

PALM BEACH COUNTY  
BOARD OF ADJUSTMENT

Thursday, September 19, 2002  
9:00 a.m - 11:50 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. Raymond Puzzitiello  
Mr. Stanley Misroch, Alternate

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

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## P R O C E E D I N G S

CHAIRMAN KONYK: I'd like to call to order the September 19, 2002, Board of Adjustment meeting.

And we will start with the swearing in of our new at-large board member, Donald Mathis.

If you would step forward and give your name for the record.

MR. MATHIS: My name is Donald B. Mathis.

CHAIRMAN KONYK: Okay.

COURT REPORTER: Do you, Donald Mathis, promise to faithfully execute the responsibilities of the office of the Palm Beach County Board of Adjustment and uphold the laws and ordinances of Palm Beach County and the State of Florida?

MR. MATHIS: I do.

CHAIRMAN KONYK: Your presence wasn't required today because you're an alternate member, but you're welcome to sit and watch.

MR. MATHIS: All right. Thanks.

CHAIRMAN KONYK: Thanks. Why don't you sit over here. Then you can really hear the action. We'll give you the seat. Make sure you don't trip on the cord.

Next item on the agenda is the roll call and Declaration of Quorum.

MS. WILLIAMS: Mr. Sadoff. Mr. Raymond Puzziello.

MR. PUZZITIELLO: Here.

MS. WILLIAMS: Mr. Bart Cunningham.

MR. CUNNINGHAM: Here.

MS. WILLIAMS: Ms. Chelle Konyk.

CHAIRMAN KONYK: Here.

MS. WILLIAMS: Mr. Robert Basehart. Ms. Nancy Cardone.

MS. CARDONE: Here.

MS. WILLIAMS: Mr. Joseph Jacobs.

MR. JACOBS: Here.

MS. WILLIAMS: Mr. Stanley Misroch.

MR. MISROCH: Here.

MS. WILLIAMS: Mr. Donald Mathis.

MR. MATHIS: Here.

CHAIRMAN KONYK: We have a quorum. I have before me proof of publication in the Palm Beach Post on September 1st, 2002. So the meeting can proceed.

Let the record reflect that Mr. Basehart has arrived.

(Thereupon, Mr. Basehart entered the room)

CHAIRMAN KONYK: Next item on the agenda is remarks of the Chairman. For those of you who are not familiar with how the Board conducts the business, the meeting is divided into two parts: The consent and the regular agenda. Items on the consent agenda are items that have been recommended for approval by Staff, either with or without conditions. The applicant agrees with those

conditions. There's no opposition from the public, and no board member feels that the item warrants a full hearing.

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

Items on the regular agenda are items that have either been recommended for denial by Staff or the applicant does not agree with the conditions recommended by Staff; or there's 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. The applicant will then have an opportunity to give their presentation.

We'll hear from the public. After the public portion of the hearing is closed, the board members will ask questions of either the Staff or the applicant, and then vote on the matter.

The next item on the agenda is the approval of the minutes of the last meeting which would have been the August meeting.

Did everybody receive their minutes?

BOARD MEMBERS: Yes.

MS. CHELLE KONYK: Does anybody have any corrections or additions to the minutes?

Seeing none, can I have a motion to approve?

MR. CUNNINGHAM: So moved.

MR. PUZZITIELLO: Second.

CHAIRMAN KONYK: Motion by Mr. Cunningham. Second by Mr. Puzzitiello.

All those in favor?

ALL: Aye.

CHAIRMAN KONYK: Motion carries unanimously.

Remarks of the zoning director.

MR. SEAMAN: And there are none, thank you.

CHAIRMAN KONYK: Are there any changes to the agenda?

MR. SEAMAN: No, there are not.

CHAIRMAN KONYK: Okay. Seeing none, we'll proceed.

We have a withdrawn item, but that was --

MR. BASEHART: They have a right to --

CHAIRMAN KONYK: Yeah, they have a right to withdraw it I guess. Okay. No postponed items so we'll go right to the consent.

