME DISTRICT:

YES. There **are special conditions** and circumstances that exist on this parcel of land that warrant special consideration when applying the literal interpretation of the Code provision related to access to a commercial pod in a PUD. The Master Plan was approved with only one access point into the commercial pod from Piper's Glen Blvd. The ULDC provision restricting access, frontage, or visibility to an arterial or collector road (Jog Road and Piper's Glen Blvd.) is to limit the users of the commercial pod to residents of this particular PUD. However, the fact the Master Plan has already approved the commercial tract at a major intersection having both visibility and access has eroded the literal intent of this code provision. Also, the fact that one access point is currently approved onto Piper's Glen Blvd., which is a collector road, which is a major east/west road that is traveled by people outside the PUD. If the variance for the additional access point to this commercial pod is not approved, the site will still have visibility, frontage, and access to a major collector road, inconsistent with current regulations, not consistent with the 1980 Master Plan approved.

Therefore, the uniqueness of this parcel of land is the fact it was approved under a prior Zoning ordinance and approved on a Master Plan that is not consistent with the current regulations with respect to these provisions. The applicant is requesting the additional access point to ensure that the final site layout will function properly in terms of vehicular circulation. Due to the configuration of the property and its location on a major intersection having an ingress/egress point onto both Jog Road and Piper's Glen ensures traffic

flow approach, accessing, and traveling the site will be safe and efficient. Having only the one access point that is currently approved onto Piper-s Glen, could result in traffic stacking onto the road as they try to enter and leave the site.

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

NO. The applicant is requesting a variance to allow an access point onto Jog Road from this vacant PUD commercial POD to ensure the overall site design is safe in terms of vehicles approaching the site off both Jog Road and Piper-s Glen Blvd., as well as maneuvering the site parking lot and access aisles. The site will comply with all other required property development regulations. The applicant states that this **is not** a self created circumstance since when the commercial pod was approved by the PBC, Jog Road was not a major road. Furthermore, when the original approval was granted, the commercial parcel met all required property development regulations. With the adoption of new PUD regulations by the county and the fact this parcel was never developed, it must comply with current regulations. By applying the literal interpretation to the PUD commercial pod location criteria (no frontage, access or visibility to an arterial or collector road) to this site, places a burden on the property owner. Although there is currently an approved Site Plan for this site that shows approximately the same square footage and site design, it is approved for only the one access point onto Piper-s Glen Blvd. The applicant went to the Board of County Commission in 1999 to delete a prior BCC condition on the PUD that restricted any access onto Jog Road to the commercial parcel. The BCC had to approve the deletion of this condition, which was required prior to the Board of Adjustment being able to consider the variance request.

Therefore, the applicant is proposing to design a site that will support uses that will service the surrounding community rather than just the PUD. The fact the parcel is located at the intersection of two major streets places design challenges on the applicant on how this site is accessed and designed. There is considerable traffic on both these major streets that needs to be considered when planning the site layout. Only one access to the site off Piper-s Glen Blvd. will increase stacking and traffic at this intersection. By approving a second access point onto Jog Road, the overall traffic flow will be greatly improved. This is an important consideration the developer of the site considered when designing the site and preparing the variance application.

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

NO. Historically, the Board of Adjustment has had to consider other similar variance requests when the conditions were consistent with the request. Both county staff, Board of County Commission, and Board of Adjustment have carefully reviewed other PUD-s that have had commercial tracts that had approved Master Plans showing access onto an arterial or collector road. Special consideration to the variance request was given to whether or not there was already one access point approved onto an arterial or collector street; if there was visibility or frontage onto the major street and the types of

uses being proposed for the property. In this particular situation, there is already frontage, access, and visibility onto Piper-s Glen Blvd.

Therefore, granting of this variance to allow an additional access point onto Jog Road **will not** grant a special privilege to the applicant. If the variance is granted, the applicant will be required to receive DRC certification of the revised site plan. The proposed site plan with the two access points will provide for safer vehicular circulation on-site and improve the flow of traffic at this major intersection by allowing users of the site to enter the site at two points rather than one.

4. A LITERAL INTERPRETATION AND ENFORCEMENT OF THE TERMS AND PROVISIONS OF THIS CODE WILL DEPRIVE 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 seeking an additional access point to this PUD commercial pod to ensure the site will function properly in the future. When a property of this size is located at a major intersection, access to the site is critical in terms of how traffic will flow both off-site and on-site. The applicant states, and staff concurs, the site location currently does not comply with the current ULDC provisions since it has both access visibility and frontage onto a collector road.

Other PUD commercial parcels have been granted additional access point variances under similar circumstances. The Board of Adjustment has recognized the fact that there are a few remaining PUD-s that have approved Master Plans with undeveloped commercial tracts on arterial or collector roads. The literal intent of the current code provisions are intended to apply to PUD-s approved after 1990. This would ensure that the PUD commercial would serve only the needs of the residents of the PUD. However, the Piper-s Glen PUD was approved in the early 1980's with the commercial tract located at Jog Road and Piper-s Glen Blvd. The granting of the variance **would allow** the applicant to design a site plan that addresses the traffic uses that will be associated with this use when developed. The additional access point will improve how users approach, enter, and leave the site in a safe manner.

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

YES. The applicant has designed the site to comply with all current ULDC requirements with the exception of the access criteria. The additional access point will provide for a more efficient design layout and traffic flow. The uses being proposed by the applicant for this site will be utilized by many of the residents of the surrounding residential projects, as well as those users traveling along both Jog Road and Piper-s Glen Blvd. Therefore, the granting of this variance to allow an access point onto Jog Road **is the minimum** variance to ensure the site is planned to address safety for motorists and pedestrians.

6. GRANT OF THE VARIANCE WILL BE CONSISTENT WITH THE PURPOSES, GOALS, OBJECTIVES AND POLICIES OF THE

COMPREHENSIVE PLAN AND THIS CODE:

YES. The Master Plan for Piper-s Glen PUD was approved in 1980 by the Board of County Commission. The Master Plan is consistent with the underlying land use for this area. This residential PUD has been site planned and constructed consistent with the site plan. The commercial tract is currently undeveloped. There is currently an approved Site Plan for the parcel showing only the one access point onto Piper-s Glen Blvd. However, the applicant has consulted with traffic engineers and determined that the site in order to function efficiently in terms of traffic requires an additional access point onto Jog Road. This will accomplish several anticipated problems that will occur if only one access point is allowed from Piper-s Glen Blvd.: possibility of vehicles stacking on Piper-s Glen Blvd., as they travel westbound, as users try to enter and leave this site, congestion at the intersection as users try to enter the site from Piper-s Glen Blvd., and on-site vehicular conflicts.

