

PALM BEACH COUNTY
BOARD OF ADJUSTMENT

Thursday, June 20, 2002
9:05 a.m - 10:30 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

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

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P R O C E E D I N G S

VICE CHAIRMAN BASEHART: I'd like to welcome everybody to the June 20th, 2002, Palm Beach County Board of Adjustment Meeting.

Our Chairman is expected but not here yet so we're going to start the meeting. The first item on the agenda is the roll call.

MS. JAMES: Okay. Mr. William Sadoff.

MR. SADOFF: Here.

MS. JAMES: Mr. Raymond Puzzitiello. Mr. Bart Cunningham.

MR. CUNNINGHAM: Here.

MS. JAMES: Ms. Chelle Konyk. Mr. Robert Basehart.

VICE CHAIRMAN BASEHART: Here.

MS. JAMES: Ms. Nancy Cardone.

MS. CARDONE: Here.

MS. JAMES: Mr. Joseph Jacobs. Mr. Stanley Misroch.

VICE CHAIRMAN BASEHART: Okay. We have a quorum. We need four for a quorum.

Second item, just for the record -- we'll accept the proof of publication for the meeting into the record.

Let the record show Mr. Jacobs is now with us.

(Thereupon, Mr. Jacobs entered the room).

VICE CHAIRMAN BASEHART: Do we have a motion to accept the proof into the record?

MR. SADOFF: So moved.

MR. CUNNINGHAM: Second.

VICE CHAIRMAN BASEHART: The motion is second. All those in favor?

ALL: Aye.

VICE CHAIRMAN BASEHART: Opposed -- okay.

Next item on the agenda is remarks of the Chairman. I guess acting as Chairman I just want to -- for those of you that are not familiar with the operation of the Board, we break the agenda into two parts: The consent agenda and the regular agenda. We don't, at this point, have any items for the regular agenda today.

Consent items are --

MR. SEAMAN: One item.

VICE CHAIRMAN BASEHART: Oh, we have one item, okay.

Consent items are items where the staff has recommended approval and where there's been no indication of opposition from the public, and where the petitioner has agreed with the Staff that any recommended conditions of approval are acceptable.

If no one is here to speak in opposition to the application at the meeting, those items will remain on consent. Once we go through the consent agenda, we will vote on the entire consent agenda as one item. The record for the hearing will be the staff report. We will ask each petitioner to confirm that they agree with the conditions before we vote.

The regular items are items where the Staff is either recommending denial, denial in part, or there's been indication of opposition from the public. In such cases, the item has to be fully heard. The applicant needs to make a presentation documenting and justifying the variance, and Staff will make a report. There will be questions and answers of the input from the public, and then we'll vote individually on those items.

And now that the Chairman is here, I'll turn the meeting over to

the Chairperson.

CHAIRMAN KONYK: Thank you. The next item on the agenda is the approval of the minutes.

Everyone receive a copy of the minutes? Does anybody have any corrections or additions?

Seeing none, can I have a motion for approval?

MR. SADOFF: So moved.

MR. CUNNINGHAM: Second.

CHAIRMAN KONYK: Mr. Sadoff?

MR. SADOFF: Yeah --

CHAIRMAN KONYK: Okay, I wasn't looking. And Mr. Cunningham seconded.

All those in favor?

ALL: Aye.

CHAIRMAN KONYK: Motion carries unanimously.

The next item is in regards to the zoning director --

MR. SEAMAN: Just a quick update on the at large board member. Commissioner McCarty has presented Donald Mathis. Commissioner Roberts has presented no candidate -- or has chosen not to present a candidate. And while we've asked Sandra Lee Smith, who's kind of our advisor, how to work this out -- or what our next step is -- and she will be getting back to us shortly.

So right now we have one person -- Donald Mathis, who is up for running.

CHAIRMAN KONYK: What's his occupation?

MR. SEAMAN: He's a -- public relations.

CHAIRMAN KONYK: Are there any changes to the agenda?

MR. SEAMAN: There are some corrections.

CHAIRMAN KONYK: Okay.

MR. SEAMAN: To one of the consent items on page seven we need to delete condition number four.

CHAIRMAN KONYK: Which item is this?

MR. SEAMAN: It is B of A 2002-028. It's on -- the condition that we're deleting is on page seven, and it is condition number four.

CHAIRMAN KONYK: Okay. Anything else?

MR. SEAMAN: And we have on B of A 2002-029 on page sixteen we have --

CHAIRMAN KONYK: We're not going to look them up. Just tell us what they are. We'll look at them afterwards.

MR. SEAMAN: Okay. Condition number two should read: By December 20, 2002 -- not 2001. And page twenty-seven, we want to add, condition number four, which reads --

CHAIRMAN KONYK: B of A 2002-031 you mean?

MR. SEAMAN: Yeah, let's back off of that one. That's a possibility, so that's not necessarily true yet. And that's all the corrections.

CHAIRMAN KONYK: Okay. Normally we do the corrections on the conditions when we announce the item. I just meant if there was any withdrawal or postponement.

MR. SEAMAN: Okay. (Reviewing) Help me out.

CHAIRMAN KONYK: Seeing no changes in the agenda, we'll proceed to the agenda. We have no withdrawn items. We have one postponed item -- B of A 2002-035. Is this by right?

MR. SEAMAN: Yes.

CHAIRMAN KONYK: So we do not need a motion for this?

MR. SEAMAN: No.

CHAIRMAN KONYK: So this item will be postponed -- does it say

when?

MR. SEAMAN: It will be July --

CHAIRMAN KONYK: The July meeting?

MR. SEAMAN: Juanita, do you have a date for me?

MS. JAMES: July 18th.

MR. SEAMAN: July 18th.

CHAIRMAN KONYK: July what?

MS. JAMES: 18th.

CHAIRMAN KONYK: July 18th. So B of A 2002-035 will be postponed until the July 18th, meeting.

The next part of the agenda to consent -- we have B of A 2002-028 -- the deletion of condition four which is Lawson, Noble & Webb, agent for Valencia Isles Homeowner's Association to allow proposed wall to exceed the maximum height requirement.

Is the agent present?

MR. RATTERY: For the builder.

CHAIRMAN KONYK: Your name for the record.

MR. RATTERY: Good morning, for the record, Kevin Rattery, with GL Homes, and we do agree to the three conditions.

CHAIRMAN KONYK: Okay. Were there any letters on that?

MR. SEAMAN: There were six letters, and they were all just basically clarification.

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

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

Seeing none, this item 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:

YES. The site **has unique circumstances** and conditions that need to be considered when applying the literal intent of the fences and walls provisions of the ULDC. The developer of Valencia Isles PUD, G.L. Homes, has received complaints from neighboring residents concerning the noise levels of the clubhouse air conditioning units located on the north side of the building. Although the air conditioning units do not exceed the decibel levels in the ULDC, G.L. Homes attempted to resolve the issue. G.L. Homes constructed a 6 foot masonry wall and installed landscaping to reduce the noise levels generated by the air conditioning units. In spite of these improvements, the surrounding residents have complained that the noise levels are still intrusive. After hiring an architectural acoustic consultant, it was determined that noise level could be reduced with a 12-foot sound barrier wall or 50 feet of dense landscaping. The site cannot accommodate

50 feet of additional landscaping since it borders an existing lake. The variance request for a 12-foot wall will allow the applicant to attempt to satisfy the complaints of surrounding residents.

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

NO. The special circumstances are due to the existing site conditions and limitations. At the request of residents, G.L. Homes constructed a 6 foot masonry wall and installed landscaping to reduce the noise levels of the air conditioning units that serve the clubhouse. After continued complaints, G.L. Homes hired an architectural acoustic consultant to develop solutions to residents' complaints. Based on the research of Siebein Associates, the noise levels can be reduced with a 12-foot sound barrier wall or 50 feet of dense landscaping. The site cannot accommodate additional landscaping since it borders an existing lake. The variance request for a 12-foot wall will allow the applicant to satisfy the complaints of surrounding residents.

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. Granting the variance **will not confer** a special privilege to the applicant. The Valencia Isles Homeowners Association has filed the variance in order to reduce the noise intrusion of air conditioning units that serve the clubhouse. The unique shape of the site and location of the air conditioning units has limited the developer in mitigating the noise levels of the units. The developer has attempted to reduce the noise levels with a 6 foot wall and landscaping to no avail. The developer has agreed to install a 12 foot wall if the proposed variance is approved.

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 Valencia Isles Homeowners Association has filed the variance in order to reduce the noise intrusion of air conditioning units that serve the clubhouse. The unique configuration of the subject lot precludes the developer or applicant from installing any other noise reducing barriers. The site cannot accommodate additional landscaping since it borders an existing lake. Denial of the variance request would deprive the neighboring residents a reasonable use of their land without noise intrusion.

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

YES. Granting the requested variance to allow a 12 foot wall is **the minimum variance** that will reduce the noise levels of the air conditioning units based on research by Siebein Associates, an architectural acoustic consultant. The developer has considered other options to reduce noise levels, however the existing site layout limits design options. The proposed

12 foot wall will allow the applicant to satisfy the complaints of surrounding residents.

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

YES. One of the primary goals and objectives of the Plan and ULDC is to permit the reasonable use of land by residents, including protection from noise intrusions. Although the noise levels of the subject air conditioning units comply with County standards, the homeowner's association and developer would like to address complaints and concerns of surrounding residents.

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

Granting the requested variance **will not be injurious** to the surrounding area. The variance request is intended to alleviate conditions that are detrimental to the public. The homeowners' association and developer have worked jointly on this project in order to resolve the complaints of the affected residents. The applicant has proposed the variance for a 12 foot wall based on architectural acoustic research by an independent consultant. The Valencia Isles Homeowners Association intent is to meet the needs of its residents. The proposed variance will allow the developer and homeowner's association to meet the needs of the community.

ENGINEERING COMMENT

No comment. (ENG)

ZONING CONDITIONS

1. The development order for this particular variance shall lapse on June 20, 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 December 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 June 20, 2003, the applicant shall complete the 12 foot wall in the same color and finish as the existing clubhouse. **(DATE: MONITORING-BLDG)**
4. By June 20, 2003, the applicant shall install native plant material that completely screens the 12 foot wall from the north, east, and west elevations. **(DATE: MONITORING-LANDSCAPE-BA)**

CHAIRMAN KONYK: Next item on consent is B of A 2002-029 -- Ernest Leon and Maxine Karklins to allow a proposed addition to encroach into the required rear setback.

Is the applicant present? Could you come forward and give us your name, for the record, please?

MR. KARKLINS: Ernest Karklins.

CHAIRMAN KONYK: Staff has recommended three conditions with condition two changed.

Are you familiar with the three conditions?

MR. KARKLINS: Yes, I am.

CHAIRMAN KONYK: Do you agree with the conditions?

MR. KARKLINS: Yes, I do.

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

Any letters?

MR. SEAMAN: Two letters -- just clarification letters.

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

Seeing none, this item 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. This SFD located in Indian Head PUD. The property owner is proposing an addition in the rear yard. There is an existing 6' wood fence along to the rear property line and behind that fence there is also a 6' utility easement and an existing SFD. The applicant intends to enlarge the existing bathroom for their handicapped parents. The proposed bathroom will be larger in order to accommodate electric wheelchair accessibility and a larger bathtub for handicap person. The proposed addition will allow the property owner to maximize the use of the existing bathroom and respond to the need of their parents.

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

NO. The applicant is proposing to construct an approximately 210 sq/ft addition to the rear side of the existing SFD. The applicant has no other design alternatives in order to eliminate the need for the variance. The applicant states in the justification statement that the entire bathroom will be widening including doorway, shower area and add a new tub to accommodate the need of their parents. Granting the 6.8' variance **will have minimal impact** on surrounding property owners.

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 the variance **will not confer** special privileges to the applicant that would be denied by the ULDC. The applicant provided staff with several medical letters to justify the need of the approx. 210 sq/ft addition for Mrs. Beatrice Loonan, the applicant's mother, who is currently treated for numerous health problems, including surgery for replacement of her left hip. Approving the rear setback variance for the proposed addition will provide the extra space requested by the applicant to accommodate their parents' conditions.

