

PALM BEACH COUNTY
BOARD OF ADJUSTMENT

Thursday, October 17, 2002
9:00 a.m - 9:12 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. William Sadoff
Mr. Raymond Puzzitiello
Mr. Joseph Jacobs

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

CHAIRMAN KONYK: All right. Let's try that again.

I'd like to call the October 17, 2002, meeting of the Board of Adjustment to order.

Let's start with the roll call and the declaration of quorum.

MS. JAMES: Mr. William Sadoff.

MR. SADOFF: Here.

MS. JAMES: Mr. Raymond Puzzitiello.

MR. PUZZITIELLO: Still here.

MS. JAMES: Mr. Bart Cunningham.

MR. CUNNINGHAM: Here.

MS. JAMES: Ms. Chelle Konyk.

CHAIRMAN KONYK: Here.

MS. JAMES: Mr. Robert Basehart.

VICE CHAIRMAN BASEHART: Here.

MS. JAMES: Ms. Nancy Cardone.

MS. CARDONE: Here.

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

CHAIRMAN KONYK: We have a quorum. I have before me the proof of publication in the Palm Beach Post on September 29, 2002.

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

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

If the applicant does not agree with the conditions or if there's opposition from the public, or a board member feels the item warrants a full hearing, items on the consent agenda will be pulled and reordered to the regular agenda.

Items on the regular agenda are items that have been recommended for denial by staff or the applicant does not agree with the conditions, opposition from the public, or a board member feels the item warrants a full hearing.

Items on the regular agenda will be introduced by staff. Then the applicant will give their presentation. The staff will have an opportunity to give their presentation. At that point, we'll hear from the public. After the public portion of the hearing is closed, the Board will have an opportunity to ask questions and then vote on the item.

The next item is approval of the Minutes which we did not receive so we'll have to postpone that until the next meeting.

And remarks of the zoning director. Are there any changes to the agenda?

MR. SEAMAN: No remarks of the zoning director, but there are some changes in the agenda. BA 2002-064, which was on the regular agenda, has now been postponed thirty days.

CHAIRMAN KONYK: By right?

MR. SEAMAN: By right. And also subdivision 109 has also been postponed for thirty days. That's all. Subdivision-109 was left off the agenda completely but it's in tandem with BA 2002-065.

CHAIRMAN KONYK: So --

MR. SEAMAN: 065 and 109 --

CHAIRMAN KONYK: Are being postponed for thirty days?

MR. SEAMAN: Right.

CHAIRMAN KONYK: By right?

MR. SEAMAN: By right.

CHAIRMAN KONYK: Okay. And 064 is being postponed for thirty days by right.

MR. SEAMAN: By right, correct.

CHAIRMAN KONYK: Okay. Let the record reflect that Mr. Jacobs is here.

(Thereupon, Mr. Jacobs entered the room)

CHAIRMAN KONYK: Okay. Items on the consent agenda are BA 2002-059, Ernest and Sophie Marks, to allow a proposed addition to encroach into the required rear setback.

Is the applicant present? Your name for the record.

MR. MARKS: Ernest Marks.

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

MR. MARKS: I do.

CHAIRMAN KONYK: Okay. Is there any letters?

MR. SEAMAN: Yes. There is one response and it's for clarification.

CHAIRMAN KONYK: Is there any member of the public here to speak on this item? Any board member feel this item warrants a full hearing?

Seeing none, your item will remain on the consent. You can have a seat until the vote is taken, and then I'll give you your paperwork and you can leave.

MR. MARKS: All right.

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** applicable to the subject property. The pie-shaped lot supports a conforming SFD that borders an existing lake along the rear property line. The existing residence was constructed with a 19.75 foot rear setback, which limits expansion alternatives for the property owners. The owner would like to maximize the use of an existing concrete patio and take advantage of lake views. One of the property owner's is disabled and would like the additional space for access and mobility.