The general intent of the ULDC provision, the applicant is seeking a variance from, was adopted after this commercial parcel was approved on the Piper-s Glen PUD Master Plan, in the 1980's. The literal intent of this provision should not be applied to this proposed development. In order to clearly comprehend and enforce this provision on this site would not be justified and placed a unique hardship on the applicant. Since the intent to limit the users of the commercial tract to residents of the PUD can no longer be met whether or not the variance is approved, granting this variance will not circumvent the code intent. When the original Master Plan was approved and the commercial pod was located at Jog Road and Piper-s Glen, it encouraged the users of the pod by a user outside the PUD.

Therefore, the intent of the variance process is to recognize that when applying the literal intent of a code provision would place an undue hardship on the applicant and deprive them of certain rights. That is the situation in this case, to deny the variance would still allow the same intensity of the site, same uses, however, would only create possible traffic congestion both off and on-site.

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 area. In fact, the granting of this variance will improve the overall traffic flow both off and on-site. As previously stated under number 6 above, the use and intensity of this site is not an issue. The proposed use of the property for retail is permitted by the ULDC and will require DRC approval of the final site plan. If the variance is approved, the applicant will submit an application to DRC to amend the current site plan, which is generally the same layout as being presented to the Board of Adjustment, without the Jog Road access.

Therefore, granting the variance for the additional access will allow for improved traffic circulation.

ENGINEERING COMMENT

The Engineering Department has no objection to allowing an access

connection for the subject property directly to Jog Road, with the condition that the proposed driveway be limited to right turns only, both into and out of the property.

ZONING CONDITIONS

1. The development order for this particular variance shall lapse on July 18, 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)**
2. Prior to January 20, 2003, the applicant shall obtain a building permit for this site in order to vest the access point variance onto Jog Road. **(DATE: MONITORING- Bldg Permit).**

CHAIRMAN KONYK: So we need a motion for approval for BA 2002-011; BA/BATE 2002-030; BA 2002-038; BA 2002-039; and BA 2002-040.

MR. BASEHART: Madam Chairman, before we do that, I noticed Mr. Kruger walked in. I guess we need to advise him he's been postponed until December.

CHAIRMAN KONYK: Yeah, that will be fine. Would you let him know that? I'll let you deal with that, Bob.

Besides that, let me just ask him -- that's the BA/BATE 2002-030?

MR. BASEHART: Yeah.

CHAIRMAN KONYK: As long as you're here, there is one condition. You understand and agree with that condition?

MR. KRUGER: Yes, I do.

CHAIRMAN KONYK: And your name for the record so that we can get that.

MR. KRUGER: Yes, it's Ken Kruger. And yes, we agree.

CHAIRMAN KONYK: Okay, thank you.

MR. BASEHART: Madam Chairman, I'd like to make a motion that the consent agenda, with the items that you read into the record be approved, subject to the Staff's conditions recommended for each one; and I'd like the record to reflect that the Staff report will form the record of the hearing.

CHAIRMAN KONYK: Okay. We have a motion by Mr. Basehart.

MS. CARDONE: Second.

CHAIRMAN KONYK: Second by Ms. Cardone.

Any discussion? All those in favor?

ALL: Aye.

CHAIRMAN KONYK: Opposed? Motion carries unanimously. You're all free to leave as soon as you get your letter from Juanita. And I think somebody had to sign something, right?

MR. BASEHART: No, he said Wes Blackman had an agent's authorization.

CHAIRMAN KONYK: Oh, he had it.

MR. BASEHART: Yeah.

CHAIRMAN KONYK: Okay. The first item on the regular agenda is BA 2002-041, Kenneth and Julie Pellicciotti, to allow a proposed single family residence to encroach into the required front and side setback.

Is the applicant present? Name for the record.

MR. PELLICCIOTTI: Ken Pellicciotti.

CHAIRMAN KONYK: Okay. We'll let Staff introduce this item, and then we'll hear from you.

MR. KOLB: As the Staff report indicates, there are actually three separate variances on this site. The first two Staff has recommended approval for, which are for the proposed single family dwelling. They are a proposed front setback of 37 feet; a proposed side interior setback of 8 feet.

Staff feels that the requested variances are consistent with the area and consistent with the seven criteria.

The third variance request which is for -- to exceed the maximum 25% distance between property line for accessory building, Staff is recommending denial. We feel that the applicant does not meet the seven criteria.

CHAIRMAN KONYK: So the one in the middle you agree with as well?

MR. KOLB: Yes. The first two -- the front setback and the side interior setback, Staff is recording the variance requests. As you can see from the -- well, the Staff report and the board, the proposed garage elevation -- it's a two-story structure along the rear property line, that is a 30 foot by 65 foot garage. The width of the lot is 100 feet. The 25% distance, of course, that would require 25 feet would be the maximum distance that the Code would allow, and the applicant is seeking 65 feet. The area is characterized by a smaller one-story single family dwelling, and in addition to being out of character with the area, it -- also there is two other alternate design options: One, the applicant could attach the garage to the proposed single family dwelling and with a 39 foot rear setback, or could reduce the size of the garage by 25 foot width and up to 48 feet because of the depth of the lot, the 25% distance would be 48 feet.

So the applicant could reduce the size of the garage to meet the seven criteria.

CHAIRMAN KONYK: Okay. Would you like to make your presentation?

Let us know why you think you should get this variance, or how you've met the seven criteria. Basically, the only way we can operate here is if you can demonstrate to us that you have met the seven criteria. Then we can vote in favor of your variance, and if you can't demonstrate that you have met the seven criteria, then we don't have a choice.

MR. PELLICCIOTTI: I understand. He told me that also in this meeting that we could go with the first two on the house. We can get the house started.

CHAIRMAN KONYK: Would you like to do that separate?

MR. PELLICCIOTTI: Yes, I would.

CHAIRMAN KONYK: Would anybody on the Board have an objection to voting on the first two items of this variance separately, and then hearing -- okay.

Why don't we just go and -- is that okay with Staff?

MR. SEAMAN: Yes.

CHAIRMAN KONYK: Okay. BA 2002-041 -- there is three components to this variance. The first one is 6.5.A and that's the property development regulations: front setback, and the variance of 21.5 feet. The second part is 6.5.A, property development regulations: side interior setback with a variance of 7 feet.

Staff has agreed that these items meet the seven criteria, and if we could have a motion to approve these two items --

MR. BASEHART: Was there anybody from the public --

CHAIRMAN KONYK: Is anybody from the public here to speak on this item? No -- sorry. Good job.

Any letters?

MR. SEAMAN: Yes, there's one letter.