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 requesting **the minimum variance** to make a reasonable use of the land. As stated above, the applicant has no other design options in order to reduce the need of the requested variance. The intent of the code will be satisfied since the applicant is proposing 8.2' separation between the rear property line and the proposed addition. The proposed addition will not encroach the 6' utility easement located in the rear yard. There is also a 6' wood fence along the rear property line to mitigate any negative impact associated with the requested variance.

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 is proposing to construct an approx. 210 sq/ft addition to the rear of the SFD. The lot is approx. 80' foot wide by 117 foot deep along with a 10' utility easement in the front and a 6' drainage easement in the north side, a 6' utility easement in the rear, therefore, there are no other design options available to the applicant since it is enlarging the existing bathroom located in the rear part of the SFD. The Home Owners Associations, neighbors to the south, north and east gave their approval for the proposed addition in the rear setback. The existing 6 foot wood fence along the rear property line will screen in part the proposed addition.

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

YES. The intent of the ULDC requirement for rear setbacks is to ensure consistency and uniformity of structures within the neighborhood, to provide the minimum separation between uses and adjacent properties and to minimize adverse visual impact. The proposed separation of 8.2' will be consistent with these provisions. As stated above, the applicant lot is approx. 117 feet in depth with a 10' utility easement in the front and a 6' utility easement in the rear. The applicant will not encroach the side's setback or any utility or drainage easement.

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.

The applicant received letters from property owners to the north, south, and east, stating they have no objections regarding the variance request. There will be a 8.2' separation between the rear property line and the proposed addition. In addition, the existing 6' wood fence along the rear property will mitigate in part any impact associated with the setback encroachment.

ENGINEERING COMMENT

No comments.

ZONING CONDITIONS

1. The development order for this particular variance shall lapse on June 20, 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 December 20, 2001, 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 March 20, 2003, the applicant shall obtain a building permit for the proposed addition to order to vest the variance approved pursuant to BA2002-029 **(DATE: MONITORING-BLDG PERMIT)**

CHAIRMAN KONYK: B of A 2002--031 -- Binoy, Bijoy and whatever -- I don't know how to pronounce that -- Binoji Abraham, owners to allow a proposed solid roof screen enclosure to encroach into the required rear setback.

Applicant present? Could you come forward and give us your name for the record?

MR. ABRAHAM: Binoy Abraham.

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

MR. ABRAHAM: Yes.

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

Any letters?

MR. SEAMAN: No letters.

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

Seeing none, this item 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 non-conforming AR lot that supports a conforming single family dwelling constructed in 2001. The single-family dwelling was constructed at the minimum required rear setback of 28 feet. Due to the existing single-family dwelling, the applicant has no other design options for the proposed solid roof screen enclosure. The proposed rear setback of 18 feet will be consistent with the Comprehensive Plan and the ULDC, as this nonconforming lot is more consistent with RS or RTU zoning regulations that require a rear setback of 15 or 20 feet, respectively. The variance request will be mitigated by an existing privacy fence, and will have little impact on the vacant lot to the rear of the subject lot.

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

NO. This is **not a self-imposed** variance. The previous owner constructed the existing house at the minimum required rear setback. The owner would like to construct a solid roof screen enclosure on an existing concrete patio. The screen room will provide a private outdoor living environment for the applicant, a typical amenity of a Florida home. The proposed screen room will align with the existing conforming side setbacks, and encroach into the rear setback 10 feet. The proposed rear setback of 18 feet will maintain the Code intent of separation between structures.

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 rear setback variance **will not confer** a special privilege to the applicant. The single-family dwelling was constructed at the minimum required rear setback of 28 feet. Due to the existing single-family dwelling, the applicant has no other design options for the proposed solid roof screen enclosure. The proposed rear setback of 18 feet will be consistent with the Comprehensive Plan and the ULDC, as this nonconforming lot is more consistent with RS or RTU zoning regulations that require a rear setback of 15 or 20 feet, respectively. The screen room will provide a private outdoor living environment for the applicant, a typical amenity of a Florida home.

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. There are **limited design options** available to the applicant. This legal nonconforming lot is required to utilize percentage setbacks due to its width, depth, and lot size. Denial of the requested variance would prohibit the owner from constructing a solid roof screen enclosure, a typical amenity enjoyed by others in the area. The proposed rear setback of 18 feet will be consistent with the Comprehensive Plan and the ULDC, as this

nonconforming lot is more consistent with RS or RTU zoning regulations that require a rear setback of 15 or 20 feet, respectively. The Board of Adjustment has granted similar setback variances for accessory structures and garages in the Delray Gardens Estates subdivision (BA 01-51 & BA 98-027).

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

YES. Granting the requested variance is **the minimum variance** necessary that will allow a reasonable use of the lot. The proposed rear setback of 18 feet will meet the intent of the Code to maintain separation between structures. The proposed variance of 10 feet will allow the property owner to construct a solid roof screen enclosure on an existing concrete patio for additional outdoor living space. The screen enclosure is a typical amenity of a Florida home, and will have little effect on the vacant lot to the rear of the subject lot.

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 requested variance **will be consistent** with the Comprehensive Plan and ULDC. The proposed rear setback of 18 feet will be consistent with the Comprehensive Plan and the ULDC, as this nonconforming AR lot is more consistent with RS or RTU zoning regulations that require a rear setback of 15 or 20 feet, respectively. The proposed rear setback of 18 feet will meet the intent of the Code to maintain separation between structures. The Board of Adjustment has granted similar setback variances for accessory structures and garages in the Delray Gardens Estates subdivision (BA 01-51 & BA 98-027).

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

NO. Granting the requested variance **will not be injurious** to the surrounding area. The owner has constructed a privacy fence (BO2010718) that will mitigate the requested rear setback variance. The proposed solid roof screen enclosure will conform with the required side interior setbacks required by Code (10.8 feet), and will have little impact on the vacant lot to the rear of the subject lot.

ENGINEERING COMMENT

No comments. (ENG)

ZONING CONDITIONS

1. The development order for this particular variance shall lapse on June 20, 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 December 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 March 20, 2003, the applicant shall obtain a building permit for the proposed solid roof screen enclosure in order to vest the rear setback variance approved pursuant to BA 2002-031. **(DATE: MONITORING-BLDG PERMIT)**

CHAIRMAN KONYK: Next item on the consent is B of A 2002-033 --Candace Rebecchini, owner, to allow proposed pool to encroach into the required rear setback.

Applicant step forward for the record. Could we have your name?

MS. REBECCHINI: Candace Rebecchini.

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

MS. REBECCHINI: Yes.

CHAIRMAN KONYK: Any member of the public to speak on this item? Any letters?

MR. SEAMAN: Two letters and one is a disapproval.

CHAIRMAN KONYK: Is that party here -- no?

VICE CHAIRMAN BASEHART: Can you tell us what the disagreement is?

MR. SEAMAN: They're concerned that installing a pool there will be a cluttered appearance.

CHAIRMAN KONYK: Okay. Do you feel that it justifies us pulling this from the --

MR. SEAMAN: I do not.

CHAIRMAN KONYK: Okay. Any member of this public feel this item warrants a full hearing?

Seeing none, this item will remain on consent.

STAFF RECOMMENDATIONS

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

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

1. SPECIAL CONDITIONS AND CIRCUMSTANCES EXIST THAT ARE PECULIAR TO THE PARCEL OF LAND, BUILDING, 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 corner lot that meets all required setbacks. Due to the configuration of the dwelling on the conforming corner lot, the applicant has no other design options that would allow construction of a swimming pool without a variance. The applicant has reduced the need for a variance by proposing a narrower than typical pool (11' vs 15' typical). A swimming pool is a typical amenity within the Winston Trails PUD.

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

NO. This is **not a self-imposed** variance. The conforming single-family dwelling was constructed on a corner lot that did not provide additional space to meet required pool setbacks. The applicant has examined several design options for a swimming pool, and would like to construct a narrow pool (11') in the rear yard. The proposed setback of 6.5 feet will allow the applicant to construct a concrete patio around the pool for circulation and maintenance. The proposed pool will meet the required side interior and side corner setbacks.

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 the requested variance **will not confer** any special privilege to the property owner. A swimming pool is a typical amenity to a Florida home, and in the Winston Trails PUD. The Board of Adjustment has granted similar variances for pool setbacks within Winston Trails, parcel 7, including: BA 97-003, BA 01-071, and BA 01-087. Due to the configuration of the dwelling on the conforming corner lot, the applicant has no other design options that would allow construction of a swimming pool without a variance. The applicant has reduced the need for a variance by proposing a narrower than typical pool (11' vs. 15' typical).

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. There are **limited design options** available to the applicant. As was previously mentioned, the Board of Adjustment has granted similar variances for pool setbacks within Winston Trails, parcel 7, including: BA 97-003, BA 01-071, and BA 01-087. A swimming pool is a typical amenity within the Winston Trails PUD, and denial of the variance will limit the safe placement of a pool on the subject lot. Due to the configuration of the dwelling on the conforming corner lot, the applicant has no other design options that would allow construction of a swimming pool without a variance. The applicant has reduced the need for a variance by proposing a narrower than typical pool (11' vs. 15' typical).

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 examined several design options for a swimming pool, and would like to construct a narrow pool (11') in the rear yard. The proposed setback of 6.5 feet will allow the applicant to construct a concrete patio around the pool for circulation and maintenance. The proposed pool will meet the required side interior and side corner setbacks. The applicant has reduced the need for a variance by

proposing a narrower than typical pool (11' vs. 15' typical).

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 requested variance **will be consistent** with the intent of this Code. The intent of the swimming pool setbacks is to establish consistency and safe circulation on site. The proposed setback of 6.5 feet will allow the applicant to construct a concrete patio around the pool for circulation and maintenance. The proposed pool will meet the required side interior and side corner setbacks. The applicant has installed a 5 foot aluminum fence that will provide a barrier from surrounding parcels.

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

NO. Granting the requested variance **will not be injurious** to the surrounding area. The applicant has submitted letters of support for the proposed variance from the affected neighbors. A swimming pool is a typical amenity to a Florida home, and in the Winston Trails PUD. The Board of Adjustment has granted similar variances for pool setbacks within Winston Trails, parcel 7, including BA 97-003, BA 01-071, and BA 01-087. The applicant has installed a 5 foot aluminum fence that will provide a barrier from surrounding parcels.

ENGINEERING COMMENTS

No comments. (ENG)

ZONING CONDITIONS

1. The development order for this particular variance shall lapse on June 20, 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 December 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 March 20, 2003, the applicant shall obtain a building permit for the proposed swimming pool in order to vest the variance approved pursuant to BA2002-033. **(DATE: MONITORING-BLDG PERMIT)**
4. This variance request is only for the rear setback for the proposed swimming pool. Any additional improvements must meet required setbacks. **(ONGOING)**

CHAIRMAN KONYK: B of A 2002-034 -- Miller Land Planning Consultants to allow existing structures to encroach into the required front, rear set-back.

Applicant -- name for the record.

MR. MILLER: Good morning, Bradley Miller -- Miller Land Planning

Consultants. We agree with the condition.

CHAIRMAN KONYK: The one condition recommended -- and you agree with it?

MR. MILLER: Yes.

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

Any letters?

MR. SEAMAN: There are 241 letters in support.

CHAIRMAN KONYK: Oh, that's exciting.

MR. MILLER: My client did his job.

CHAIRMAN KONYK: I can tell. One letter with 241 signatures probably would have been better.

Any member of the Board feel this item warrants a full hearing?