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

NO. The applicant purchased the SFD in 2000 in its existing configuration. The applicant previously constructed a screen roof screen enclosure in 2001 (B01032226) over an existing slab. The applicant would like to replace the existing screen roof screen enclosure with a solid roof

glass enclosed room addition. The setbacks for a solid roof addition are greater than the existing screen enclosure. The applicant would like to utilize the existing patio, and maintain an enclosure of similar size to the existing screen roof screen enclosure. One of the property owner's is disabled and would like the additional space for access and mobility.

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 a special privilege to the applicant. The intent of the ULDC requirement for rear setbacks is to maintain separation between residences, protect adjacent property owners, and insure privacy. The proposed rear setback of 9.23 feet will ensure this is accomplished due to site specific factors. The rear property line borders an existing lake. There are no residential structures behind the existing SFD. The proposed solid roof glass enclosed room addition is a permitted addition to an SFD.

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 intent of the ULDC requirement for rear setbacks is to maintain separation between residences, protect adjacent property owners, and insure privacy. The proposed rear setback of 9.23 feet will ensure this is accomplished due to site specific factors. The rear property line borders an existing lake. There are no residential structures behind the existing SFD. The proposed addition meets the side interior setbacks outlined in the ULDC. The proposed solid roof glass enclosed room addition is a permitted addition to a SFD. One of the property owner's is disabled and would like the additional space for access and mobility.

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 allow construction of a room addition. The subject lot rear property line borders an existing lake. The ULDC allows a 25 percent reduction in the rear setback when a property abuts a minimum of fifty feet of open space. If the applicant utilized the open space setback reduction provision, the required rear setback for the addition would be 11.25 feet. The applicant would like to utilize the existing patio, and maintain an enclosure of similar size to the existing screen roof screen enclosure. One of the property owner's is disabled and would like the additional space for access and mobility. The proposed addition will meet Unified Land Development Code (ULDC) side interior setback requirements.

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

YES. The intent of the ULDC requirement for rear setbacks is to maintain separation between residences, protect adjacent property owners, and insure privacy. The proposed rear setback of 9.23 feet will insure this is accomplished due to site specific factors. The rear property line borders an existing lake. There are no residential structures behind the existing SFD. The proposed addition meets the side interior setbacks outlined in the ULDC. The proposed solid roof glass enclosed room addition is a permitted addition to a SFD.

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 rear property line borders an existing lake that will mitigate the requested rear setback variance. There are no residential structures to the rear of the property. The proposed addition will meet Unified Land Development Code (ULDC) side interior setback requirements. The proposed rear setback will meet the Code's intent to preserve separation between structures.

ENGINEERING COMMENT

No comments. (ENG)

ZONING CONDITIONS

1. The development order for this particular variance shall lapse on October 17, 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 January 17, 2003, 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 October 17, 2003, the applicant shall obtain a building permit for the proposed solid roof room addition in order to vest the variance approved pursuant to BA 2002-059. (DATE: MONITORING-BLDG PERMIT)

CHAIRMAN KONYK: BA 2002-060, Paul and Jeanne Emond, owners to allow an existing solid roof screen enclosure to encroach into the required side interior setback.

Is the applicant present? Your name for the record.

MS. NOSTILL: Kim Nostill (phonetic).

CHAIRMAN KONYK: You are the applicant?

MS. NOSTILL: Agent.

CHAIRMAN KONYK: Agent. Okay. And the Staff has recommended two conditions. Do you understand and agree with those conditions?

MS. NOSTILL: Yes.

CHAIRMAN KONYK: Are there any letters?

MR. SEAMAN: There's one for clarification only.

CHAIRMAN KONYK: Any members of the public here to speak against this item? Any board member feel this item warrants a full hearing?

Seeing none, your 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:

Special circumstances and conditions **do exist** which are peculiar to this parcel of land that are not applicable to the parcels within the same zoning district. The subject lot is a legal-nonconforming lot with a 38' width and 116.7' depth. The applicant is requesting this variance to allow an existing solid roof screen enclosure to encroach 2.7 feet into the required side setback. The ULDC states that remaining portion of the home may be recessed from ZLL by complying with the following standards: The home shall be recessed a minimum distance of four (4) feet from the zero property line. The applicant received a letter from the owner adjacent to the west property line stating that he has no objection regarding the variance request. Adjacent to the rear property line of the subject lot is a 20 foot wide lake maintenance easement and water management tract of approx. 25 acres.