CHAIRMAN KONYK: On these two that you're recommending?

Okay.

MR. SEAMAN: No.

CHAIRMAN KONYK: Just on the third part, okay. So on the two components of this variance that we're polling separately -- there's no letters and there's no opposition from the public.

MR. SEAMAN: Correct.

CHAIRMAN KONYK: Okay. Does any board member have any objection to us making -- going forward? All right. Then let's see if we can do a motion on those.

MR. BASEHART: Madam Chairman, I'd like to make a motion for approval of the variances -- the two variances from section 6.5.A, the front and the side interior setback. Having read the staff report and the owners -- the applicant's justification, I believe the seven criteria have been met.

CHAIRMAN KONYK: Okay. We have a motion by Mr. Basehart. I also would like to let the record reflect that Mr. Misroch has joined us. (Thereupon, Mr. Misroch entered the room)

MR. BASEHART: And that would be with the conditions recommended by Staff.

CHAIRMAN KONYK: Okay.

MR. JACOBS: I'll second that.

CHAIRMAN KONYK: Who seconded it -- Mr. Jacobs?

MR. JACOBS: I did.

CHAIRMAN KONYK: Okay. So we have a motion by Mr. Basehart; second by Mr. Jacobs. All those in favor?

ALL: Aye.

CHAIRMAN KONYK: Opposed?

That portion carries unanimously. So you have received the first two parts of your variance.

MR. PELLICCIOTTI: Okay.

CHAIRMAN KONYK: Now, as far as the third part which is the property development regulations: accessory garage distance between property lines, you are asking for a variance of 40 feet -- why don't you just give us your justification.

MR. PELLICCIOTTI: Realistically, like he explains, I can't give you justification. I would be willing to tie the two buildings together with a pathway, like an 8 foot wide patio there. Between the buildings I wanted to have a pool so air could go through there. We do a lot of baseball with the kids and stuff. So if you -- I could do it and put it onto the back of the building and go 55 feet instead of 65 feet, and still do everything I was going to do, but then I would have no chance for a breezeway. And actually, everyone's talking about the golf course view -- that would give me a golf course view, and I don't really want it anyway.

I'm not really -- I don't think you're going to give it to me, but I would be willing to do the pathway over to it, but like he explained, I don't want to spend anymore time. They wouldn't let me tie the lots together. That took me three months. This is taking me another three months. I'm kind of --

CHAIRMAN KONYK: Ready to build.

MR. PELLICCIOTTI: Yeah, I'm beyond.

CHAIRMAN KONYK: Okay. Alan, is there anything that you can suggest here?

MR. SEAMAN: Should I read this first?

CHAIRMAN KONYK: Yeah.

MR. SEAMAN: There is one letter. It says, I oppose the building of the garage. The owners of the property own an electrical contracting business. I oppose the garage because it is planned to be used as storage for contracting equipment and commercial vehicles. This is a quiet residential area,

and to have employees of this business coming and going would damage the tranquility of the area.

MR. PELLICCIOTTI: Well, that's wrong. I have an electrical business, but I have a shop in Wellington where I base everything out of. I do drive a commercial vehicle to my house. I have a van with -- I live in the Aero Club, and I drive my van there. So that would be the only vehicle that would be there, except my personal vehicle.

CHAIRMAN KONYK: And I'm sure your Association has rules about where you can park that.

MR. PELLICCIOTTI: Very many rules.

CHAIRMAN KONYK: And I'm sure the county has rules about conducting businesses out of your home?

MR. PELLICCIOTTI: Correct. You can have an office but you can't have materials.

CHAIRMAN KONYK: Right.

MR. KOLB: During the pre-application, I mean the applicant expressed that the garage is going to be used for a car collection, not an electrical contracting business.

MR. PELLICCIOTTI: I used to have cars before I had kids. Now, it's to the point where --

CHAIRMAN KONYK: You should have stuck with the cars.

MR. PELLICCIOTTI: No way, no way. I've done well.

The kids are almost gone. I can start having some fun. I've worked pretty hard, so that's the reason for the big garage so I can put like eight or nine cars in there and collect old Chevilles or Novas and have fun.

CHAIRMAN KONYK: I didn't understand what you were saying before. Were you offering to modify your variance?

MR. PELLICCIOTTI: Yes. I offered it to him and he said that by attaching it, it would cause another variance and that would be the 39 foot setback. So that would -- we would go from a 25 foot setback to a 39, so we would need a variance of 14 feet on the back of the garage, and he felt that we shouldn't do that at the time.

MR. KOLB: The problem with attaching it is the applicant stated that he would like to attach it with a breezeway. The building division -- in order for that to be considered part of the primary dwelling, because attachment by a breezeway and having -- it would still be an accessory building, but if it has a continuous footer, and I believe shares the same roof line as the criteria that the zoning division uses, then it would have to meet the same setbacks that the permanent -- the proposed single family dwelling would have to meet which would be the 39 foot rear setback.

With the uses, it still doesn't change the scale of it. You can see in the top left corner of the size of the building and the character of the area, and whether or not it's attached or detached, the applicant really has to decide whether it's going to be an accessory building or whether it's going to be attached to the structure.

MR. BASEHART: So what you're saying is you'd really like to have this big garage, but based on the Code, you can't really justify the variance.

MR. PELLICCIOTTI: No, I can have a big garage. I can attach it to the back of the house and go 55 by like 33, which is the width of the back corner of the house. It would be better for me to be in the back than on the side and out of the way so I could be out there working on cars and, you know, playing around and having fun. It would be better for my whole family, and I would have a breeze coming through so when the kids -- we do baseball tournaments. They could play in the pool, and there would be a breeze through there in the middle of the summer, where if I turned it to the side there would be no breeze. It would just hit that building and then stop. It would be stagnant.

It would just be more comfortable for us, and the people on the west side are like our best friends, and the main reason I'm doing this is for baseball. Our kids play-- they're 11 years old, and they play pretty good ball.

CHAIRMAN KONYK: They're not almost out. You said they were almost out.

MR. PELLICCIOTTI: Let me tell you something. In three years, he won't want nothing to do with me.

CHAIRMAN KONYK: Okay. Is this in a sub-division?

MR. PELLICCIOTTI: No. It's a little private, little dirt road with eight houses on it. The average size of the houses are about probably 1500 -- 1600 square foot. I'm already building a 2900 square foot house, you know, I'm over-building for the neighborhood, but I'm planning on being there till I'm done so -- I mean, I want to have some fun.

MR. SEAMAN: Part of the justification that you're using is the same justification the code said, that you need to meet those setbacks.

MR. PELLICCIOTTI: I understand.