Seeing none, this item 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:

YES. There are special circumstances that exist that are peculiar to structures that are not applicable to other structures in the same district. The Zoning Division under the 1958 Code of Ordinances, as amended, approved the mobile home park, Mas Verde. The lot sizes, setbacks, and separations are nonconforming to the present ULDC development regulations. The site plan for this mobile home park, which leases the property and mobile homes to the residents, consists of lease lines that do not specify the location of the mobile homes or accessory uses. Because the original approval for this mobile home park was over thirty years ago and there have been numerous tenants during this time period, the configuration of the lots and placement of the mobile homes changed over. This has resulted in some structures not meeting the original separation requirements. From a practical standpoint, there are no legal lease lines for the park. Unit establishes the leases. Therefore, the submitted survey shows separations between structures rather than setbacks from lease lines.

In order to meet the separation/setback requirements, some of these older mobile homes and sheds would have to be moved, removed or dismantled, causing a great hardship on the home owners and the park as a whole. If variances are granted, the mobile home park will be able to continue to exist, generally, in the configuration of the 1958 Code, and with the least amount of disruption to the park and its tenants.

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

NO. The special circumstances are not the result of the actions of the

applicant, but are, generally, the result of the many lessees and their replacement of mobile homes over the past thirty years. For much of that time, the county, generally, has issued permits for the mobile homes. Again, this is a case where the goal of staff is to bring the mobile home park into compliance with the ULDC. To that end, what could be corrected, moved, removed, or receive legal permits, has been completed. What remains, is for the applicant to request variances for the remaining mobile homes and sheds that could not be brought into compliance.

In addition, the Fire Marshall has agreed that current regulations regarding separation of structures would not be imposed retroactively on the park and that the granting of the requested variances would be supported (see attached correspondence with Fire Marshall Sweat's signature). Staff, therefore, is recommending approval of the variances to the Board of Adjustment.

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 the variance request would not confer special privileges upon the applicant. The other lots in the mobile home park currently support mobile homes and sheds. Allowing some of these mobile homes and sheds to have lesser separations than others would not change the character of the mobile home park. Requiring the relocation or removal would cause more of a disruption to the tenants of the park than special privilege. Many of the units in question have been in their location for more than 30 years and have not caused any reported hardship.

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 literal interpretation and enforcement of the provisions of the Code would deprive the applicant of rights commonly enjoyed by other mobile home parks in the same district. As stated earlier, to deny the variances would require the mobile homes and sheds to be relocated or removed. This would result in an immediate undue hardship and financial investment upon many senior families in the mobile home park, many of which have lived in their mobile homes for more than 30 years.

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

YES. As mentioned earlier, the variances are the minimum needed to allow a reasonable use of the mobile home park. The separation distance encroachment is the minimum possible. These distances have been confirmed by the submittal survey.

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

COMPREHENSIVE PLAN AND THIS CODE:

YES. The purpose and intent of the mobile home park regulations is to promote efficient design of mobile home communities which provide enlightened and imaginative approaches to community planning and accommodate the housing needs of residents who prefer mobile home living and those who desire an economic alternative to conventional dwellings. The objective of setback and separation requirements is to ensure uniformity and to protect adjacent property owners. The mobile home and shed separations will be in harmony with the character of the neighborhood and will not detract from the area.

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 variances will not be injurious to the surrounding area or the public welfare. As stated earlier, the variance requests are minor in nature and will not be visibly detected. Approval of the variance requests will enable the applicant to allow sheds and mobile homes to remain where many have been for over 30 years. And most importantly, not disrupt the lives of the seniors who live in Mas Verde.

ENGINEERING COMMENT

No comments.

ZONING CONDITIONS

1. By August 20, 2002, the applicant shall submit the BA result letter, a revised site plan reflecting all notes and conditions as previously denoted on approved Exhibit 19 (12/20/88) for certification through the DRC process. Also denote on the revised site plan the BA conditions of approval and the approved setback and separation variances as shown below: **(DATE: MONITORING DRC-BOFA)**

CHAIRMAN KONYK: B of A 2002-036 -- Jay Carpenter, agent for Robert and Janice Aiken to allow for the use of a non-translucent material for windows.

Applicant present? Step forward and give us your name for the record, please.

MR. AIKEN: Good morning, Robert Aiken, owner.

CHAIRMAN KONYK: Okay. There's five conditions recommended by the Staff. Do you understand and agree with those?

MR. AIKEN: Yes.

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

Any letters?

MR. SEAMAN: There's one letter and it's from the Jonathan's Landing Golf Club and their concern is that -- they'll approve it but they don't want any reflective material -- or hopefully there's no reflective material on the window.

CHAIRMAN KONYK: Okay. How far away is the window from the golf course?

MR. SEAMAN: A long way.

CHAIRMAN KONYK: Okay. Curious.

Any member of the Board feels this item warrants a full

hearing?

Seeing none, this item 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, OR STRUCTURE, THAT ARE NOT APPLICABLE TO OTHER PARCELS OF LAND, STRUCTURES, OR BUILDINGS IN THE SAME DISTRICT.

YES. The subject lot as well as structure on the lot are conforming. To the west is a vacant lot (#20) owned by the applicant, to the north is golf course, to the south and east is Bridgegate Drive. Special conditions and circumstances **are peculiar** to this parcel of land by the fact that the subject property is a ZLL corner lot and does not abut another unit on the ZLL side to the east, where the requested windows are proposed to be located. The approximately 60 feet separation between the subject lot and the lot adjacent to the east would mitigate any impacts of the variance request. In addition, the adjacent units across the Bridgegate Dr. to the east will be buffered by a 6' high mature hedge along the zero lot line obstructing most of the views of the house from the proposed windows.

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

NO. These special circumstances and conditions **are not** the result of actions of the applicant. The applicant is proposing an opening in the zero lot line wall that will make the best use of the lot's visual amenities by making openings from the unit as well as providing additional light into the dwelling.

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 the variance **will not** confer special privileges upon the applicant denied by the Code to other applicants because, in this particular case, there is no contiguous unit to the east. The zero lot line closure is a requirement intended to provide and ensure privacy between units. The applicant also obtained the Home Owners Association (HOA) approval for the requested variance and approval from both neighbors to the east.

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

YES. A literal interpretation of the provisions of the Unified Land

Development Code (ULDC) would work an unnecessary hardship onto the applicant because this is an end-unit dwelling, therefore, condition differs from those applying for interior units that have another unit adjacent to the ZLL side. Due to the placement of this end-unit and the fact that a 20' right-of-way and 15' paved brick alley is contiguous to the zero lot line; this application can be given a special consideration. Granting the variance would provide additional light and enhance the visual aspect of the subject dwelling.

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

YES. As previously stated, the subject lot has unique location that it is a corner lot with no immediate unit along the east side of the property. The adjacent property to the zero lot line side is located at approximately 60'. There is a 15' paved brick alley, a 20' right-of-way and an existing 4' dense ficus hedge if maintained at 6' along the ZLL side will ensure privacy to the adjoining lots' owners. The proposed openings will allow the property owner the maximum use of light, air enhance the unit.

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 requested variance **will be consistent** with the purpose and objectives of the Comprehensive Plan and the ULDC. The intent of the Code to restrict openings on the zero lot line side is to ensure privacy to the adjoining lots' owners. This is due to the zero lot line lots and homes have a relatively limited outdoor area and the setback separation between units is minimal and openings could detract the property owners from enjoyment of their homes. As stated previously, the requested openings would be mitigated by the existing 15' paved brick alley and 20' right-of-way, which provide adequate separation between the subject lot and the adjacent property.

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 area involved. Due to the special lot location, the window openings in the zero lot line wall will not have a negative affect on the surrounding area or the adjacent property. The direct effect will be an additional openness within the dwelling will be beneficial to the property owner and will not be injurious to anyone in the surrounding neighborhood.

ENGINEERING COMMENT(S)

No comments.

ZONING CONDITIONS

1. The development order for this particular variance shall lapse on June 20, 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 December 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 presented to the Board, simultaneously with the Building permit application. **(DATE: MONITORING-BLDG PERMIT: BLDG)**
3. By March 20, 2003, the applicant shall obtain a building permit for the proposed windows addition in order to vest the variance approved pursuant to BA2002-036 **(DATE: MONITORING-BLDG PERMIT)**
4. The existing ficus hedge along the zero lot line shall be maintained at 6' to mitigate the variance request. **(ONGOING)**
5. The variance is limited to the zero lot units on lot #21. **(ONGOING)**

CHAIRMAN KONYK: B of A 2002-037 -- Cotleur & Hearing, agent for Albanese Homes to allow proposed structures within the Crystal Lake sub-division to encroach into the required front setback.

Your name for the record.

MR. CHEGUIS: Morning. Brian Cheguis, Cotleur & Hearing.

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

MR. CHEGUIS: Understood and we will comply.

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

Any letters?

MR. SEAMAN: Four letters of approval.

CHAIRMAN KONYK: In support of the variance?

MR. SEAMAN: I'm sorry -- in support.

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

Seeing none, this item will remain on consent.

MR. CHEGUIS: 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. The subject 13.90-acre subdivision was approved by the BCC on June 25, 2002 (Petition Z/CA 2000-114). The project consisted of 55 undeveloped zero lot line single-family lots; each approx. 4,900 SF in size. The density was approved at 3.90 DU/AC. The current developer does not propose changes to the original site plan in terms of number of lots or density; only model types and floor plan configurations. The configurations present some

floor plans with living quarters extending beyond the garage facade and utilizing the ZCL 10 foot living quarter setback. Such a condition would require certain garages to move forward into the 25 foot front loading garage setback. Staff recommends approval to the Board of Adjustment based on the special circumstances presented by the unique irregular floor plans and facades. The concept will provide relief from an otherwise “straight” sight line down the residential street.

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

NO. Special conditions do not result from the actions of the applicant, but in fact are the result of changing market demands. The accessibility of desirable facilities near the location of the development is attractive to a market that wishes quick and easy access to such facilities. This market also desires back yard pools; unique floor plans, and marginally larger homes.

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 subdivision is similar in concept and layout to typical subdivisions in the vicinity. It does, however, provide additional pedestrian connections to the adjacent public roadway and an on-site recreational area. The applicant is proposing in addition to these requirements, amenities such as a school bus shelter for children, on-site pedestrian connections, an enlarged tot-lot, two amenity-seating areas and two hardscaped/specialized planting areas. The applicant is requesting this single minimum variance for the purpose of improving the quality of life for the residents who intended to live within the community.

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 reasonable use of the property is being requested and meets the intent of the code in the requirement of maintaining separation between structures. The variance request will improve the quality of life for the future residents with additional amenities and a variety of building facades. Although this subdivision was not approved as a Planned Unit Development (PUD) it has design features commonly found in a PUD. The applicant is proposing to provide additional site amenities, public spaces, and pedestrian circulation in a finite space to recreate the imaginative approaches to community planning and shelter design associated with PUD developments. The variance request will not negatively impact the surrounding uses since it affects the front setback of lots which are adjacent to a 50' right-of-way; and the fact that the subdivision is surrounded to the north, west, and south by a 10' landscape buffer supporting a 6' high wall, and to the west by a right-of-way landscape buffer. Further, property development regulations for zero lot line developments allow for reduced front setbacks for the purpose of moving residential space closer to the property line.

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

YES. Granting of the variance is the minimal variance needed to accommodate marginally models with a variety of facades proposing living quarters moved forward of, front loading garages. The reduced setbacks will not result in increased lot coverage by structures. The proposed single-family dwellings conform to the maximum building lot coverage regulations for the RTU zoning district. Alternative design options are not possible due to the size of the existing approved lots (typically 110 feet by 45 feet). Granting the variance will also provide back yard space large enough to accommodate an adequate recreational space, i.e., pool and deck areas.

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

YES. The request is consistent with the intent of the ULDC and the Comprehensive Plan in that it promotes a better quality urban environment, improves the residential ambiance, promotes resident and public welfare. The applicant is providing interconnections to public sidewalks and pedestrian paths. These in turn encourage walking access to adjacent neighborhood facilities. Recreation area and tot-lot will be provided as well as seating amenities in two locations within the development.