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

NO. The applicant obtained building permit (B02010419) for the existing solid roof screen enclosure by Building Department. Building Staff was under the impression that the roof of the enclosure was a screened roof instead of a solid roof. As mentioned previously, screened roof does not have the same setback requirement as screen roof. The applicant is requesting this variance for the existing structure in order to comply with the Code and obtain the final Certificate of Completion.

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 that were denied to other parcels of land in the same subdivision. The property owner would like to enjoy the view of the lake from the enclosure like other property owners who have similar enclosures abutting their rear yard.

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. As previously mentioned in the above criteria, there are other properties within this subdivision that support solid roof screen enclosures on the rear of the dwelling unit. The applicant would like to have a solid roof screen enclosure similar property to other property owners in the same area. In addition, the HOA and property owner to the west has no objections regarding the variance request if granted.

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 subject lot supports a zero lot line home 38' wide by 116 feet deep. Considering there is not ample buildable area to the side (non zero lot line side) or the front of the subject dwelling unit to support the enclosure and meet the setbacks. The approval of the variance **is the minimum** variance that will allow a reasonable use of the parcel of land, building, or structure.

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

YES. The request **will meet** the general intent of the Code. The Code requires 4 foot separation and the applicant is proposing 2.7 foot separation between the west property line and the existing solid roof screen enclosure. The intent of side setback is to establish a minimum separation between structures on adjacent properties. As stated previously, the property owner to the west has no objection if the variance is granted and existing Eugenia hedge on site will buffer activities inside the enclosure.

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

NO. The granting of the variance **will not** be injurious to the area involved or otherwise detrimental to the public welfare. As previously mentioned, the subject received approval from the property owner to the west and from the HOA of Lake Charleston stating that they have no objections if the variance is granted. Also there is an existing 6' Eugenia hedge located along the west side of the enclosure to mitigate any negative impacts associated with the requested variance.

ENGINEERING COMMENT

No comments. (ENG)

ZONING CONDITIONS

1. The development order for this particular variance shall lapse on October 17, 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 November 19, 2002, the applicant shall provide the Building Division with a copy of the Board of Adjustment Result letter in order for the solid roof screen enclosure (B02010419) to obtain a final Certificate of Occupancy (DATE: MONITORING-BLDG PERMIT)

CHAIRMAN KONYK: Alvarez, petitioners to allow a proposed pool to encroach into the required rear and side setbacks.

Applicant? Your name for the record.

MS. ALVAREZ: Etima Alvarez.

CHAIRMAN KONYK: Four conditions are recommended by Staff. Do you understand and agree with those?

MS. ALVAREZ: Yes.

CHAIRMAN KONYK: Any letters?

MR. SEAMAN: No, there are not.

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

Your item will remain on the consent agenda.

MS. ALVAREZ: 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. There **are unique circumstances** surrounding this lot that warrant consideration. The subject lot is a conforming lot that meets all required RS setbacks. The dwelling under construction forms an open air courtyard on the west side of the SFD. The home design limits placement of a swimming pool, a typical Florida amenity. In order to meet required setbacks, the property owner would have to construct the swimming pool next to the SFD under construction, or install a pool significantly small than typical (15 X 30). The rear property line borders a landscape buffer that has an existing 6 foot wall that separates the subject lot from Boynton Beach Blvd. The side interior setback borders the subdivision entrance gate and a landscape buffer. There are no residential structures that border the side interior or rear setbacks.