First item on consent is BA 2002-050, Land Research Management, agent for Bibi Enterprises, to allow a proposed reduction on the number of required parking spaces.

Is the applicant present?

MR. MCGINLEY: Morning. Kevin McGinley.

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

MR. MCGINLEY: Yes, we do.

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

MR. SEAMAN: No, there are not.

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

Seeing none, this item will remain on consent.

MR. MCGINLEY: 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 structure, that are not applicable to other parcels of land structures or building in the same district. The ULDC does not differentiate between enclosed buildings and open buildings (automatic car wash) for parking spaces requirement. The proposed square footage of the car wash facility is 4,522 square feet consisting of 1,665 square feet for offices area and 2,857 square feet for equipment and machineries. If the enclosed building area of the car wash were the basis for the required parking space calculation, no variance will be needed. Since the 2,857 square feet area includes the service area, machineries and equipment within the calculation for parking, therefore, 13 more parking spaces are required for the proposed development.

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

**NO.** This subject property is currently vacant. The applicant is proposing the construction of a 4,522 square foot automatic car wash on this 2.07 acres parcel. The ULDC does not differentiate between enclosed buildings and open buildings such as automatic car wash for parking space calculations. In addition, the applicant is proposing a total of 29 queuing spaces for the proposed car washes. Queuing spaces are not credited for additional spaces even though the applicant is providing 29 of them. Ample spaces for vehicles including parking and queuing will be provided for the subject property if the variance is granted.

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 grant** special privilege to the applicant. The ULDC does not differentiate between enclosed buildings and open buildings (automatic car wash) for parking spaces requirement. If only the office area of the proposed car wash was the basis for the required parking calculation, no variance would be needed or requested by the applicant. Considering this fact, no special privilege will be granted to the applicant.

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 strict interpretation of the ULDC would require the applicant to provide 23 parking spaces for the proposed automatic car wash. The applicant is under the impression that since 2,857 square feet of the proposed car wash will be used for service area, machineries and equipments, parking space requirement should not include these areas. In addition, the ULDC does not provide car wash queuing spaces to be credited toward required parking spaces.

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

**YES.** The approval of this variance is **the minimum** variance necessary that will make possible the reasonable use of the parcel of land. The Code requirement for parking spaces for the automatic car wash and the retail commercial center is (1) parking space per (200) square feet. According to the ULDC, the applicant should provide a total of 74 parking spaces, however, the applicant is proposing a total of 61 parking spaces for a 13 parking space variance. The car wash itself requires 23 parking spaces. The applicant is proposing 12 queuing spaces for the car wash plus 17 spaces west of the car wash entrance. Only five queuing spaces are required by the ULDC (Table 7.2-5 Minimum Queuing Standards). The 29 spaces proposed by the applicant for the automatic car wash will meet the intent of the Code.

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

**YES.** The grant of the variance will be consistent with the purposes, goals, objectives, and policies of the Comprehensive Plan and this Code. According to the proposed site plan, the applicant will provide 24 queuing spaces more than the Code required. The applicant intends to rezone the current property and submit for a Conditional Class B use to Development Review Committee in order to move forward with the proposed development. As stated by the applicant, additional compatibility issues will be addressed during these processes before final approval.

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

**NO.** If this variance is granted, **it will not be** injurious to the surrounding area. The proposed automatic car wash will be located along Military Trail, which is an established commercial corridor. If the 2,857-sq/ft. area, including the machineries and equipment, was not part of the calculation for parking spaces requirement, no variance will be needed. Additional compatibility issues will be addressed through Zoning and Planning Division

review processes for compatibility issues.

### ENGINEERING COMMENT

No comment.