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

NO. The request is compatible with the surrounding area in that an existing residential subdivision is in the immediate vicinity (The Club at Indian Lakes, subdivision). The effect of the proposed setback variances will be internal to the subdivision, and will not have negative effects on the surrounding properties. Previously approved landscape buffers are proposed along all perimeters to reduce visual intrusion into the project as well as increase the aesthetic enjoyment for the residents.

ENGINEERING COMMENT

No comment.

ZONING CONDITIONS

1. The development order for this particular variance shall lapse on June 20, 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 March 20, 2003, the applicant shall apply to the Building Division for building permit(s) for the **first** ZLL single-family residence to vest the front garage setback variance or make application to the zoning department 30 days prior to the conditions' expiration for a time extension. **(DATE: MONITORING BLDG PERMIT)**
3. By September 20, 2002, the developer/property owner shall provide the

Building Division, simultaneously with the building permit application, a copy of the Board of Adjustment Result Letter and a copy of the Site Plan presented to the Board, indicating the BOFA conditions of approval. **(DATE: MONITORING-BLDG PERMIT)**

4. By August 20, 2002, the applicant shall amend the certified site plan through the DRC process to reflect the approved front setback (from 25' to 22.5'; a var. of 2.5') for all 55 ZLL lots. Also, the BA conditions shall be placed on the site plan. **(DATE: MONITORING DRC-BOFA)**

CHAIRMAN KONYK: Next item on consent is SD107 -- Lawrence Kelleher requesting variances from the requirements, et cetera.

Is the applicant present?

MS. COTTRELL: Good morning. I'm Anna Cottrell. I'm the agent for this application. The condition is acceptable.

CHAIRMAN KONYK: There's one condition.

MS. COTTRELL: Yes.

MR. CUFFE: There is one condition on the staff report.

CHAIRMAN KONYK: You understand and agree with that.

MS. COTTRELL: Yes.

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

MR. PHILLIPS: I have --

CHAIRMAN KONYK: Well, we're going to re-order this to the first item on the regular agenda then.

Oh, that's it for the consent. So just to recap that. Item B of A 2002-028, 2002-029, 2002-031, 2002-033, 2002-034, 2002-036, 2002-037, will remain on the consent agenda, and I would need a motion to approve that.

And I just want to note that SD107 has been re-ordered to the first item on the regular agenda so --

VICE CHAIRMAN BASEHART: I'd like to make a motion that the items that you just read be approved on consent with the conditions recommended by Staff, and I'd like the record to reflect that the Staff report for each item will be the record for the hearing.

CHAIRMAN KONYK: Okay. We have a motion by Mr. Basehart. Can I have a second?

MR. JACOBS: Second.

CHAIRMAN KONYK: Second by Mr. Joseph -- Mr. Jacobs -- I'm sorry.

Any discussion? All those in favor?

ALL: Aye.

CHAIRMAN KONYK: Motion carries unanimously.

Everybody that was on the consent is free to leave. Wait for your letters, though.

Okay. Just so everyone knows, on the regular agenda the item will be introduced -- we'll first hear from the applicant -- well, no, actually the item will be introduced by Staff.

Item will be introduced by the -- hello -- are we ready, not ready.

Okay. So we'll have the item introduced by Staff, and then we'll hear from the applicant.

MR. CUFFE: This is sub-division variance request SD-107. It's the petition of Lawrence J. Kelleher requesting variances from the requirements that all streets used for access to residential sub-division lots shall be designed and constructed to local street standards as established by the sub-division regulations.

Requirements are set forth in the Unified Land Development

Code, Section 8.22, Chart 8.22-2 which is the chart of minor streets. Property location is the south side of Country Oaks Lane approximately two tenths of a mile east of Prosperity Farms Road in the RS zoning district.

The applicant is requesting -- the requested variances are to allow access to a proposed two lot sub-division by means of an existing unpaved street and a 16-foot wide right-of-way to both lots having their required access and frontage on a proposed 25-foot wide private common driveway easement.

CHAIRMAN KONYK: Okay. Ms. Cottrell, I would like to vary from my normal procedure.

Since you weren't aware that there was opposition, I would kind of like to hear from the people that are opposing to see what their opposition is to see if it does even apply -- if it's something that we can hear.

So if the people that are planning on speaking would raise their right hand and be sworn in by the court reporter, I would --

(Complying)

THEREUPON,

the persons testifying, after being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified on their oath as follows:

ALL: I do.

CHAIRMAN KONYK: If you gentlemen would like to come forward -- if you have different things to present; if you have the same thing, maybe one of you could be the spokesperson.

Okay. We need your name for the record.

MR. PHILLIPS: Ronald Phillips.

CHAIRMAN KONYK: Ronald Phillips, can you tell us what your objection is?

MR. PHILLIPS: Yeah, I'm a resident of Country Oaks Lane.

CHAIRMAN KONYK: I can't hear you. I'm sorry. Speak up or get closer to the microphone -- or bring it closer. There we go.

MR. PHILLIPS: I'm a resident of Country Oaks Lane. Number 2370 is the address -- and according to my deed on my property, I have an easement to the -- I think it goes to the waterway, and it shows on the map almost to Kelleher's as part of his property.

Currently, Mr. Kelleher has a lock on that right-of-way easement which does not allow anyone from that street to use that property. That's my objection.

VICE CHAIRMAN BASEHART: I'm not so sure I understand.

Is the easement in the same alignment with the road?

MR. PHILLIPS: Yes.

VICE CHAIRMAN BASEHART: Well, then how would putting -- do you understand what this request is? What's been applied for here is there is a provision in the sub-division code that says when you create a sub-division you have to have at least a 50-foot right-of-way, and you have to pave the road to county standards.

The request here is to not have to have a 50-foot right-of-way and not to have to pave the road. The road will still be there. It will be what -- a shell rock road?

MR. PHILLIPS: Correct.

VICE CHAIRMAN BASEHART: All right. And I don't see how the approval of the variance would in any way, shape, or form block your access or affect your access to the intracoastal.

MR. PHILLIPS: Because he owns the property and it's currently locked -- he has it locked.

CHAIRMAN KONYK: Can you address this?

MS. COTTRELL: Yes, I believe we can.

VICE CHAIRMAN BASEHART: Okay.

MS. COTTRELL: For the record, Anna Cottrell, and I'm the agent for this application.

The request is pretty straight forward. That is, to reduce the required width for access to this two-lot sub-division. Country Oaks Lane, one of the last in the area, is still a dirt road. The County, as part of its street improvement program, is in the process of acquiring the easements that are needed for drainage across the north end of this property, and the County will be constructing both drainage improvements and paving improvements in this area.

This is a little bit unusual because of the lot configuration that it seems not extraordinary at all having looked at the text maps in this area where Mr. Kelleher's lot is and has frontage on the intracoastal.

So Country Oaks lane actually terminates west of his property. There is no easement. There is no public easement that will go through his lot to the intracoastal with the exception of this drainage easement that the County is acquiring, and that will be actually effectuated after this variance is approved.

So there has been some confusion I understand in the past about what legal rights there are for access to the intracoastal. This property has been subject of a quiet title action just a few years ago. The survey that was submitted was abstract of title, and we found no evidence whatsoever that there was ever any public access to the intracoastal, either pedestrian or vehicular. So I think that that answers your question.

CHAIRMAN KONYK: Wait -- let me just go to the county attorney now.

It appears that this man has a problem with access to this property, whether it's correct or not, but I don't think it affects this variance. And I would like you to clarify that for us. If it doesn't affect the variance, then we need to deal with the variance and --

MS. PETRICK: Okay. He suggested that his deed reflects the nature of the easement. I, obviously, haven't seen his deed so I guess it would depend on the nature of his easement.

CHAIRMAN KONYK: Wouldn't it depend on what the variance request words were -- reduction -- or I guess it's leaving the road the way it is; is that what you're asking to do?

VICE CHAIRMAN BASEHART: Well, no, they want to extend the road -- the road ends here now. The road ends at your west -- whatever --

MS. COTTRELL: The road kind of terminates into Mr. Kelleher's lot.

CHAIRMAN KONYK: Okay.

MS. COTTRELL: And there was an exchange of easements as part of his quiet title action a few years ago. Mr. Kelleher has cleared title for a rectangular piece of what was -- it appeared to be Country Oaks Lane. The property owner on the north acquired another piece, so what will happen is Country Oaks Lane, for all appearances -- for the way it functions -- actually terminates at Mr. Kelleher's front driveway. It does not go through.

CHAIRMAN KONYK: Okay. Let me just assume -- let's assume for argument sake, as to whether this issue even concerns us. Let's assume he's correct -- Mr. Phillips is correct.

Does this variance affect that? I mean, I don't think the variance has anything to do with why he's objecting.

I think he maybe has a valid concern and a valid, you know, stance, or whatever. I'm not going to determine that, but whether or not he has this issue, I don't think has anything to do with us approving or disapproving the variance, and that's what I'm asking you.

MS. PETRICK: Right. I understand that. But what I'm saying is, I'm not clear as to what this property is that he's saying he has easement rights. For example, if he has an easement right that says, I have the right to use a stretch of property that they're asking for us to allow them to maintain a road on, then potentially that might create a problem. But if, as you're suggesting, he is saying, I have an easement right across this person's property and that's unrelated to the existing road, then, no, the variance wouldn't impact it.

CHAIRMAN KONYK: Well, then it seems to me like we can't make a determination if he has a valid claim or not. So we can't do anything with this variance either.

VICE CHAIRMAN BASEHART: I mean, that's a civil matter, right?

MS. PETRICK: Right, because just looking at positions on property rights is something that, as she had suggested, a quiet title action would be necessary for.

MS. COTTRELL: If I could offer something.

We're not asking for any physical changes to Country Oaks Lane whatsoever. It exists at 16 feet. It's going to continue to exist at 16 feet. It will terminate functionally exactly the same place as it does right now. The other portion of this variance relates to the width of the driveway that will serve these two lots.

So that's an internal driveway, that the only thing we ask is that sub-division code requires that Country Oaks Lane, as it serves as access, be 50 feet. It's only 16 feet, and we're not asking for any change whatsoever on that.

VICE CHAIRMAN BASEHART: All right. Well, I mean --

MS. PETRICK: Sir, the easement that you're saying that your deed reflects -- is it something that impacts the existing road, or are you saying that it's on his property, and that he has blocked off the easement you should have a right to.

MR. PHILLIPS: It's both -- because the property is right here. This is what he's talking about. And he's showing this as part of his property --

MS. PETRICK: Okay.

MR. PHILLIPS: And my easement says that I have the right to go from the start of the road to the intracoastal waterway, and this is where he has it blocked off -- so here's part of the property.

VICE CHAIRMAN BASEHART: All right. Well, it seems to me, using that, normally he would -- the applicant would have to have a 50-foot right-of-way to the termination point of the road. He's asking to have that reduced. It's going to be a road.

So if this gentleman has an easement that allows him to traverse that area, the granting of the variance isn't going to affect that.

CHAIRMAN KONYK: Right. And not only that, the variance isn't allowing him to lock it. I mean, we're not giving him a variance so he can lock it or unlock it. We're giving -- if he receives this variance, it's so that that can remain 16-feet wide.

VICE CHAIRMAN BASEHART: And it seems that the area of contention is that little nub that sticks up over here which is beyond where we're considering. I mean, do you see a conflict between his interest and the variance?

MS. PETRICK: Not if that's the situation -- that that little extra piece of that property that is sticking out on that picture is the subject of contention, I'm not understanding why this current variance would impact his ability to access that easement, assuming that the easement existed.

VICE CHAIRMAN BASEHART: Right, okay.

CHAIRMAN KONYK: Do you understand, Mr. Phillips? I mean, we're not saying that you're not right or you don't have a valid claim. What we're saying is that your claim does not affect this variance, so we don't have any right to hear your claim. It's obviously something that you'll have to take up as a civil matter.

So are you comfortable with that now?

MR. PHILLIPS: Yes.

CHAIRMAN KONYK: Okay. Does the other gentleman have the same concern or do you have a different concern or would you like to say something?