MR. SEAMAN: You've been using it in reverse. The open space and separation is supposed to be between you and your adjacent land owner or structure --

MR. PELLICCIOTTI: There's nobody in the back.

MR. SEAMAN: But in the future there may be.

MR. PELLICCIOTTI: There's a golf course and a big canal, and you got trees all up in my back yard. I don't even own the property in the back. They put some big palm trees back there. I'm sure you have a picture of that. So it's not like you can see anything.

CHAIRMAN KONYK: Who owns the property behind you?

MR. PELLICCIOTTI: I believe it's The Fountains, and I'm not trying to pull anything. I just -- it would be better from me that way than it would be the other way, because of the simple things that I told you. I don't think it's a big deal -- my personal opinion.

CHAIRMAN KONYK: Is that one of the seven criteria?

MR. PELLICCIOTTI: I know. I agree; I agree. I don't believe I'm hurting anything.

MR. BASEHART: But, you know, my own opinion is that the purpose of the limitation in the code, I believe, that you not occupy more than 25% of the width of the lot with an accessory building, is to provide openness and view and breeze for your adjacent property owner, the neighbors. But in this case you're adjacent to a canal, and then a golf course.

So in terms of the criteria that relate to approval of this item and having a negative impact on the character or quality or value of the surrounding property, I don't think that you violate that. You know, the hardest criteria is to decide whether, without the granting of the variance, you would be denied a reasonable use of your property.

MR. PELLICCIOTTI: Well, not really because I'm going to change some parts --

MR. BASEHART: I don't have an answer for that one.

MR. PELLICCIOTTI: Well, like I said, I can change the plans. I already have my plans into here to get started, and I just have to change them. It's the point. I can build this. You've given me the first variance to build the house; I can build that. I can have a 39 foot setback and go 55 feet off the back of the house, and I would lose like 200 and something square feet.

MR. BASEHART: What would be the impact if he -- I mean, it appears that there are other options here. I guess the thing that would suffer the most would be the ability to have a pool. What if the garage were turned sideways - - it's longer than it is wide, and if it were turned sideways then you would be at least

reducing the amount of variance that were necessary in this case, wouldn't you?

MR. KOLB: There probably would not be a need for a variance if it was turned to the side.

MR. PELLICCIOTTI: Well, 5 foot, because then I could only go 25 foot wide.

MR. KOLB: If it was detached and turned to the side, the width requirement would be 25 feet because you'll have a 100-foot wide lot. It's currently planned at a 30 foot width, and the length going north and south would be a maximum of 48.75 or if the 25% of the depth of the lot is 195, so 25% of that is almost 50 feet. So it would have to be 25 by 50 would be the maximum that the accessory garage could be if it was detached.

MR. PELLICCIOTTI: What I could do is on the back of the house which is right here (indicating), the width of this, I can come back 55 feet and turn it that way, and go the distance of the building right here (indicating) which is 31 or 32 feet right here, and- I could 55 and still have my 39 feet back here, and I would be set on my setbacks.

MR. BASEHART: Why don't you do that?

CHAIRMAN KONYK: Why don't you do that?

MR. PELLICCIOTTI: Because I really wanted to go the other way.

CHAIRMAN KONYK: You just told us why you can't.

MR. PELLICCIOTTI: No, no.

CHAIRMAN KONYK: Well, you just gave us an option.

MR. PELLICCIOTTI: I understand. I'm not-- like I said, it's up to you. The whole point is it would be easier for me to enjoy the property.

CHAIRMAN KONYK: Okay. But, unfortunately, you just told us why we can't grant you the variance, because you just showed us there's another option.

MR. PELLICCIOTTI: That's fine. I'm not trying to do anything. I just want to get it done.

CHAIRMAN KONYK: We know that. I know you just want to build your house and have fun.

Don't look at me. I can't make any motions.

MR. PELLICCIOTTI: Because if people are saying they don't want me to build it; I'm still going to build it. That's the whole point. It's just going to cost me more money. That's all.

MR. BASEHART: I don't think anybody's saying they don't want you to build there. You didn't have any objections really from your neighbors.

MR. PELLICCIOTTI: Right.

MR. BASEHART: I'd really like to find a way to grant this variance because I don't think --

CHAIRMAN KONYK: You're making it very difficult.

MR. PELLICCIOTTI: Thank you.

MR. BASEHART: I really -- looking at the site plan and looking at the photographs and knowing what's around there, I really don't see where any harm would come from granting you the variance, you know, but we do have these seven criteria. I'm trying to figure out --

CHAIRMAN KONYK: Would it be a considerable financial burden to turn that building around?

MR. PELLICCIOTTI: It's going to be a few more thousand dollars. I mean, and a little time but I mean, I would rather build it this way.

MR. JACOBS: I tend to agree with Mr. Basehart. I don't see any harm done at all. I mean, with the canal and the golf course, it's certainly not causing any possible harm to any other existing home owners.

MR. SADOFF: I agree.

CHAIRMAN KONYK: Maybe somebody should make a motion and we'll see what happens.

MR. JACOBS: I make a motion to grant the third variance.

CHAIRMAN KONYK: Okay. We have a motion by Mr. Jacobs on BA 2002-041, 6.5.G.4.b to grant the variance.

MR. JACOBS: As proposed.

CHAIRMAN KONYK: By the applicant.

Do we have a second?

MR. SADOFF: Yes, I second it.

CHAIRMAN KONYK: We have a second by Mr. Sadoff.

Do we have any discussion?

MR. BASEHART: Far be it from me to stand in the way.

CHAIRMAN KONYK: Okay. All those in favor?

ALL: Aye.

CHAIRMAN KONYK: Opposed?

Motion carries unanimously.

MR. PELLICCIOTTI: Thank you very much.

CHAIRMAN KONYK: I think you're your own worst enemy.

MR. PELLICCIOTTI: I'm a nice guy --

STAFF RECOMMENDATIONS

Approved 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 STRUCTURE, THAT NOT APPLICABLE TO OTHER PARCELS OF LAND, STRUCTURES OR BUILDINGS IN THE SAME DISTRICT:

SFD Front and side interior setback: **YES.** The subject lot is a **non-conforming AR lot** whose size and location are more consistent with the RS or RTU zoning designation. The non-conforming AR percentage setbacks are more restrictive than setback requirements that would be consistent with the FLU designation. The owner has proposed a one-story SFD due to extensive knee surgery reconstruction, with limit frequent use of stairs, rather than a two story SFD with increased setbacks. The proposed front and side setback will be consistent with the surrounding residences.