### ZONING CONDITIONS

1. The development order for this particular variance shall lapse on September 19, 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. In order to vest this parking variance, the applicant shall secure final DRC certification by September 19, 2003. **(DATE: MONITORING-DRC)**.
3. By September 19, 2003, or prior to DRC certification, the applicant shall ensure the BA conditions are shown on the certified site plan. **(DATE: MONITORING-DRC)**
4. This parking variance for 13 parking spaces is for this particular use configuration (Exhibit 9) and based on the applicants justification. Any change in use shall render the variance null/void **(ONGOING)**.

CHAIRMAN KONYK: Next item is BA 2002-051, Esperanza Rodriguez, agent for George Rodriguez, to allow a proposed screen enclosure to encroach into the required interior setback.

Is the applicant present? You need to come forward and give us your name for the record. Esperanza Rodriguez is who should be up here.

MS. RODRIGUEZ: Yes, good morning. I am Esperanza Rodriguez.

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

MS. RODRIGUEZ: Yes, we are agreeable with the conditions.

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

MR. SEAMAN: No, there are not.

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

Seeing none, your item will remain on the consent.

So you can sit down and when we pass the consent, you'll get a letter and then you can leave.

MS. RODRIGUEZ: Okay. Thank you very much.

CHAIRMAN KONYK: You're welcome.

### 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 lot is located approximately 1 mile north of Glades Road and 0.1 mile west of Cain Blvd., within the Boca Greens PUD, in the RTS Zoning District. The lot is located on a curve in the right-of-way which makes the lot irregular in shape. The lot supports an existing 3,747 square foot single family residence with a pool. To the rear property line is a 5' landscape buffer easement, a 20' anchor easement, and a 100' utility easement followed by the South County Regional Park. Considering the layout of the site, and the irregular lot dimensions, there are no alternative design options available to the applicant. The impact of this encroachment of the side interior setback would be minimal with sufficient open space between structure for light and air.

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

**NO.** In this case, the alternative design options for the subject lot are eliminated by the irregular configuration of the lot within the subdivision. Homes within this subdivision are approximately 4,000 square feet in size on lots of similar size as the subject lot. The residence located on the subject lot is 3,747 square feet. This residence is comparable in size to other homes within the area that enjoy the amenities requested in this case. Therefore, the requested variance is not the result of actions of the applicant, they are rights enjoyed by other parcels of land adjacent to the subject property that do not have the limitations imposed upon them by irregular configurations.

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 typical homes in Boca Greens are approximately 3,000 to 4,000 square feet. This home, with the addition approved in BA 1998-044, is consistent in size with the other homes in the neighborhood. Other homes in the area also have screen roof screen enclosures that encapsulate a pool area. In this case, the configuration of the lot and the site layout precludes any alternative design options that might meet setbacks.

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 requested variance, if granted, will meet the general intent of the side interior setback provision. Other lots within the Boca Greens

development have similar structures that serve similar purposes as the proposed structures in this case and have a greater impact on surrounding development than the proposed development on the subject property. Therefore, the granting of the variances **would be consistent** with the surrounding neighborhood and with the intent of the setback provision.

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

**YES.** The applicant has demonstrated the necessity of the variance to accomplish the desired use of the property. Given the irregular shape of the lot, the applicant has no other site development options on the lot that would allow a screen enclosure over the existing pool without a variance. Other lots within the Boca Greens development have similar size screen enclosures on the rear of the dwelling. Also, the screen roof screen enclosure would not encroach into the side interior setback any farther than the approved addition to the residence by the prior variance. Therefore, the granting of the variance would be consistent with the surrounding neighborhood and with other development on the lot.

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

**YES.** The intent of the setback regulations for houses is to mitigate the impacts to adjacent properties associated with the residential use (noise, light, shadows) and to ensure proper separation between structures, thus maintaining property values and aesthetics. The requested variance meets the intent of the Code in that the side interior setback, if granted, would still allow sufficient separation between structures for light and air.

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

**NO.** The grant of the variance will not be injurious to the area involved or otherwise detrimental to the public welfare. The applicant proposes a variance to allow a screen roof screen enclosure that many residents of Boca Greens are currently enjoying.