2. SPECIAL CIRCUMSTANCES AND CONDITIONS ARE THE RESULT OF

ACTIONS OF THE APPLICANT:

NO. The courtyard home under construction utilizes RS setbacks, however, the design style places emphasis on a side-yard “courtyard,” rather than a more traditional SFD “backyard.” The SFD rear yard setback of 15 feet does not leave room for a pool after applying the required 10.5 foot required setback to the water’s edge of the pool. The applicant would like to maintain a deck of at least 3 feet between the SFD and proposed swimming pool to allow pedestrian movement. In addition, the SFD has several sets of doors that open onto the courtyard that will open into the swimming pool if the required setbacks are applied.

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

NO. The ULDC permits swimming pools as an accessory use to a SFD. The applicant is unable to accommodate the required rear and side setbacks of 10.5 feet due to the existing layout of the SFD. The applicant will meet the intent of the ULDC in preserving privacy and safe access to the pool area. The rear property line is adjacent to a 25 foot landscape buffer and Boynton Beach Blvd.

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

YES. A swimming pool is an accessory use to a SFD and typical amenity to a Florida home. Denial of the variance will limit the available width for a pool to 10 feet. In addition, the available space would be immediately adjacent to the SFD. If the pool was constructed in this area, several sets of doors would open into the swimming pool. The applicant would also like to insure adequate pedestrian access to the pool area by providing a 3 foot patio around the pool.

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

YES. The requested variance is the **minimum variance necessary** that will make a swimming pool possible. The applicant has considered several design alternatives, however, the courtyard layout of the SFD limits swimming pool locations. The applicant has reduced the need for a variance by proposing a narrower than typical pool (11' vs 15'). The applicant will meet the intent of the ULDC in preserving privacy and safe access to the pool area. The rear property line borders a landscape buffer that has an existing 6 foot wall that separates the subject lot from Boynton Beach Blvd. The side interior setback borders the subdivision entrance gate and a landscape buffer. There are no residential structures that border the side interior or rear setbacks.

6. GRANT OF THE VARIANCE WILL BE CONSISTENT WITH THE

PURPOSES, GOALS, OBJECTIVES AND POLICIES OF THE COMPREHENSIVE PLAN AND THIS CODE:

YES. The ULDC permits swimming pools as an accessory use to a SFD. The intent of the pool setback provision is to insure privacy for adjacent property owners and safe access to the pool on the subject lot. The rear property line borders a landscape buffer that has an existing 6' foot wall that separates the subject lot from Boynton Beach Blvd. The side interior setback borders the subdivision entrance gate and a landscape buffer. There are no residential structures that border the side interior or rear setbacks.

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

NO. A swimming pool is an accessory use in the RS zoning district and a typical amenity of a Florida home. Granting the requested variance **will not be injurious** to the surrounding area. The rear property line borders a 25 foot landscape buffer that separates the subject lot from Boynton Beach Blvd., a 120 foot right-of-way. The side interior setback borders the subdivision entrance gate and a landscape buffer. There are no residential structures that border the side interior or rear setbacks.

ENGINEERING COMMENT

No comments. (ENG)

ZONING CONDITIONS

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

CHAIRMAN KONYK: Thomas Heppler, agent for Louis and Patricia Trinkle, to allow a reduction in the front setback.

Applicant -- name for the record.

MR. HEPPLER: Thomas Heppler.

MR. SEAMAN: And we have a -- this is a correction to a condition.

CHAIRMAN KONYK: Okay. Go ahead.

MR. SEAMAN: On page thirty-two of your report, Condition number 2, which reads, By November 17, 2002. It should be changed to, By January 17, 2003.

CHAIRMAN KONYK: Do you understand and agree with the conditions?

MR. HEPPLER: Yes.

CHAIRMAN KONYK: Are there any letters on this?

MR. SEAMAN: There are not.

CHAIRMAN KONYK: Any members of the public to speak against this item? Any board member feel this item warrants a full hearing?

Seeing none, your item will remain on consent.

MR. HEPPLER: 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:

A lake reducing buildable area to approx 22,000 square feet of the total 10.18 acres covers approx. 85% of land. The lake has created special circumstances and conditions that do not apply to the majority of homeland lots.