Garage to exceed distance between property lines:

NO. The applicant would like to construct a 30' X 65' garage to store a car collection. There are **no unique circumstances** that dictate building placement. The property has several options to reduce or negate the need for a variance. Both the SFD and garage are proposed and can be redesigned to accommodate the car collection.

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

SFD Front and side interior setback: **NO.** The subject lot is a **non-conforming AR lot** whose size and location are more consistent with the RS

or RTU zoning designation. The non-conforming AR percentage setbacks are more restrictive than setback requirements that would be consistent with the FLU designation. The proposed front and side setback will be consistent with the surrounding residences.

Garage to exceed distance between property lines: **YES**. There are **no unique circumstances** that dictate building placement. The property has several options to reduce or negate the need for a variance. Both the SFD and garage are proposed and can be redesigned to accommodate the car collection.

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

SFD Front and side interior setback: **NO**. Granting the requested variance **will not confer** special privilege to the applicant in regards to the front and side interior setback. The requested setbacks are consistent with the surrounding parcels and will be consistent with the FLU designation.

Garage to exceed distance between property lines: **YES**. Granting the requested variance **will confer** special privilege to the applicant, and will not be consistent with the accessory residential structure restrictions in the ULDC. The applicant has several design options that will reduce or negate the need for a variance.

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

SFD Front and side interior setback: **YES**. Denial of the variance **would cause undue hardship** to the owner. The non-conforming AR percentage setbacks are more restrictive than setback requirements that would be consistent with the FLU designation. Denial of the requested variance will force the property owner to redesign a complete set of blueprints for the SFD. The property owner is proposing to utilize front and side interior setbacks that are consistent with the area, and the Comprehensive Plan.

Garage to exceed distance between property lines: **NO**. The property owner **has alternative design options**. The 1950 square foot detached garage is not a typical amenity in the surrounding area. The two story detached garage will be larger than many SFD-s in the area and will occupy more distance between property lines than is typical in any residential zoning district.

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

SFD Front and side interior setback: **YES**. The requested variance is the **minimum variance** necessary. The owner has proposed a one-story SFD due to extensive knee surgery reconstruction, which limits frequent use of

stairs, rather than a two story SFD with increased setbacks. The proposed front and side setbacks will be consistent with the surrounding residences.

Garage to exceed distance between property lines: **NO**. The property owner **has alternative design options**. The 1950 square foot detached garage is not a typical amenity in the surrounding area. The two-story detached garage will be larger than many SFD-s in the area and will occupy more distance between property lines than is typical in any residential zoning district.

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

SFD Front and side interior setback: **YES**. The proposed front and side interior setback variance **is consistent** with the residential setback provisions in the ULDC. The proposed front and side setback will be consistent with the surrounding residences.

Garage to exceed distance between property lines: **NO**. Granting the requested variance to exceed the distance between property lines is **not consistent** with the purposes, goals, or objectives of the ULDC. The two-story detached garage is not compatible with surrounding uses and will occupy 65% of the distance between property lines.

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

SFD Front and side interior setback: **NO**. Granting the requested variance **will not be injurious** to the surrounding area. The proposed SFD setbacks will be consistent with the surrounding parcels and will maintain separation between structures.

Garage to exceed distance between property lines: **YES**. Granting the requested variance **will be injurious** to the surrounding area. The proposed two-story 30' X 65' detached garage will exceed the maximum distance between property lines by 40 feet. The proposed setback of 25 feet will partially block the rear view of a golf course for two adjacent residences. The two-story structure is not consistent with typical SFD-s in the area.

ENGINEERING COMMENT

The requirement that the Base Building Line for the subject property be 30 feet from the centerline of Clendenin Street is hereby waived. Said Base Building Line is hereby established at the existing north property line of the subject lot as platted. **(ENG)**

ZONING CONDITIONS

1. The development order for this particular variance shall lapse on July 18, 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)**

2. By October 20, 2002, the applicant shall provide the BA staff with a revised site plan indicating no garage or a garage that meets all ULDC requirements. **(DATE: MONITORING-ZONING).**
3. By October 20, 2002, the applicant shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a revised Site Plan indicating no garage or a garage that meets all ULDC requirements, simultaneously with the building permit application for the proposed single family dwelling. **(DATE: MONITORING-BLDG PERMIT)**
4. By January 17, 2003, the applicant shall obtain a building permit for the proposed single family dwelling in order to vest the front and side interior setback variance approved pursuant to BA 2002-041. **(DATE: MONITORING-BLDG PERMIT).**

CHAIRMAN KONYK: Okay. Next item on the regular agenda is SD-108, Petition of the Oaks at Boca Raton Venture; requesting a variance from the requirement that vehicular traffic on a local residential street not exceed 1,500 average daily trips.

Is the applicant present? You name for the record.

MR. KILDAY: My name is Karin Kilday. Do you want me to present first?

CHAIRMAN KONYK: Well, we'll just have Staff introduce the item, and we'll let you make a presentation, but I think they're still on the last item.

MR. CUFFE: This is subdivision variance request SD-108. This is a variance request to allow a local residential street of 50 foot width with curb and gutter to exceed the Code established vehicular traffic maximum of 1,500 average daily trips, and allow it to be used for a design maximum traffic volume of 1,716 average daily trips.

The Staff had reviewed this. The Traffic Division, the County Attorney's Office, and Zoning had no comments. The engineering department, though, recommends denial of the variance request based on the applicant's failure to demonstrate conformance with the standards for granting of a variance.

Do you want me to -- do you want to let them --

CHAIRMAN KONYK: Yeah, we're going to hear him, and then you can come back.

Are there any members of the public to speak on this item out of curiosity?

MR. KILDAY: Okay. My name is Karin Kilday. I'm always learning from coming and watching everyone else. Let me tell you, this is no big deal. It's the eighth criteria for a variance.

If I could walk you through why it's no big deal and why we do meet the other seven criteria. I will give you a little history, and let me just start with this first, and then I'll go back backwards. But just so you know what the variance is, is this is the Oaks at Boca Raton project which I'll walk you through.

The variance only concerns this section of internal road within the PUD. Along this road, I highlighted in green are 25 lots that will front on this road, and use this road for an access.

The Code criteria for the two-lane road as indicated is 1500 feet -- 1500 trips per day on local streets which is well, well below the capacity of this street. The actual breakdown, just so you know, on this street and our traffic engineer, Rob Rennebaum, is here, is that this segment where you have the lots on both sides -- the actual number is fifteen hundred and thirty-four so it's just barely tipping over the criteria. The 1700 number, however, is from this cross-street here to the culdesac here, and it affects only the 7 lots in that area.