MR. HAUS: I'm Paul Haus, and I certainly apologize for my cell phone. Normally, I announce that all meetings should we turn your cell phones off.

I'm a resident of 2350 Country Oaks Lane, and the only thing that I would object in addition to what Mr. Phillips has said, as title owner, is that the road is currently slated for development, and at present, our road floods significantly. And I would expect that there would be a coordination with this variance, with the county plan for development, because it is soon slated within, I believe, a year is what we've been promised to be paved, drained -- and I want to make sure that this particular variance will either not negatively affect or will be considered when this -- if I'm using the right term -- when this petition goes forward, it is not going to affect the progression of the road.

CHAIRMAN KONYK: We'll ask Mr. Cuffe to address that.

MR. CUFFE: This would have no impact on the street improvement program that's being petitioned, other than the possibility of adding another lot to it which would be included in the distribution of the assessment.

MR. HAUS: And you understand that, as currently slated, that lot would add additional septic systems and a well to the density of the road, and that would -- by granting this variance, you would add another property to the road, and it would proceed with the installation of a septic system and a well.

MR. CUFFE: If the property were sub-divided, it would add another lot -- it would create two lots out of an existing lot, and until such time that there is public sewer, it would be on a septic tank, my understanding is that the street improvement program -- the BMSTU program that has already been petitioned and that is in design right now is for paving, drainage, water, and sewer to serve all the properties on Country Oaks Lane.

MR. HAUS: And so other than the impact of additional draw down of potable water and the installation of a septic system, there should be no impact by the granting of this variance.

MR. CUFFE: The granting of a variance would only clear the way to allow review of a sub-division of the property.

MR. HAUS: And will there be further meetings where we, as the public, can be involved if there is to be an impact on --

MR. CUFFE: Not that I'm aware of -- not from a sub-division standpoint.

MR. HAUS: Okay. That's all I had to say.

CHAIRMAN KONYK: Clarify this for me just out of curiosity. You said they are adding sewer.

MR. CUFFE: That's according to Allen Webb who's a street improvement coordinator --

CHAIRMAN KONYK: Right. Why would there be another septic tank if they're adding sewers?

MR. HAUS: Well, if the lot is divided as proceeded, I would assume that the only way that a house could be habitable is if they put in a septic system.

VICE CHAIRMAN BASEHART: But if they're bringing sewers down, there will be a sanitary sewer system.

MR. HAUS: There's no guarantee at this moment that there will be sanitary sewers brought to my property.

CHAIRMAN KONYK: Okay. What do you know, Anna?

MS. COTTRELL: Actually, I can address this. There has been a commitment to bring sewer. In fact, the property would not be eligible for the sub-division because the lots would be too small, were it not for the fact that

sewerage is going to be extended.

So he's going to be required to connect in order to go forward with development.

CHAIRMAN KONYK: So there should not be a septic tank put on this property.

MS. COTTRELL: There's no septic tank because it couldn't meet the health department rules for the half-acre lot requirement. Now, with respect to the drainage, we submit there was an issue -- there's an issue about flooding on the west side of Country Oaks Lane, and as part of this application, we did have an engineer look at the storm water run-off from two lots versus one, and Rob Renevaud (ph.) had submitted a letter to engineering and certified that this sub-division can meet the storm water management requirements for sub-divisions. So we are consistent with all permitting requirements.

CHAIRMAN KONYK: So even if the County doesn't go forward and put sewers on this property, this piece of property could not qualify for a septic tank because there's not enough room for setbacks or whatever --

MS. COTTRELL: He would need a variance, and there's no intent to do a variance. It doesn't -- when you sub-divide this, these are some of the largest lots in the area, but it wouldn't meet the half-acre net requirement for septic.

CHAIRMAN KONYK: Does that satisfy the gentleman? Does that satisfy you?

MR. HAUS: More or less.

CHAIRMAN KONYK: Okay. Thank you.

MR. HAUS: I'm not an attorney. I really don't understand the terms.

CHAIRMAN KONYK: It's not really our thing.

MR. PHILLIPS: Can I make another point?

CHAIRMAN KONYK: Yeah.

MR. PHILLIPS: There's a notation on here that says, Proposed county drainage easement that crosses that road.

Has that drainage easement been included in the plan -- at this point were granted -- or is it proposed? It doesn't say granted.

VICE CHAIRMAN BASEHART: I don't think the County would approve the sub-division if the drainage easement wasn't included.

MR. PHILLIPS: I don't know that. That's why I'm asking.

MS. COTTRELL: Technically, legally, they're not connected, but the commitment has been made. The easement deed has been drawn, and it will be submitted so that engineering can finish their drainage improvement program.

MR. PHILLIPS: Has Mr. Kelleher signed off on that drainage easement?

MS. COTTRELL: The easement deed has not yet been submitted to engineering, but it's been drawn up. So there's a commitment made.

MR. PHILLIPS: I was told by engineering that it was submitted to Mr. Kelleher, and they were awaiting his approval on it two months ago.

MS. COTTRELL: Correct.

MR. PHILLIPS: He has not approved it yet?

MS. COTTRELL: It's been executed but not submitted.

CHAIRMAN KONYK: Okay. Thank you.

Anybody else have any other questions?

Mr. Basehart has a suggestion of a condition about something that might be added to this petition.

VICE CHAIRMAN BASEHART: Would you accept the condition of approval for the granting of the variance that, since it's all related to the subdivision of the property, that the variance is dependent on the execution of the drainage easement.

MS. COTTRELL: That's acceptable.

CHAIRMAN KONYK: Okay. So would you add that condition, Alan?

MR. SEAMAN: State that one more time.

VICE CHAIRMAN BASEHART: The approval of the variance is subject to or contingent upon the applicant executing and submitting the drainage easement that the County needs.

MS. COTTRELL: Is there a time limit?

VICE CHAIRMAN BASEHART: Prior to completion of sub-division improvement.

CHAIRMAN KONYK: Okay. So do you want to clean that up and read it -- no?

MR. SEAMAN: Well, I'm going to double-check when we're finished because Bob read it into the record.

CHAIRMAN KONYK: Okay. So you're accepting it the way he read it?

MR. SEAMAN: Yes.

CHAIRMAN KONYK: Okay, great.

Any other discussion from any board members?

Okay. Can we have -- is somebody prepared to make a motion on this item?

VICE CHAIRMAN BASEHART: I'll make a motion that -- wait a minute -- that variance SD-107 be approved subject to staff recommendation and with the addition of the drainage condition as read into the record.

CHAIRMAN KONYK: And the applicant has indicated that that is acceptable.

VICE CHAIRMAN BASEHART: And my motion is made on the basis of my review of the staff report and my conclusion that the criteria for the granting of the variance has been met.

CHAIRMAN KONYK: We have a motion by Mr. Basehart. Do we have a second?

MR. SADOFF: Second.

MS. CARDONE: Second.

CHAIRMAN KONYK: I don't know who was first -- Mr. Sadoff. Second by Mr. Sadoff. All those in favor?

ALL: Aye.

CHAIRMAN KONYK: Any discussion? Well, I guess we already voted, huh?

VICE CHAIRMAN BASEHART: Yeah.

CHAIRMAN KONYK: Okay. So motion carries unanimously. This variance has been approved.

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:

Standard met. The subject property is at the end of an existing 16 ft. wide street which is substantially narrower than other streets which is substantially

narrower than other streets in the area, with fully developed residential lots on both sides. The property is also the largest lot on the street, being at least twice the size of most other surrounding lots. Due to existing development, acquisition of the necessary additional right-of-way to establish a conforming street would not be possible since it would result in significant encroachment into the current front yards and creation of nonconforming setbacks for most if not all of these existing houses.

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

Standard met in part. The need for variance relief is a result of the applicant's desire to subdivide the subject property rather than continue to use it as a developed single family lot as recently purchased. However, the existing street and abutting lots were created by previous owners in the late 1960's, prior to enactment of the County's mandatory subdivision regulations, and the lots were developed by their individual owners at setbacks conforming to code requirements in effect at the time of construction, with no provision made for future widening of the street. Therefore, the applicant did not create the conditions of development surrounding the subject property which now preclude construction of standard local street access for subdivision.

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:

Standard met in part. Granting the requested variances would allow the applicant to subdivide property with substandard access, a privilege that would normally be denied to owners of other properties with similar access. However, the proposed subdivision will create only two lots from a single existing lot served by the same nonconforming street that serves 20 other developed lots created by subdivision prior to enactment of current code standards for access and other required subdivision improvements. Therefore, the proposed subdivision access would be entirely consistent with that serving adjacent development.

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 HARSHSHIP:

Standard met. If the requested variances are not approved, the applicant would be required to obtain an additional 17 feet of right-of-way width from each lot owner along Country Oaks Lane west of the subject property to Prosperity Farms Road, and construct the entire 1,100 feet of roadway as a 20 feet wide paved street with valley gutter. Given that the additional right-of-way cannot be obtained without created nonconforming setbacks and unacceptable reductions in front yard depth of the existing developed lots, the applicant would be precluded from creating the single additional lot resulting from the proposed subdivision.

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

STRUCTURE:

Standard met. The variances requested are the minimum that would allow the existing street and proposed driveway easement to be used for access to the subdivision lots without unduly encumbering the subject lots and adjacent properties.

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

Standard met.. The intent of the code is to ensure safe, convenient vehicular access to lots without interfering with normal street traffic circulation, and to provide sufficient right-of-way width to accommodate the necessary roadway, drainage facilities, and utilities. The subject property is at the terminus of a dead-end street which cannot be extended, and the pending county street improvement program will provide a paved roadway, drainage, water, and sewer to serve all lots on Country Oaks Lane. Therefore, granting of the requested variances will not be consistent with the Code's intent.

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

Standard met. Since the subject property is at the terminus of the existing dead-end street and the driveway easement will serve only the proposed lots, there will be no impact on the general public traffic circulation system serving surrounding development. Therefore, granting of the required variances will not be detrimental to public safety and welfare.

ENGINEERING COMMENT

The Engineering Department recommends approval of the requested variances, subject to the condition that the proposed driveway easement be used for access by only the two lots created by subdivision of the subject property.

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

VICE CHAIRMAN BASEHART: No, we have one more hearing.

CHAIRMAN KONYK: Oh, we have one more hearing. Sorry -- a regular item.

B of A 2002-032 -- Patrick and Jean Ellis, owner, to allow an existing addition to encroach into the front setback.

Is the applicant present? And could you come forward.

Anybody that's going to speak on this item --we'll go ahead and swear everybody in.

If you'll raise your right hand and let the swearing in take place.

(Complying)

THEREUPON,

the persons testifying, after being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified on their oath as follows:

ALL: I do.

CHAIRMAN KONYK: Okay. Applicant -- your name for the record.

MR. ELLIS: Patrick Ellis.

CHAIRMAN KONYK: Okay.

MS. ELLIS: Jean Ellis.

CHAIRMAN KONYK: What's the recommendation on them?

MR. AUBOURG: There is two variance requests. One for denying and one for approving.

CHAIRMAN KONYK: Okay. So we have two variance requests. Normally, they put it on our front cover, and they don't tell us.

So we'll just go ahead and let the Staff introduce the item, and then we'll hear from you.

MR. AUBOURG: BA 2002-032 -- Patrick and Jean Ellis, owners, to allow an existing addition to encroach into the front setback and to allow an existing fence to exceed the maximum height requirement. Location: 5274 Cleveland Road, approximately point fifty-five miles north of Linton Boulevard, and approximately point twenty-eight miles west of Military Trail within the Country Club Acres sub-division in the RS Zoning District.

CHAIRMAN KONYK: Okay. Which variance are you recommending for approval and which one are you recommending for denial?

MR. AUBOURG: Approval is for the existing addition to encroach into the front setback.

CHAIRMAN KONYK: Which would be 6.5.6.1 -- that's the one that's identified like that.

MR. AUBOURG: Yes.