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

The special circumstances are not the result of the applicant's action. A large portion of property was excavated and converted to a lake prior to the current owner's purchase. The size of the lake and the required front set back of 100+40 feet base building line have reduced the buildable area. The construction of a home comparable to others in the neighborhood cannot be constructed with the variance.

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:

By granting the variance for a front setback reduction of 30', the applicant will be able to construct a home closer to the street and further from the lake encroachment to the rear providing a larger rear yard. This request is consistent and in character with other lots on same side of street and does not confer special privileges.

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:

Due to the reduced buildable lot area created by the existing lake, a literal interpretation of code would deprive the owner of alternative design options on the property. Other residences in the neighborhood are enjoying similar rights in alternative design options due to the large encroaching lake.

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

The proposed 30 foot variance to allow the home to be constructed closer to the right-of-way and base building line is the minimum variance needed to allow a reasonable use of the land. The constraints placed on the land by the largeness of the existing lake and the encroaching base building line limits the design options on-site.

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

Granting the variance will be consistent with the policies of the code. The intent is to maintain uniform front yard spacing between structures and rights-of-way; and to maintain consistency in separation between adjacent structures. The proposed 70 foot setback is consistent with all other lot setbacks on Cypress Lane. There is an 80 foot road right-of-way easement and 40 feet of the easement (BBL waiver) encroaches into the lot. The setback is measured from the inside edge of the easement.

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

The proposed variance will not be injurious to the area. The character of the neighborhood currently consists of owners who have had to adjust their construction options because of the lake, surrounding wetlands and BBL. Granting the variance, therefore, will not be detrimental to the neighborhood.

ENGINEERING COMMENT

No comments of Certification issues.

ZONING CONDITIONS

1. The development order for this particular variance shall lapse on October 17, 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 November 17, 2002, the applicant shall provide the Building Division 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-Zoning)**
3. By April 17, 2003, the property owner shall obtain a building permit for the single-family dwelling. **(DATE: MONITORING-Bldg).**
4. Prior to final Certificate of Occupancy, the owner shall call the landscape inspector's office at 561-233-5038 and schedule an on-site landscape inspection to verify owner had preserved the existing native trees along Bald Cypress in the front yard. **(DATE: Monitoring-Landscape Inspectors)**

CHAIRMAN KONYK: Okay. BA 2002-067, Pamela Ljongquist, to allow an existing garage to convert to an accessory dwelling and to encroach into the required rear setback.

Your name for the record.

MS. LJONGQUIST: Pamela Ljongquist, agent.

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

MS. LJONGQUIST: Yes.

CHAIRMAN KONYK: Any letters?

MR. SEAMAN: No, there are not.

CHAIRMAN KONYK: Any members of the public to speak against this item? Any board member feel this item warrants a full hearing?

Seeing none, your item will remain on the consent.

MS. LJONGQUIST: Thank you.

STAFF RECOMMENDATIONS

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

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

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

YES. Special conditions or circumstances exist that are peculiar to the parcel of land, building, or structures, that are not applicable to other parcels of land structures or building in the same district. The applicant is requesting a 10.8 foot variance for an existing 1,200 sq./ft garage constructed in 1992 (B92023991) to be converted to an accessory dwelling. The subject lot is approx. 349 feet wide by 238 in depth with a 30' road easement platted along the west property line. Existing well septic tank and drain field on site limits other design options for the construction of a new structure.

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

NO. The applicant is proposing to convert an existing garage to an accessory dwelling if the variance is granted. The ULDC requires accessory dwelling to have the same setback as the principal dwelling. This existing garage, if converted, will meet all the setbacks requirement for an accessory dwelling except for the rear setback. The Code requires 50' rear setback for an accessory dwelling within a future land use category of RR2.5. The applicant is proposing 39.2' for a 10.8' variance. According to the Planning, Zoning, & Building (PZB) Mainframe, the applicant is an owner builder acting in good faith by requesting a variance in order to comply with the Code before requesting a special permit.