That being said, let me just give you a quick history. This property is on the north side of Clint Moore Road and it fronts on State Road 7, and it's in the process of adding additional property that will bring it out to Lyons Road on its east side -- this is what's called an AG Reserve PUD, so in order to develop this property, which is considered 40% of the PUD, there's another 60% elsewhere which is going into a preserve area within the AG reserve area.

What it is, however, as you can see it's definitely an end field piece which is Stone Bridge Country Club on the west; this is Horseshoe Acres located on the east. This property is actually developed now is Well Ravage PUD also used in the 60/40. The history on this property and why we ended up needing to come before you on a variance is that it's gone through several permutations over time. The first thing is that the property, when it was originally approved, only ran from here to here (indicating), and because Clint Moore Road was a two-lane road, the sole access to the original PUD was from State Road 7. I bring that up because the previous developer, who is not my client, Kenco Communities, bought this property when it was in a state of failure. These three pods on the north side have been platted. Model homes have been built. The lots were in place.

The staff report mentions that this section, which shows up as a variance, was originally platted as an 80-foot right-of-way, and that is correct, but it was not platted by this applicant. It was platted by a previous applicant who needed the 80 feet because every bit of traffic that entered this project had to come in and out on State Road 7. Subsequently, my clients purchased this property, and they took in the two platted pods on the north and they developed access out onto Clint Moore Road, and in order to do that it was a very long negotiated process. The commissioner whose district it's in, Commissioner Aaronson -- I negotiated with this developer and the shopping center across the street to fund the widening of Clint Moore Road to four lanes, and that funding is in place. This developer's contribution to the funding was 1.18 million dollars, but by allowing this road to be widened, it allowed this project now to have two access points.

This project was approved for 405 units, and what happened was because it had two access points there was no longer a requirement for 80 feet in this section. So the developer proceeding to develop this property and was well along in development platted the 50-foot right-of-way where the old 80-foot right-of-way was, with lots fronting on the north side and with this, which was called Pod C, which was a multi-family project on the south side. It got platted as indicated in your report and meets all the traffic standards. No variance is required.

Recently, the opportunity -- and I'm changing scale on you a little -- the opportunity -- here's the original PUD and the original entrance and exit came out here (indicating). The opportunity came up to buy this 118 acres. Now, this 118 acres is entirely capable of being its own PUD, and again, the 60% had to be set aside so it allowed 300 units on it. In going through the analysis of where the market was, it was decided that it made more sense to take this 118 acres and instead of developing it with its own separate entrance, in which case, I again, wouldn't be here in front of you, to combine with this project and create a better layout and design. In doing that, I need to point out that while this new land entitles the property owner to request another 295 units, the net change in density of this project is 95 units, 200 units are being sunsetted (ph). The reason is is that these are all large single family homes and it was decided at that point in time that this pod which happens to be against it, would be reduced from the original multi-family which was 215 units to single family, which is now 102 units. And in our most recent layouts, because of lot size changes, it looks like it's going to be reduced another 20 units, however, that's not low enough to avoid the variance.

So now we have a single family home; a single family development; we have less units up here because we dropped it by a 100 units, and we've interconnected. Now, the last thing is, even if I had gone ahead and built this here,

the County has a policy of interconnection. They want to see people staying inside the project versus going out on the rims. So I could have built this out as shown; built this as a separate project; when I got to the Board of County Commissioners they would say we want you to interconnect the two, and I'd be right back where we were, when again, I wouldn't need a variance to do it.

The net result is what we have is a project that meets the goals. Now, one final thing is that in the widening of Clint Moore Road an issue came up, and that was that these other projects on Clint Moore Road have no requirements except any drainage from it. So an issue came up as regarding drainage for this road. This developer has now gone back and on top of the money for the road, is accepting most of the drainage, including the county share of drainage, into these new lake areas, and all the drainage on the frontage that is going to be required on Lyons Road to the side.

The net result is that it's a win-win situation for everybody. It accomplishes a great amount of goals; it creates a unified plan, and we're only talking about a very minimal amount of additional traffic here internal to it. Personally, I know the numbers when we run them because we're required to use the adopted numbers, say those trips will be there. I don't think they're ever going to be there. I don't think we're ever going to be over 1500 trips per day. But those are the rules; those are the numbers we use. We're talking about large units -- they tend to be seasonal owned units -- and most of these units are going to have their own recreation, so while we do a recreation area, the use of that is going to be probably far less than other projects where they don't have it.

So going back to the seven things, number one -- or the eight things -- no big deal; and it's not a self-created hardship. As I say, this is an approved project that meets the standards for accomplishing a tremendous benefit, but by adding the additional 95 units, that's causing the slight rise in the traffic on that one little link of road. Thank you.

MR. BASEHART: What do you have to say for yourself, Dave?

MR. CUFFE: Do you want to include number 8? Actually, as far as the history on this, and the one thing that I think needs some clarification, is that right now that 50 foot -- or what is being shown as the subject portion of the street right now is not platted and the lots themselves abutting that section of the street are not currently platted. They're an open area. If you take a look at your -- at the diagram of the staff report, the areas that are shown as C-1, C-2 and D are right now have been -- or deplatted or replatted as open areas that are going to be subject for replatting in the individual lots. So right now along that subject section of the street there are no single family lots actually platted. The developer -- or when this project was originally platted and permitted the majority of that street, or at least the western half of that subject section of the street, was platted and under construction or constructed as an 80-foot street with a temporary culdesac turn-around. In the past six months, though, I believe in January the applicant abandoned that portion of the 80-foot street and some of the other internal streets in order to replatt the properties on the north side of the street and reconfigure the lakes to create the situation that exists today. The proposed easterly extension of this street and the adjacent future residential development areas are currently uncommitted as to a specific development plan other than what the applicant is specifically proposing here.

It is no different from any other parcel from the standpoint or potential for the road to determine a lay-out that would meet -- or a configuration that would meet the code requirements. It's self-created in that the applicant chose to abandon the initially platted 80-foot collector street and to reconfigure the adjacent lakes and development areas by replatting. As far as special privilege, the standards for special privilege is not met and the granting of the variance would allow the applicant to utilize a local street providing direct driveway access for

several lots and minimum pedestrian facilities rather than a non-plan collector street for the primary traffic circulation street through the development. You can note too that the area that that street is the one connector that runs through the development and provides the access for the entire development and provides access to the recreation area down in the southwest corner.

As far as an undue hardship, there really is not a hardship in accordance with the Codes since there's nothing to prevent the applicant -- the applicant from again revising the development layout and again replatting the areas adjacent to the proposed connecting street in order to provide for the required collector. The denial of a variance might preclude the development of a project as specifically proposed by this plan, but the applicant would still have other options for reasonable development of the property.