CHAIRMAN KONYK: So that one, and the one for denial is 6.6.A.2.

MR. AUBOURG: Yes.

CHAIRMAN KONYK: Okay. Now, let me make a suggestion here that we go ahead and review this one that's not in dispute -- the portion of it and --

VICE CHAIRMAN BASEHART: First of all, maybe what we need to do is invite the public to --

CHAIRMAN KONYK: Is there anybody from the public here to object to this item? Okay.

Now can we hear that part? Okay.

All right. So I'm going to suggest that we separate this into two parts right now just so we can move away from the item that there's no disagreement about.

As far as the property development regulations, front setback for an existing addition with the required 25-feet, proposed 22-feet, and a 3-foot variance, Staff is in agreement that this item does meet the criteria necessary to receive a variance.

There's nobody from the public to speak against this item.

Does any board member have any objection to this item being approved?

Seeing none, then can I have a motion to approve this portion of the variance request?

MR. SADOFF: So moved.

CHAIRMAN KONYK: Mr. Sadoff has made a motion to approve --

MR. CUNNINGHAM: Second.

CHAIRMAN KONYK: -- 6.5.6.1 of this variance request with Mr. Cunningham seconding.

Is there any discussion?

All those in favor?

ALL: Aye.

CHAIRMAN KONYK: So that portion of your variance is approved.

MS. ELLIS: Thank you.

CHAIRMAN KONYK: Now we'll move on to the portion that isn't approved which is 6.6.A.2, Supplementary Regulations: Fence height in the required front yard, 4-foot required, Proposed 6-feet, with a 2-foot variance.

Do you want to give us your justification for this variance?

MS. ELLIS: Yes, thank you.

VICE CHAIRMAN BASEHART: If you're going to use the drawing, that will come out of the holder and you can carry it.

MS. ELLIS: I'll stand here for now --

VICE CHAIRMAN BASEHART: Okay.

MS. ELLIS: Thank you.

I would just like to give a little brief history of this piece of property -- the lot. Before we purchased this lot, we had serious problems. People were drag racing through it; dumping garbage, throwing car parts, truck oil, doing drugs, smoking, drinking.

So that is the only reason we purchased it is for a peace of mind. We were -- all this time we were having the problems, Mr. Richard Collier, who's our code enforcement officer, was wonderful in helping us with this so he's very familiar with what went on before we purchased the lot and put the fence up. So he can verify, you know, the things that were going on.

I even had someone come out and hang a boar from the tree and gut it. People even urinating on the property. So when we finally -- we were able to purchase the property and Mr. Collier was wonderful in getting after the person that owned the lot to go out there and have him cut the weeds and things like that, so we really appreciate his help.

The reason for the 6-foot fence is to stop this negative activity so that we could have peace of mind in our own home. There were many police -- I had to call the police on numerous occasions, you know, in the middle of the night. It was just incredible. The fence does not completely obstruct the view into the property. It's three-sided, and it is just attached to our property where we have our home.

So when you stand in front you can see right in. You can see the whole entire area from the front. So, like I say, it's three-sided.

When we put the fence up, we really felt we were being consistent with the neighborhood. Our neighborhood -- you know, it's an old neighborhood. Most homes were built in 1956, and there are many, many 6-foot fences completely enclosing yards. Even on our own street there is another home that has a lot -- an empty lot -- and it is completely fenced with a 6-foot fence.

So there are no 4-foot fences in our neighborhood so we really felt we were being consistent, you know, with what else was in the neighborhood. The fence has improved the whole neighborhood. I have a petition from the people that live in Country Club Acres saying that it was a source of police problems and that they are thrilled with the improvements that we've done and also quite a few letters from residents.

CHAIRMAN KONYK: You haven't given those to Staff yet ever?

MS. ELLIS: I showed the petition the first time I came up here, but I did not turn it in the file.

CHAIRMAN KONYK: Do you want to give us those?

MS. ELLIS: Yes.

CHAIRMAN KONYK: Okay. We have to make a motion to accept them into the record.

Can I have a motion?

VICE CHAIRMAN BASEHART: I'll accept them into the record.

CHAIRMAN KONYK: Mr. Basehart.

Second?

MR. CUNNINGHAM: Second.

CHAIRMAN KONYK: Second by Mr. Cunningham.

All those in favor?

ALL: Aye.

CHAIRMAN KONYK: Now they're ours.

VICE CHAIRMAN BASEHART: Now they're part of the record.

CHAIRMAN KONYK: I mean, we're not going to give them back to you. You don't need them back, right?

MS. ELLIS: No.

CHAIRMAN KONYK: You have copies?

MS. ELLIS: Yes. Thank you.

CHAIRMAN KONYK: Okay. All right.

Let me ask staff to give us their justification for denying this variance.

MR. SEAMAN: Part of the reason why we feel that the variance should be denied is, there are other design options that they could accommodate such as lowering the fence to the 4-feet as required or to move it back. As you can see on the right side of the board, they can move it back twenty-five feet meeting the permanent structure setback requirements that would allow her to keep the six feet, and we feel that we would be presenting something or suggesting from somebody that is not normally approved or enjoyed throughout other neighborhoods.

CHAIRMAN KONYK: How about this neighborhood?

MR. SEAMAN: We can't confirm or deny that, you know, we're looking at this particular individual, and if there are other 6-foot high fences out there we need to --

CHAIRMAN KONYK: Call code enforcement.

MR. SEAMAN: Yeah.

CHAIRMAN KONYK: Okay. Can you address the suggestion that you make it the 4-foot fence instead of the 6-foot?

MS. ELLIS: Yes.

CHAIRMAN KONYK: Okay.

MS. ELLIS: There are several reasons why it would be difficult to do what is suggested. First of all, this is a vacant lot. There will never be anything built on it, and what happens is, there's a lot of gangs. There's some bad kids in the neighborhood -- a 4-foot fence -- they just crawl over it.

I've had people -- eight guys in a dump truck literally drive down the ditch that is owned by the County. So I've seen all that. The only way to keep people off the property is if they just can't climb over it. There are two huge mango trees there, and the kids -- little kids, you know, five, six years old -- they're up in the top of the tree beating the mangoes. Somebody's going to break their leg. I really feel that this 6-foot height is the only way to stop this.

MR. SADOFF: Excuse me. May I interject a question, please?

VICE CHAIRMAN BASEHART: Sure.

MR. SADOFF: Chair, may I?

CHAIRMAN KONYK: Well, we usually let them finish speaking first but that's okay.

MR. SADOFF: I just wanted to get a hone in on the area because I pass that area quite frequently.

Are you near the Delray Hospital?

MS. ELLIS: Not too far from Delray Medical Center, right.

MR. SADOFF: And you say there are a lot of kids around there -- a lot of bad kids and stuff?

MS. ELLIS: Yes, sir.

CHAIRMAN KONYK: This is located on Military Trail.

MR. SADOFF: No, it's not on Military Trail.

CHAIRMAN KONYK: Off of Military Trail.

MR. SADOFF: It's about a half mile, what, west of it, right?

MR. ELLIS: Right.

CHAIRMAN KONYK: Well, their home is but the sub-division is entered from Military Trail.

MR. ELLIS: Correct.

CHAIRMAN KONYK: Correct?

MR. ELLIS: Yes. It's between Linton and --

CHAIRMAN KONYK: Isn't it Lake Road or something like that -- the road you go in on.

MR. ELLIS: Right.

MS. ELLIS: It's a little kind of country neighborhood that's been there since the 50's, you know, and in the back of this lot is a home. There is a road that no one's supposed to have access to and a drainage ditch. Lake Worth Drainage are the only people that are supposed to have access, but for so many years people have used -- driving through the lot and speeding down behind the houses; sitting in their cars back there, you know, smoking and other things.

So if you can kind of picture -- we're on the very last street, and no one's behind us actually. So not only the trouble makers in the neighborhood would come through there -- even people from other neighborhoods -- kids, you know, they just -- they had the word that this was the place to go, just to drag race. I mean, these trucks, you know, that are jacked up with the wheels, you know, this high (indicating) with the booming and -- so the word was out, not only in our neighborhood but all over, that this is the place for all the kids to go and hang out.

So, you know, if you can --

CHAIRMAN KONYK: What was your question?

Did you get an answer?

MR. SADOFF: I was just trying to visualize what she was talking about.

CHAIRMAN KONYK: Oh, okay.

MR. SADOFF: I was trying to get a --

MR. ELLIS: It's not a bad neighborhood. It was just a problem lot.

CHAIRMAN KONYK: And there's probably a lot of renters in the neighborhood.

MS. ELLIS: Absolutely.

CHAIRMAN KONYK: And it's an older neighborhood.

MS. ELLIS: Yes, it is.

VICE CHAIRMAN BASEHART: Well, I'm satisfied -- you've justified why you need a 6-foot fence, but the second part of that is why would it not be more appropriate just to move the fence back twenty-five feet from the front property line.

MS. ELLIS: I understand your question.

The main reason for that is that this property -- there's -- let me see if I can give you a picture of this so you can visualize it.

CHAIRMAN KONYK: The pictures that you have -- do you have one that shows that fence?

MR. SEAMAN: Yes.

CHAIRMAN KONYK: Why don't you put that one up since we're not even considering that -- thank you.

MS. ELLIS: Right at that mark where you're asking us to move it back is a huge fur tree -- a gorgeous tree. Like I say, this lot has mango -- it has three mango trees on it that have been there, I don't know, a long time -- old tree -- beautiful fur tree here (indicating).

So, you know, I know that the zoning board is here to make the neighborhoods -- keep them nice so that people can't just put things anywhere. I

understand that. But sometimes in certain circumstances -- I mean, we're willing to compromise and move the fence, but we cannot move it to that point because we'd have to chop down the tree.

MR. ELLIS: In this photograph, these posts are eight feet apart, and you'll see the third post which is twenty-four feet centering this mature fur tree.

CHAIRMAN KONYK: It's a Norfolk pine, isn't it?

MS. ELLIS: Yes, I believe so.

MR. ELLIS: Yes.

CHAIRMAN KONYK: Well, you're not going to get us to agree that that's a great tree because those are really not appropriate trees in Florida. But so -- I mean -- you're not going to get me to agree to it. Let's put it that way.

MS. ELLIS: Well, I tell you --

CHAIRMAN KONYK: What are these posts? What are these extra posts --

MR. ELLIS: Those are posts for the fence to go up. They're eight feet apart.

CHAIRMAN KONYK: Once you get this resolved, you're going to continue the fence.

MR. ELLIS: Correct.

CHAIRMAN KONYK: Okay, I understand.

So you were stopped.

MR. ELLIS: Correct.

CHAIRMAN KONYK: Okay.

VICE CHAIRMAN BASEHART: Go ahead.

MS. ELLIS: Just one point that I'd like to mention before I forget it. The reason for the whole neighborhood having 6-foot fences is -- I don't know the exact year -- but 6-foot fences were allowed in the neighborhood for years and years and years. And then it was changed -- it was changed back and forth a couple of times. I was even told by --

CHAIRMAN KONYK: Six foot fences are allowed on the side, but not in the front.

MS. ELLIS: It was changed in the 70's to allow 6-foot fences in the front, and then they changed it back. They changed it back.

VICE CHAIRMAN BASEHART: I think under the -- ever since the '73 zoning code was approved -- was adopted -- I think the height has been -- the height limit has been four feet in the front yard. But under the '57 Code, I believe she's right.

CHAIRMAN KONYK: Well, you didn't put the fence up in '57.

MS. ELLIS: No.

CHAIRMAN KONYK: Okay.

MS. ELLIS: But I'm just making the point that since the neighborhood has been there for so long, almost the whole neighborhood is 6-foot fences because, at that time, that's when they were put up and, you know, people have not taken them down for all these years.

VICE CHAIRMAN BASEHART: And they fixed them --

MS. ELLIS: Yeah.

VICE CHAIRMAN BASEHART: So if any fences -- any 6-foot high fences in front yards that were installed before 1973 were probably consistent with the Code.