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

NO. Granting of this variance **will not confer any special privilege** upon the applicant. Many parcels in this AR zoning district have accessory dwellings. This request is compatible with the intent of the Comprehensive Plan and the ULDC and will not impact the immediate or surrounding area. Granting of this variance will allow the applicant to use an existing structure on site to accommodate their family need.

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 existing site constraints limit the placement of a proposed accessory dwelling. The applicant request is reasonable considering the fact that there is a 30 foot road easement platted along the west property line and existing well septic tank and drain field on site limiting other design options for the construction of a new structure. The applicant's intent is to convert the existing 1,200 sq/ft garage to an accessory dwelling by adding a second story. The first floor will remain for garage uses and the second floor will be used for the mother-in-law apartment. Granting of this variance will enhance the applicant's usable lot area while enabling his family a large usable of rear yard similar to other lots in the AR zoning district.

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

This is the **minimum variance** necessary to make a reasonable use of the land. The applicant is proposing to add a second story above the existing garage for a mother-in-law apartment use. The ULDC requires accessory dwelling to meet the same setbacks requirement as the SFD. The conversion of the existing garage to an accessory dwelling trigger the need of a variance for the rear setback. All other setbacks requirement will be met.

6. GRANT OF THE VARIANCE WILL BE CONSISTENT WITH THE

PURPOSES, GOALS, OBJECTIVES AND POLICIES OF THE COMPREHENSIVE PLAN AND THIS CODE:

Granting the variance **will be consistent** with the setback requirement. The ULDC established setbacks in all zoning districts to protect land values, ensure minimum separation between lot lines, structures, and to encourage a sense of continuity. The existing garage to be converted to an accessory dwelling is setback at 39.2 feet from the rear property line. Granting this 10.8 foot variance will comply with the general intent of the Code to provide minimum space to property lines for structures.

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

Granting this variance **will not be considered injurious** to the general area. The applicant intends to use the same footprint of the existing garage. If the applicant was not converting the existing garage to a mother-in-law apartment, no variance will be needed. The Acreage subdivision includes many properties with accessory dwelling. If the variance is granted, the applicant will be able to submit for a special permit.

ENGINEERING COMMENT

No comments.

ZONING CONDITIONS

1. The development order for this particular variance shall lapse on October 17, 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 May 15, 2003, or prior, the applicant shall provide the Zoning Division (Special permit planners) with a copy of the Board of Adjustment Result Letter in order to apply for a Special Permit for an accessory dwelling. **(DATE: MONITORING-ZONING).**
3. By May 15, 2003, or prior, the applicant shall obtain a building permit for the existing garage to be converted to an accessory dwelling in order to vest the variance approved pursuant to BA 2002-067. **(DATE: MONITORING-BLDG)**

CHAIRMAN KONYK: The next item on the consent is BA 2002-068, Vincent Knight and Tiffany Holmes, owners to allow existing structures to encroach into the required side setbacks.

One of you needs to speak -- will be fine. Your name for the record.

MR. KNIGHT: Vince Knight.

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

MR. KNIGHT: Yes, we do.

CHAIRMAN KONYK: Any letters?

MR. SEAMAN: Two, and they are in support.

CHAIRMAN KONYK: Any member of the public here to speak against this item? Any board member 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. Special circumstances and conditions **do exist** which are peculiar to this parcel of land that are not applicable to other parcels within the same zoning district. The minimum lot size per Code is 65 feet wide by 75' deep. The subject lot is 60.01' wide by 111.61' deep; therefore, a non-conforming lot in terms of width. If the lot was 65' in width no variance would be required.

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

NO. The encroachments were **not self-created**. The applicant was unaware that the existing carport and the shed underneath it was encroaching into the side setback. The applicant obtained proper building permits for the structures and thought they meet code. The applicant was informed by Building staff that a variance would be needed in order to keep the structures in their current location. The owner has made many improvements to the lot and structure over the past several years. A review of the building history for this property from 1999 clearly indicates the property owners have obtained necessary permits when required.