CHAIRMAN KONYK: May I ask you a question, Mr. Kilday?

MR. KILDAY: Yes.

CHAIRMAN KONYK: On that 80-foot collector road that would then be 50 foot -- is that like the main entrance, though, to the community?

MR. KILDAY: No. The main entrance to the community we now believe, because of the changes, is going to primarily be Clint Moore Road. But we also have a segment here -- we do still have a State Road 7 entrance -- and we still have the 80 feet coming in and serving all these initial pods. So it's only when you get at this point internally then you have it. Likewise down here provided the full right-of-way serving all of these pods.

CHAIRMAN KONYK: Okay. Can I see the picture that you have of the lots on it?

MR. KILDAY: Yeah.

CHAIRMAN KONYK: And the green line -- in that area there where that variance is being requested, is there some way to limit parking on the street in that area, or is street parking not allowed in this community?

MR. KILDAY: It will probably be restricted by the community. I mean, we can agree to restrict it.

CHAIRMAN KONYK: The reason I say that is I happen to live in a community where they got a variance on the main road, because of the trip thing, and it really is not a problem in my community. We never had a problem with too many cars trying to get in and out. But at times, because it is the only entrance in and out of our community, because of cars parked on either side of the road, it causes a congestion problem. Now, we also have some common area there where we have no parking signs, but I often had wished that the developer had made that area a designated, No Parking, area because I think that might have helped alleviate the situation. I don't see the same problem here because I don't see that as being, you know, your main entrance and the only entrance.

MR. KILDAY: Right.

CHAIRMAN KONYK: But I'm just asking if that's a consideration that you could make.

MR. KILDAY: I mean, we would definitely -- I mean, we have never talked about it but we can stipulate that we'll put in our HOA documents a stipulation. In fact these area all oversized lots. They all have parking courts. Most of our units have three garages off these parking courts. So they're going to have a considerable amount of parking on the south, so the need really shouldn't be there given the type of unit being built there.

Can I go back -- just two other things, just in response to the staff report. One is that this will continue to have -- this has the sidewalk on both sides of the street without -- so, you know the question was, Well, you knock down a pedestrian. The difference between the 80 foot road and the 50 foot road is a 4 foot sidewalk versus a 5 foot sidewalk so there's a difference in width, but there will be sidewalks on both sides of the street connecting in with the sidewalks that the

overall project has. So that won't change there.

This, just so that it's clear -- this reduction to 50 feet met all county standards. This 50 foot right-of-way is platted, and it was platted based upon the original property with the multi-family units on the south side. These lots on the north side have clearly been shown on the master plan from day one, so we haven't created something new there. What we have done is we've significantly reduced the overall units here, and we have a few lots now on the south side of the road. We are well along constructing that road because the road itself is a platted road, and based upon that, not knowing that 118 acres was coming -- going to suddenly become available -- we proceeded to construct that road, because we actually have deposits on a few of these lots. But the plat itself is not recorded because I can't record it without the variance, so obviously, I would have --

CHAIRMAN KONYK: Okay.

MR. CUFFE: I really would like to get clarification of what Mr. Kilday feels is actually recorded plat right now because that's at odds with our records; that road -- that street is not platted. It's only part of Pod C-1, C-2, and the northwest portion of Pod D. Those are large open areas.

MR. KILDAY: I'm being told that it's because of this variance the actual recording's been held up, but in fact all the work has been done on it, relying upon the approved Master Plan.

MR. BASEHART: All right. Any other discussion? If not, I'd like to make a motion that Subdivision variance SD-108 be approved. I find that the applicant has met the criteria. I think there are a lot of factors here, not the least of which is cooperation with Pam Beach County to accomplish the widening of Clint Moore Road and the acceptance of drainage for the roadways in the general area, you know, has become a limiting factor in the ability to redesign this area. And I think if you look at the Master Plan, regardless of how you have to work the traffic numbers, and I know that's kind of a like a nuclear formula of it that you guys use. But in reality, if you look at the lay-out of the development, I think the entire eastern portion that's being added is going to, almost without exception, be using the Clint Moore Road drive. Maybe there would be some residual traffic that goes over. Occasionally, they got out onto State Road 7 or, you know, to use the recreation area. And I think the area east of that -- west of that link of road is going to almost exclusively use the State Road 7 entrance, and this is a little connection road that will provide convenience for the residents and give them an alternative, but I don't see it as being heavily traveled, and I don't think that leaving it at a 50-foot right-of-way and leaving it as two lanes is going to cause any hazard or inconvenience to the residents within the development. This is a gated development; isn't it?

MR. KILDAY: Yes, it is.

MR. BASEHART: So you're not going to have a lot of thru-traffic. This is going to be totally an internal thing. I would, though, suggest -- not suggest. I'll make it part of my motion that a restriction be made for the community that not only this 50 foot length but the entire kind of spined roadway; it comes in off of Clint Moore Road, moves into here; then goes out onto State Road 7, be restricted from having any parking on it. Would that be acceptable?

MR. KILDAY: That would be acceptable.

MR. BASEHART: That's my motion.

CHAIRMAN KONYK: We have a motion by Mr. Basehart.

MR. JACOBS: I'll second that.

CHAIRMAN KONYK: Second by Mr. Jacobs.

Any discussion? All those in favor?

ALL: Aye.

CHAIRMAN KONYK: Opposed? Motion carries unanimously.

MR. KILDAY: Thank you.

CHAIRMAN KONYK: The next item on the agenda is the attendance record.

MR. SEAMAN: I need to bring something to the Board's attention.

CHAIRMAN KONYK: Okay.

MR. SEAMAN: If I may.

CHAIRMAN KONYK: Yes, you may.

MR. SEAMAN: On the approval of the accessory garage for 2002-041, in doing so we should have modified the conditions. They don't change the thrust of the variance approval but there are some words that should be taken out of these conditions now.

CHAIRMAN KONYK: What do you want to do?

MR. SEAMAN: Make a --

CHAIRMAN KONYK: He's gone.

MR. SEAMAN: We can make it as a -- she mentioned as a Scribner's error.

MR. BASEHART: Okay. What would the changes be?

MR. SEAMAN: I'll read them off. Condition one stays as it was originally written. Condition two is deleted. Condition three should read, By October 20, 2002, the applicant shall provide the building division with a copy of the Board of Adjustment result letter and site plan, Exhibit 9, simultaneously with the building permit application. Condition four should be modified to read, By January 17, 2003, the applicant shall obtain a building permit for proposed single family dwelling and garage in order to vest the front side, interior setback variance and distance between property lines approved pursuant BA 2002-041.