MS. ELLIS: Yes. That's exactly what I'm saying. So the truth of the matter is that if we were told to cut the fence down to four feet, we would be the only fence in the whole area.

CHAIRMAN KONYK: I find it hard to believe that there's that many 6-foot fences in the front yards.

MS. ELLIS: I have pictures --

CHAIRMAN KONYK: Okay. But even if there are it doesn't matter. You're putting up a fence in 2002, not 1957, when the Code said it was okay. Unfortunately, codes change and when people do things after the codes change, they need to comply with the current code. I really personally can't see justification for not having the 4-foot fence in the front yard. It's been my experience throughout my history in this community and as a president of not only my association for the last twelve years but also the master association, that these preventative measures only keep the honest people out. Your real thieves are going to get around it anyway -- your real bad people are going to get around any kind of obstruction you try to put in their way regardless of what you do.

So it's my opinion that a 4-foot fence would probably satisfy that just as well as a 6-foot fence and possibly you could plant some kind of a hedge on the inside of that fence that would make it a wider area for them to climb over and prevent them from being able to climb over such as a Viburnum hedge which has a very rough bark that, as it matures, it would hurt them to climb through the Viburnum. That's my opinion.

MR. JACOBS: May I ask Staff a question?

CHAIRMAN KONYK: Uh-huh.

MR. JACOBS: Was there a physical examination made by the Staff before it recommended a denial of a second variance?

MR. SEAMAN: Yes, there was.

MR. JACOBS: And were there other 6-foot fences noted in the area?

MR. SEAMAN: Yes. There were some 6-foot fences there, but again, without code enforcement looking into it, we couldn't really bring them into the equation of this variance.

MR. JACOBS: Well, if there were other 6-foot fences in the area, the variance wouldn't necessarily give the applicant something not given to other people in the area.

MR. SEAMAN: Well, the conflict is for us is we need -- we sometimes ask the applicant to provide us with information or give code enforcement a call to verify the existence of a 6-foot fence, whether it's per code or not per code, or when it was constructed. Our team goes out and just checks to see what's existing. If things are in violation, we need to have the applicant contact code enforcement to verify it; and again, that's not something that we traditionally do for variances.

CHAIRMAN KONYK: No. Because every variance stands on its own. It doesn't matter if there's been prior approvals in the past. It doesn't affect this variance.

MR. SEAMAN: We try to focus on just the applicant before us.

CHAIRMAN KONYK: Any other questions from the members of the Board? Do you have anything else?

MR. SADOFF: Yes. I'd like to address Mr. Collier. When you --

MR. COLLIER: I am Dick Collier -- Richard Collier -- with the Palm Beach County Code Enforcement.

MR. SADOFF: Hello, Richard, I haven't seen you in a long time.

When you were at the property, did you have any objections -- I mean, I know that the code -- are most of the fences there six feet?

MR. COLLIER: Many of them are. This is an older neighborhood, and many of the older homes there have fencing that shuts them off this way. This particular lot -- the only thing I can add to you all about this is this particular lot was a troubled spot. It was an attractor of problems, and Mrs. Ellis and I have fought with the old owner to get him to cut it and maintain it, and to shut off the foot traffic that was going through. There was a considerable amount of drug traffic going on behind the property and passing through that area.

Ultimately, the only way she could resolve this problem was to buy the lot and to shut it off. Now, whether it's a 6-foot fence or a 4-foot fence is

strictly an aesthetic question as far as I'm concerned, as to whether it has to be that height or not. I understand her point of view. I think her point of view best expressed is that she's trying to still barricade out the troublesome elements. At least in her mind, I believe that's the way she sees it.

Alternate plannings and other ways can solve the problem if you vote against her. It's immaterial for me and whatever the staff has recommended is acceptable. So I'll be happy to answer any specifics about it. The fence is aesthetically pleasing. It interferes with no one, you know, other than the owner, and the truth is if she could stand it to the 4-foot level and you raise it six in the back past the set back as --

CHAIRMAN KONYK: Well, then she would comply with the code which you are enforcing.

MR. COLLIER: Yes.

CHAIRMAN KONYK: Correct. And to enforce the code, she needs a 4-foot fence in the front and it could be a 6-foot fence on the side.

MR. COLLIER: Yeah.

CHAIRMAN KONYK: So not that it changes the opinion of code enforcement, but in your opinion, a 4-foot fence would satisfy the needs that she has.

MR. COLLIER: Yes. It would satisfy the community's needs. It is an aesthetic question with her and for you all to decide.

MR. CUNNINGHAM: I have a question. All of these other 6-foot fences that you continue to refer to in the neighborhood -- do they fall within the setback requirements?

MR. COLLIER: I would have to go property by property. That happens to be my target area and I'm in it virtually every day, and many do. I am getting into some now where we're beginning to phase into that -- those building questions -- and I'm sure I'm going to be facing these issues so --

MR. CUNNINGHAM: But there are some that do fall within setback requirements.

MR. COLLIER: Yes, sir. They're non-conforming in the sense that they were put in after '57 when they were put in with a higher fence. Those still exist. Some were put in before '57 and have been rotated or replaced.

MR. CUNNINGHAM: With a permit?

MR. COLLIER: Some are and some aren't.

MR. CUNNINGHAM: This particular fence here?

MR. COLLIER: No. This fence was not permitted initially and was cited for that.

MR. CUNNINGHAM: Thank you.

CHAIRMAN KONYK: Yes.

MS. ELLIS: May I please -- I'm asking, please, that you just take a look at this. This is directly across the street because it clearly shows that we really thought we were being consistent.

CHAIRMAN KONYK: You didn't get a permit. If you had gotten a permit, you would have found out.

MS. ELLIS: I apologize. I know we made a mistake and we take complete responsibility for it.

CHAIRMAN KONYK: Right. But if you had gotten a permit, you would have known that a 4-foot fence is allowed in the front.

MS. ELLIS: I understand. But I'm asking that you just take a look at this, that's all.

CHAIRMAN KONYK: We'll make a motion to accept this.

MS. ELLIS: Thank you.

MR. CUNNINGHAM: So moved.

CHAIRMAN KONYK: Second?

MS. CARDONE: Second.

CHAIRMAN KONYK: Okay.

Motion by Mr. Cunningham. Second by Ms. Cardone.

Anybody have any objections? Motion carries unanimously.

Where's the front of this house?

MS. ELLIS: The front of the house?

CHAIRMAN KONYK: That's the front right there?

MS. ELLIS: Yes, absolutely.

CHAIRMAN KONYK: Is that behind that corner?

(Indicating)

MS. ELLIS: Yes.

CHAIRMAN KONYK: So your house isn't on a corner.

MS. ELLIS: No.

CHAIRMAN KONYK: It's at angle -- the house -- okay, whatever.

Anybody else have any questions?

MR. CUNNINGHAM: I'd like to make a motion -- motion for denial based on staff report and also that shows -- I mean, you really could move the fence.

MS. ELLIS: May I make a -- I didn't know if I --

CHAIRMAN KONYK: No.

MR. CUNNINGHAM: Just a motion for denial.

MR. SADOFF: Second.

CHAIRMAN KONYK: We have a motion by Mr. Cunningham. Second by Mr. Sadoff.

Can you clarify your motion -- the applicant has not shown that he's met certain criteria?

MR. CUNNINGHAM: Correct.

CHAIRMAN KONYK: Okay. Any discussion?

VICE CHAIRMAN BASEHART: Yes. Before we vote, looking at the pictures and considering the neighborhood, and Mr. Collier's input, I really think for privacy and for security a 6-foot fence around this lot is appropriate, but I'm uncomfortable with it being right out on the right-of-way line. I feel that -- well, of course, the way it was advertised -- it wasn't advertised as a setback variance for a 6-foot fence. It was advertised as a height variance.

You know, I'd like to offer a substitute motion if somebody feels it's appropriate to second it, that the height variance be granted provided that the fence be moved back to a point looking at the pictures and considering where the trees are, I think -- and I don't know for sure, tell me if I'm wrong -- is that tree about twenty feet back from the front property line?

MS. ELLIS: Yes.

MR. ELLIS: Correct.

VICE CHAIRMAN BASEHART: So I'd like to make a substitute motion that the variance be granted provided that the front of the fence be moved back twenty feet from the right-of-way line. That would only be five feet closer to the right-of-way than would normally be allowed.

CHAIRMAN KONYK: I don't -- I'm not a parliamentarian so I don't know how substitute motions work. Can you explain that?

MR. JACOBS: I'll second that motion.

CHAIRMAN KONYK: Now what motion are we going to vote on?

MR. JACOBS: Mr. Basehart.

MS. PETRICK: Commonly, the way that I've seen it done on all my other boards, the person who makes the original motion withdraws or amends their motion to conform with the second suggestion.

CHAIRMAN KONYK: And if he doesn't.

MS. PETRICK: Then you would need to vote on his first.

CHAIRMAN KONYK: Okay.

MR. SADOFF: I'm going to withdraw.

CHAIRMAN KONYK: Well, you didn't make the motion anyway.

MR. SADOFF: Yeah, I did.

VICE CHAIRMAN BASEHART: Yes, he did.

CHAIRMAN KONYK: Bart made it.

MR. SADOFF: I'm losing it. I thought I did.

MR. CUNNINGHAM: We'll withdraw.

CHAIRMAN KONYK: Okay. So now clarify what you're asking.

VICE CHAIRMAN BASEHART: My motion is to grant the variance under Section 6.5.6.1 to allow a 6-foot fence in the required front yard provided, as a condition of that approval, the fence be moved back to a point no closer than twenty feet from the front property.

CHAIRMAN KONYK: So in other words, we're going to give them a 5-foot setback variance.

VICE CHAIRMAN BASEHART: And secondly, that a permit be applied for and obtained.

MR. ELLIS: We have a permit for the fence.

CHAIRMAN KONYK: Okay.

MS. ELLIS: We have --

CHAIRMAN KONYK: Wait -- just wait. Okay.

You wanted to say something.

MR. SEAMAN: If the Board feels they're going to go another direction here, there is another solution that you might want to consider.

VICE CHAIRMAN BASEHART: Why didn't you tell us before?

MR. SEAMAN: Well, it wasn't getting where it needed a third option. This is a third option that's been discussed with Mrs. Ellis, with the zoning director, as well as with staff, and this was option one -- this was the option to move it back. The third option was to create a right-of-way buffer to go back ten feet, and the condition would require that they put in a continuous hedge thirty-six inches high with four canopy trees, and that would be a compromise between the code requirement and what Mr. and Mrs. Ellis were looking for.

VICE CHAIRMAN BASEHART: I'm going to start to call him Bill Buffer Whiteford.

Does that solution require cutting down existing trees?

MR. SEAMAN: No. I don't --

CHAIRMAN KONYK: Is that an agreeable solution for you?

MS. ELLIS: Absolutely.

MR. ELLIS: Yes, it is. That would be great.

CHAIRMAN KONYK: So why didn't you --

MR. SEAMAN: We worked very hard at this solution before we got here.

CHAIRMAN KONYK: Well, why didn't you tell us at the very beginning? Why didn't somebody say this at the beginning?

MR. SEAMAN: They were against it.

CHAIRMAN KONYK: She says she's agreeable.

MR. SEAMAN: Now.

CHAIRMAN KONYK: Oh, I got it.

MS. ELLIS: I'm very willing to move the fence back ten feet and also landscape. I even drew up a landscaping plan.

MR. SEAMAN: We have some strong conditions for the landscaping.

CHAIRMAN KONYK: Okay. Let's hear the conditions that he has.

VICE CHAIRMAN BASEHART: Do you think that that alternative is better than moving it back to a point twenty feet?

MR. SEAMAN: Yes. I think that's a better alternative simply because

it fits more into line of section 7.3 where we discuss right-of-way buffers.

VICE CHAIRMAN BASEHART: Okay.

MR. SEAMAN: And that's more reflecting -- a right-of-way buffer for multi-family residential district. So it more falls in line with the ULDC.