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

NO. Granting the variance **will not confer** special privileges upon the applicant. The property owner acted in good faith by obtaining building permits for the carport and the shed located in the side yard. The applicant assumed that the existing carport and shed was in compliance with County setbacks. The applicant has no recourse but to request these variances. Approval of the variances will permit the applicant to comply with the Sandalfoot MHPD requirement for side setback. In addition, the applicant provided staff with a letter from the Sandalfoot Cove section one Home Owner's Association stating that they have no objections if a variance is granted for the existing carport and storage shed.

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 of the provisions of the ULDC **would create** an undue hardship on the applicant. The applicant would be required to remove the existing improvements already made at considerable expense and would deprive the applicant of the use of such structures. The applicant states that the architectural drawing for the shed was based upon approved permits granted in 1999 for the existing carport referenced a 6' separation between structures on their property and structures on their neighbor's property. The granting of the variances will ensure the applicant a final inspection for the carport and the shed.

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

YES. This **is the minimum** variance necessary to correct this side setback encroachment. The current location of house restricts the property owner from alternative design options that would avoid the need for these variances. The existing house is approximately 1,512 square feet, and there is an existing concrete driveway leading to the carport. The encroachment occurs along the northeast property line and there will be no encroachment along the front setback and the rear setback for the two structures.

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

YES. Granting of the requested side setback variances will allow the existing carport and utility shed to remain at the present location and serve the owner's needs. Granting the requested variance **will also meet** the general intent of the Code. The ULDC establishes setbacks for principal and accessory structures. The variance is not based on self-created hardship. In this particular situation, the applicant obtained all necessary building permits for the two structures. The applicant cannot reasonably relocate the carport and the utility shed without affecting the single family dwelling in order to comply with the code requirements.

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

NO. If the variance is granted, **it will not be injurious** to the surrounding area. The carport has existed for approximately 3 years and it's only at the final inspection for the shed in 2002 that the applicant was notified of the encroachment. Granting the variance will, therefore, not be detrimental to the public welfare.

ENGINEERING COMMENT

No comments.

ZONING CONDITIONS

1. The development order for this particular variance shall lapse on October 17, 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 November 19, 2003, the applicant shall provide the Building Division a copy of the Board of Adjustment Result letter in order for the utility shed and the carport to obtain a final Certificate of Completion. **(DATE: MONITORING-Zoning).**

CHAIRMAN KONYK: The next item on the consent is the Board of Adjustment Time Extension 2002-070. This is an existing church with proposed addition, previously BA 2001-017.

What is the time extension that they're asking for?

MR. JAMES: Six months.

CHAIRMAN KONYK: Six-month time extension?

MR. SEAMAN: It was for two -- there are two conditions and it's --

CHAIRMAN KONYK: Two new conditions?

MR. SEAMAN: No. There are two of the previous conditions that are being extended by six months.

CHAIRMAN KONYK: Okay.

MR. SEAMAN: And they are condition 1 -- I'm sorry. I stand corrected. They are condition three and the development order, and they are both being extended six months. So their new due date is March 20th, 2003.

CHAIRMAN KONYK: Okay. Any board member have any objection to this? It wasn't advertised, correct?

MR. SEAMAN: Doesn't need to be advertised. It's a BATE.

MS. KONYK: Okay. It will stay on the consent.

We don't have any letters in opposition, right?

MR. SEAMAN: Correct. There are none.

CHAIRMAN KONYK: That item will remain on consent.

MR. DONALDSON: Did you need my name?

CHAIRMAN KONYK: Actually, you can give us your name for the record, but there's no new conditions. It's just -- but your name for the record, you may.

MR. DONALDSON: Cliff Donaldson.

CHAIRMAN KONYK: Okay. Thank you.

SUMMARY OF JUSTIFICATION

The applicant states that the extension of 6 months for condition #3 and the Development Order in order to ensure the building permit for the expansion is issued by the Building Division. The applicant submitted for a building permit on February 4, 2002, and the permit has been reviewed by several county agencies. The applicant is moving forward to secure the necessary permits to vest the variance and comply with the Board's conditions.