MS. PETRICK: The problem with the way that it was stated earlier was it was saying that he had to demonstrate that he was not building the garage and, obviously, in this case, the condition of the garage, you're just modifying it to look like the new variance.

CHAIRMAN KONYK: So obviously it's assumed that a variance can't pass without conditions that the Staff imposed as being met, and it's really not contingent upon them agreeing to the conditions anyway, correct?

MS. PETRICK: Right.. There's no substantive change so --

CHAIRMAN KONYK: I mean, even if it was a substantive change, there's still no requirement that they agree with the conditions in order to get the variance.

MS. PETRICK: Right.

MR. BASEHART: Do we need a motion to accept those changes or do we just acknowledge that that was our intent?

MR. SEAMAN: I thought we approve this with the conditions.

CHAIRMAN KONYK: We do. But I'm saying it's not a basis of whether or not the applicant agrees with it. If the applicant doesn't agree with the conditions, we can still impose the conditions and they can choose not to have the variance.

MR. BASEHART: The question is, to make the changes you're suggesting, do we need a motion or not?

MS. PETRICK: You may want to just make a motion acknowledging that this new articulation is the conditions that you intended to have imposed. It's just a housekeeping measure. It's not an absolute requirement.

CHAIRMAN KONYK: Right. And if the applicant has a problem with it, he can bring it back.

MS. PETRICK: Right. But you couldn't have met the

prior ones --

CHAIRMAN KONYK: Right. I understand. So why don't we just -- to make this clean and easy -- make a motion to --

MR. BASEHART: Make a motion we accept the amendments as correction of Scribbner's error and --

CHAIRMAN KONYK: Okay. Mr. Basehart makes a motion to accept the conditions as modified on BA 2002-041. We have a motion. Do we have a second?

MS. CARDONE: Second.

CHAIRMAN KONYK: Second by Ms. Cardone.

Any discussion? The only thing I would say is that we certainly are going to make this applicant aware of this.

MR. SEAMAN: He'll get a revised letter.

CHAIRMAN KONYK: Right.

Any opposition? All those in favor?

ALL: Aye.

CHAIRMAN KONYK: Motion carries unanimously.

STAFF SUMMARY/RECOMMENDATIONS

The County Attorney's Office, Zoning Division, and Traffic Division reviewed this request. They have no comments.

Land Development Division stated the following:

UNIQUENESS:

Standard not met. A portion of the originally approved 164 acre project is currently platted and under construction. This area initially included the western half of the subject connecting street segment, which was originally platted and constructed as an 80 foot wide non-plan collector street. In the past 6 months, however, the applicant abandoned this portion of the 80 foot street, and recorded a replat of the former street and adjacent property to create a single large tract for future replatting into lots, streets, and common areas. This single tract (identified as the combined Pods C-1, C-2, and D on the submitted development plan) has no currently platted connecting street through the subject property. The remaining property, including the proposed easterly extension of this street and adjacent future residential development areas, is currently undeveloped land with no approval of or commitment to a specific development plan, and is no different from other large parcels from the standpoint of potential development layout options.

NOT SELF-CREATED:

Standard not met. The applicant chose to abandon the initially platted 80 foot collector street, and to reconfigure the adjacent land and development areas by replatting. The same applicant is now proposing a development layout with several residential lots having direct access on the subject street segment, constraining the available street width between these lots and the south boundary of the site (i.e., along the north line of adjacent Tract 105"). Since establishment of the development layout for the currently unplatted areas, including street provisions for interconnectivity, lake boundaries, and residential pod delineations are essentially up to the applicant at this stage of design, the conditions cited as justification for the variance are wholly self-created. In addition, the development layout proposed in support of the variance would require revisions to the existing western half of the subject street, currently constructed as an 80 foot wide collector, to reduce it to a 50

foot wide local street.

NO SPECIAL PRIVILEGE:

Standard not met. Granting of the variance would allow the applicant to utilize a local street, providing direct driveway access for several lots and minimal pedestrian facilities, in lieu of a non-plan collector street (with associated expanded pavement width and pedestrian/bicycle paths) for the primary traffic circulation street through the development. In any other project, a non-plan collector street would be required for similar use and traffic volumes.

UNDUE HARDSHIP:

Standard not met. There is nothing to prevent the applicant from again revising the development layout and again replatting the areas adjacent to the proposed connecting street in order to provide for the required 80 foot wide collector street, or to revise the preliminary development plan for the currently unsubdivided property to reduce the traffic volume on the subject street to no more than 1500 ADT, consistent with a 50 foot local street. Therefore, although denial of the variance request may preclude development of the project as specifically proposed per the submitted plan, the applicant would still have many options for reasonable development of the property.

MINIMUM VARIANCE:

Standard not met. The applicant has the option to reconfigure the proposed development plan so as to eliminate the need for the requested variance altogether.

CODE-S INTENT:

Standard not met. The Code-s intent is to limit the traffic volume on local streets used for direct access to residential lots in order to minimize conflicts created by cars backing out of driveways into the traffic flow. Local streets, with 4 foot sidewalks and 10 foot wide travel lanes, are intended for pedestrian travel and low vehicular volumes and speeds within the immediate areas of individual residential lot development. They are not meant to accommodate the higher volumes of pedestrian, bicycle, and vehicular traffic expected on the sole street connecting residential areas within the development, through the development to its entrances, and to the single common recreation area at the western end of the project as shown on the proposed development master plan submitted with the variance application.

PUBLIC WELFARE:

Standard met. The subject street is to be a private street within a gated community, and will not be incorporated into the County street system for use by the general public.

ENGINEERING DEPARTMENT RECOMMENDATIONS

The Engineering Department recommends denial of the variance request, based on the applicant-s failure to demonstrate conformance with the standards for granting of a variance.

CHAIRMAN KONYK: The next item on the agenda is

the attendance and Mr. Puccitiello was away on business.

MR. BASEHART: He still is.

CHAIRMAN KONYK: And he is, yes. Okay. So we would need a motion to accept his absence as excused.

MS. CARDONE: So moved.

CHAIRMAN KONYK: Ms Cardone makes the motion.

MR. BASEHART: Second.

CHAIRMAN KONYK: Second by Mr. Basehart.

All those in favor?

ALL: Aye.

CHAIRMAN KONYK: Motion carries unanimously.

We are adjourned.

(Thereupon, the board meeting concluded at 10:00 a.m.)

CERTIFICATE

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

I, RHONDA LATHAM, a 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 1
through 39 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 any financial interest in the outcome of this
action.

IN WITNESS WHEREOF, I have hereunto set my hand
and seal this ____ day of August, 2002.

Rhonda Latham
Notary Public