VICE CHAIRMAN BASEHART: Then for the moment, I will withdraw my motion, and we don't have any motions on the table.

CHAIRMAN KONYK: Now, why doesn't he present this option to us with the condition; have the applicant listen; and let's see where it goes, right?

MR. CUNNINGHAM: Yeah.

CHAIRMAN KONYK: Okay.

MR. SEAMAN: If the Board chooses to entertain option three, which is moving the wall back ten feet allowing it to remain six feet high, staff would recommend that we provide a condition that says on, November 20, 2002, the applicant shall re-locate the 6-foot high fence ten feet from the right-of-way and install a thirty-six inch high native hedge, planted thirty inches apart, and four 12-foot high native trees, locate materials between the fence and the right-of-way.

CHAIRMAN KONYK: Is that it?

MR. SEAMAN: That's it.

CHAIRMAN KONYK: Okay. Well, I would add another condition to that. And that would be that if this lot is ever built on, this variance is removed. That fence has got to comply period.

MS. ELLIS: No problem.

VICE CHAIRMAN BASEHART: Well, you kind of have to do that or you couldn't get home.

CHAIRMAN KONYK: I'm just saying. I want to make it clear so somebody doesn't come back later and say he didn't know that. So now they know it.

MR. SEAMAN: Of any structure period or just of a single family residence?

CHAIRMAN KONYK: I would say any -- no, it's not --

VICE CHAIRMAN BASEHART: Residence.

CHAIRMAN KONYK: Not anything added to her house. I'm just saying if this is ever a single family residence -- if that lot is ever -- it's not part of her lot now anyway, right?

VICE CHAIRMAN BASEHART: She owns it.

CHAIRMAN KONYK: She owns it but they're not common deeds. They don't have a common deed -- unity of title or whatever.

MS. ELLIS: No.

CHAIRMAN KONYK: So in other words, I'm saying that if that house is ever built on -- I mean, if that lot ever has a habitable home built on it, then I think that it needs to be removed.

Do you understand and agree with all those conditions?

MR. ELLIS: Yes.

MS. ELLIS: I do. I do just have one question.

CHAIRMAN KONYK: Sure.

MS. ELLIS: The verbiage on the plants. What kind of plants --

CHAIRMAN KONYK: That's specific.

MS. ELLIS: I'm just wondering because I had a landscaping plan here. You said four tree -- I just want to make sure I understand.

MR. SEAMAN: Four native trees twelve feet --

MS. ELLIS: Trees, would that be like palm --

MR. SEAMAN: No, native trees. Not queen palms.

VICE CHAIRMAN BASEHART: You said canopy trees. I mean, there are native palms.

MR. SEAMAN: No, I said -- let me say what I said. Four twelve foot

high native trees.

CHAIRMAN KONYK: Twelve foot high native trees.

MR. SEAMAN: There are native palms, okay. There are native --

MS. ELLIS: So I'm just trying to make sure that I -- because I want to do what I'm supposed to do and comply.

CHAIRMAN KONYK: Okay. Let me clarify one thing. He doesn't mean a Norfolk pine.

MS. ELLIS: Okay. I mean, but I could put palm --

CHAIRMAN KONYK: It's got to be a native palm tree.

MS. ELLIS: Okay.

CHAIRMAN KONYK: So I would suggest that before you purchase the trees maybe you call Alan and say, These are the four trees we're considering. Do they comply before they're planted?

VICE CHAIRMAN BASEHART: And he can give you a list of what are native and what are not.

MS. ELLIS: All right. I just want to make sure that I understand.

CHAIRMAN KONYK: Okay.

MR. SEAMAN: And I should read that condition that you said -- the second condition.

CHAIRMAN KONYK: Sure.

MR. SEAMAN: So we're adding a second condition by the Chair which reads, Any future construction of a single family dwelling on the site, the 6-foot high fence shall be removed.

CHAIRMAN KONYK: Okay. So now we have an option. You have conditions.

Do you agree with and understand those conditions?

MS. ELLIS: Yes.

MR. ELLIS: Yes.

CHAIRMAN KONYK: Is there any member of the board that would like to add anything else?

VICE CHAIRMAN BASEHART: Accept a motion.

CHAIRMAN KONYK: Well, that's what I was going for next. Can somebody make a motion?

MR. JACOBS: I'll make a motion we accept option three as outlined by the staff with the addition of these -- extra condition added by the Chairperson.

CHAIRMAN KONYK: Okay. We have a motion by Mr. Jacobs. Do we have a second?

MS. CARDONE: Second.

CHAIRMAN KONYK: Second by Ms. Cardone.

Any discussion? All those in favor?

ALL: Aye.

CHAIRMAN KONYK: Motion carries unanimously.

You've got your variance with some variations.

MS. ELLIS: Okay, thank you.

STAFF RECOMMENDATIONS

Approval for the existing addition and Denial for the existing 6' fence in the front yard. 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:

(a) Existing addition to encroach into the front setback:

YES. The lot supports a 1,638 square foot single family dwelling constructed in 1956 and the applicant's request is simply to align the addition to the same front setback line as the existing dwelling. There will be no significant impact on the street by the existing improvement to the dwelling.

(b) Fence height variance:

NO. The applicant is also requesting a variance for the existing 6-foot fence.

The existing 6 foot fence in the front yard **will not meet** the intent of the code fence height limitation which is to avoid a "wall" type character in the RS zoning district supporting single family dwelling.

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

(a) Existing addition to encroach into the front setback:

NO. The existing addition will be consistent with the existing dwelling setbacks. The applicant has no other design options for the construction of the addition in the front setback since there was no entrance door along front house. Granting the variance would allow the proposed addition to align with the existing single family dwelling in the front setback.

(b) Fence height variance:

YES. Special circumstances and conditions are the result of the applicants. As indicated, the applicant has alternative options that would eliminate the necessity for this variance. The relocation of the existing fence beyond the front setback line is one of the suggestions given by staff if the applicant wants to keep the existing fence at the same height (6').

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:

(a) Existing addition to encroach into the front setback:

Granting the variance shall not confer upon special privileges denied by the comprehensive plan and this code to other parcels of land, buildings, or structures, in the same district. The applicant purchased the property in November 1996, at which time an entrance door did not exist. Other property in the area has existing entrance in the front property. The existing addition will simply allow the applicant to enjoy their property to the greatest extent possible.

(b) Fence height variance:

YES. The requested variance is not compatible with the provision of the ULDC Code and Comprehensive Plan, which encourages structures (including fences) to be in harmony with the neighborhood. The applicant's primary justification for the 6' wood fence is to mitigate any aspect associated to drug activities and to promote safety. Staff informed the applicant that the 6' fence can be maintained to promote the safety requested by the applicant

if he relocates the fence beyond the front setback line. Also, the applicant has the option of lowering 2 feet of the existing fence.

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.

(a) Existing addition to encroach into the front setback:

YES. The applicant's proposal simply aligns the addition to the same front setback line as the existing dwelling. There will be no significant impact on the street by this existing improvement to the dwelling. The required front setback for this property is 25 feet. As a legal nonconforming structure, the existing front setback is 22 feet from the north property line and the proposed front setback is 22 feet for the addition to the house. The proposed setbacks are sufficient to be consistent with the original structures and the general intent of the front setback.

(b) Fence height variance:

NO. A literal interpretation and enforcement of the terms and provisions of this code will not deprive the applicant of rights commonly enjoyed by other parcels of land in the same district. The strict interpretation of the terms of the Code is that a fence placed in the front side of the property line does not exceed a maximum of 4 feet high. However, the applicant was informed that the 6 foot fence is permitted only if relocated beyond the front setback line.

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

(a) Existing addition to encroach into the front setback:

YES. This is a **minimum** variance that will ensure a reasonable use of the property. The addition to the existing home **will meet** the required side yard setbacks; this will ensure that adequate separation between properties is met. The proposed addition will not detract from the existing view of the property from the street since the existing addition aligns with the existing facade.

(b) Fence height variance:

Staff has made several suggestions to the applicant in order to meet the ULDC Code provision for fence height. The applicant has these options to meet the code: lowering 2' of the existing wood fence, relocate the fence beyond the front setback line. Some options will mitigate many of the issues stated by the applicant and also meet the intent of the code.

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

(a) Existing addition to encroach into the front setback:

The current ULDC would require the applicant to construct the existing addition with a front setback of 25 feet. The applicant cannot align the proposed addition with the existing dwelling and comply with the current code at the same time. Due to the inability of the applicant to meet the current setback requirement, a variance is necessary and warranted.

(b) Fence height variance:

The intent of the ULDC Code requirement is to ensure fences provide buffering while not creating a wall. The principal goal of the comprehensive plan and the ULDC is to maintain consistency and harmony of residential character throughout the neighborhood. The granting of this variance would contribute to a neighborhood inconsistency with respect to fence height.

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

(a) Existing addition to encroach into the front setback:

NO. The grant of this variance will not be injurious to the area involved or otherwise detrimental to the public welfare. The request for a reduction in the front setback is not visually detectable since the existing addition will be keeping with the original setbacks applied to the existing dwelling.

(b) Fence height variance:

YES. Approval of the requested variance for a 6 foot wood fence in the front setback would send a negative message to the neighborhood that PBC supports the construction of 6 foot fences along the front property line in RS zoning district. If the residents were allowed to construct fences without restrictions, the character of this neighborhood would be compromised. The code limitation is to discourage this effect and to encourage residents to explore other options to secure and enhance their properties.

ENGINEERING COMMENT

1. Please note that the Base Building Lines for Cleveland Road and the unimproved right-of-way of Harrison Road have been established at the existing north and east property lines of the subject property per Base Building Line Waivers issued August 29, 2001 and September 24, 2001. The requirement that the Base Building Line be thirty (30) feet from the centerline of Cleveland Road is hereby waived and established at the existing south right-of-way line, being also the north property line of the above-described lots as platted. The requirement that the Base Building Line be thirty (30) feet from the centerline of Harrison Road is hereby waived and established at the existing west right-of-way line, being also the east property line of the above described lot as platted. Since this portion of the subject street is not open to vehicular travel, no safe sight distance triangle is required at the northeast corner of the lot.

ZONING CONDITIONS

1. The development order for this particular variance (existing addition) shall lapse on June 20, 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 December 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 presented to the Board for the existing addition, simultaneously with the Building permit application. **(DATE: MONITORING BLDG PERMIT: BLDG)**

3. By March 20, 2003, the applicant shall obtain a building permit for the existing addition in order to vest the variance approved pursuant to BA2002-032. **(DATE: MONITORING-BLDG PERMIT)**

CHAIRMAN KONYK: Alan, can I make a suggestion in the future?

MR. SEAMAN: Oh, yeah.

CHAIRMAN KONYK: I mean, if you have three options like this, can you just show them all to us at the beginning of the meeting?

MR. SEAMAN: I can do that, yes.

CHAIRMAN KONYK: Okay. That would be great.

VICE CHAIRMAN BASEHART: In other words, she doesn't want to play liar's poker.

CHAIRMAN KONYK: Next item on the agenda -- the attendance record. Ms. Cardone was away on business, and that is the only person that was absent. And we accept that as an excused absence.

VICE CHAIRMAN BASEHART: I make a motion that we do that.

CHAIRMAN KONYK: Motion by Mr. Basehart.

MR. CUNNINGHAM: Second.

CHAIRMAN KONYK: Second by Mr. Cunningham.

All those in favor?

ALL: Aye.

CHAIRMAN KONYK: Motion carries unanimously. We are now adjourned.

MR. SADOFF: I make a motion that we adjourn.

VICE CHAIRMAN BASEHART: I second.

CHAIRMAN KONYK: Motion by Mr. Sadoff. Second by Mr. Basehart.

You know, we really don't need a motion to adjourn. We can just adjourn. The Chair can adjourn the meeting so I'm not going to have motions to adjourn anymore.

(Thereupon, the board meeting was concluded.)

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 49 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 July, 2002.

Rhonda Latham
Notary Public