STAFF RECOMMENDATION

Staff recommends approval of a 6-month time extension of Condition #3 from **September 20, 2002 to March 20, 2003**, and to allow a 6 month time extension for the Development from **September 15, 2002 to March 20, 2003**, consistent with Article 5.7.H.2 of the ULDC, to provide additional time for the petitioner to commence development and implement the approval.

The applicant shall comply with all previous conditions of approval of BA 2001-017 and BATE 2002-010, unless modified herein:

ZONING CONDITIONS:

1. The property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan, Exhibit 9, presented to the Board, simultaneously with the building permit application **(BLDG PERMIT: BLDG) COMPLETED ON February 4, 2002.**
2. Prior to DRC certification the applicant shall ensure the BA 2001-017 conditions are attached to the Site Plan. **(DRC) COMPLETED 2001**
3. Prior to September 20, 2002, the applicant shall obtain a building permit for the expansion to the church to vest the front, rear setback variances and the lot coverage variance approved pursuant to BATE 2002-010. **(DATE: MONITORING-BLDG PERMIT)**

Is hereby amended to read:

Prior to **March 20, 2003**, the applicant shall obtain a building permit for the expansion to the church to vest the front, rear setback variances and the lot coverage variance approved pursuant to BA 2002-010. **(DATE: MONITORING: BLDG PERMIT) See PR02-004166 for church expansion.**

4. Prior to DRC certification the applicant shall provide additional landscaping around the foundation of the future expansion at both the rear and front to mitigate the setback variances. The use of native plant material is encouraged to maintain the natural character created by the existing vegetation. **(DRC) COMPLETED ON SEPTEMBER 25, 2002.**
5. The Development Order shall expire on September 15, 2002. The applicant shall have to obtain the building permit for the church expansion in order to vest the three variances approved pursuant to BA 2001-017. **(DATE: MONITORING-ZONING-BA)**

Is hereby amended to read:

The Development Order shall expire on **March 20, 2003**. The applicant shall have to obtain the building permit for the church expansion in order to vest the three variances approved pursuant to BA 2001-017. **(DATE: MONITORING-ZONING-BA)**

ENGINEERING COMMENT:

No comment **(ENG)**

CHAIRMAN KONYK: Okay. He says you don't get paid unless your name's on the record. All right.

So we have BA 2002-059; BA 2002-060; BA 2002-063; BA 2002-066; BA 2002-067; and BA 2002-068; and Board of Adjustment Time Extension 2002-070 on the consent agenda.

Could I have a motion to approve?

VICE CHAIR BASEHART: Madam Chairman, I make a motion that we approve the consent agenda as read into the record and that would be with all the staff reports becoming the record of the hearing.

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

MR. PUZZITIELLO: Second.

CHAIRMAN KONYK: A second by Mr. Puzzitiello.

Any discussion? And the vote is -- all in favor?

ALL: Aye.

CHAIRMAN KONYK: Motion carries unanimously.

You're all free to leave.

VICE CHAIR BASEHART: You can pick your letters up at the door.

CHAIRMAN KONYK: Okay. Next item on the agenda is the attendance with Mr. Sadoff on vacation. Can we have a motion to accept that as an excused absence?

MR. CUNNINGHAM: So moved.

CHAIRMAN KONYK: Motion made by Mr. Cunningham.

MR. JACOBS: Second.

CHAIRMAN KONYK: Second by Mr. Jacobs.

All those in favor?

ALL: Aye.

CHAIRMAN KONYK: Motion carries unanimously.

And now we will adjourn. We don't need a motion for it.

(Thereupon, the meeting concluded at 9:12 a.m.)

CERTIFICATE

STATE OF FLORIDA

COUNTY OF PALM BEACH

I, RHONDA LATHAM, a Certified Shorthand Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true record.

Dated this 27th day of October, 2002.

Rhonda Latham
Certified Shorthand Reporter