#### **ENGINEERING COMMENT**

No comment.

#### **ZONING CONDITIONS**

1. The development order for this particular variance shall lapse on September 19, 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 19, 2002, the property owner shall provide the Building

Division with a copy of the Board of Adjustment Result letter and a copy of the Site Plan (Exhibit 9) presented to the Board, simultaneously with the building permit application. **(BLDG PERMIT: BLDG)**.

3. By September 19, 2003, the applicant shall receive a building permit for the proposed screen roof screen enclosure in order to vest the rear setback variances. **(DATE: MONITORING-BLDG PERMIT)**
4. The structure shall not be enclosed with solid walls or be converted into an enclosed space. **(ONGOING)**.

CHAIRMAN KONYK: BA 2002-052, Lee & Olga Stern, to allow a proposed screen enclosure to encroach into the required rear setback.

Is the applicant present?

Step forward and give your name for the record.

MR. STERN: Good morning, Lee Stern.

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

MR. STERN: Yes, I do.

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

MR. SEAMAN: There are two responses. One's for approval and one's for clarification.

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

Seeing none, this item will remain on consent.

MR. STERN: 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 supports a courtyard style home that was constructed at the minimum front, rear, and side interior setbacks. The applicant would like to construct a screen roof screen enclosure in order to maximize the outdoor living area. The applicant had previously constructed a pool that meets required setbacks, which in turn limits potential screen enclosure locations. The pie shaped lot rear property line borders a landscape buffer and Boynton Beach Blvd.

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

**NO.** The existing courtyard style residence was constructed at the maximum front, side, and rear setback in order to form an open air courtyard in the center of the residence. The applicant also previously constructed a swimming pool that meets the required side and rear setbacks. The existing site conditions limit possible locations for a screen roof screen enclosure.

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 ULDC allows screen roof screen enclosures to be constructed with a zero foot rear setback when the lot abuts open space. The subject parcel does not qualify for this reduction, however, the existing site conditions warrant consideration. The subject lot borders a 20 foot landscape buffer tract and a 10 foot utility easement (that overlaps into the landscape buffer five feet). There is a six foot high wall that separates the subject lot from Boynton Beach Blvd., a 120 foot ultimate right-of-way. There are no other residences behind the subject lot that would be negatively impacted by the variance request.

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 Code will require the applicant to construct the screen roof screen enclosure with a 7.5 foot rear setback. The applicant states that a 7.5 foot wide screen enclosure would not provide enough space for a table and chairs. The ULDC allows screen roof screen enclosures to be constructed with a zero foot rear setback when the lot abuts open space. The subject parcel does not qualify for this reduction, however, the existing site conditions warrant consideration. The pie shaped lot rear property line borders a landscape buffer and Boynton Beach Blvd. There are no other residences behind the subject lot that would be negatively impacted by the variance request.

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 will be a reasonable use of the parcel of land. A screen roof screen enclosure is a typical amenity of a South Florida residence. The ULDC permits screen roof screen enclosures as an accessory to a single family residence with a 7.5 foot rear setback. The applicant has no other design options since the existing courtyard style residence was constructed at the maximum rear setback, and an existing swimming pool was constructed at the required side and rear setback.

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

COMPREHENSIVE PLAN AND THIS CODE:

**YES.** The intent of the rear setback provision for screen roof screen enclosures is to ensure there is a minimum separation between structures and to maintain privacy for property owners. The requested variance will be consistent with Code setback provisions. The pie shaped lot rear property line borders a landscape buffer and Boynton Beach Blvd. There are no other residences behind the subject lot that would be negatively impacted by the variance request.

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 proposed screen roof screen enclosure will meet the required side interior setbacks adjacent to other residences. Existing site conditions will mitigate the requested rear setback variance. The pie shaped lot rear property line borders a landscape buffer and Boynton Beach Blvd. There are no other residences behind the subject lot that would be negatively impacted by the variance request.

**ENGINEERING COMMENT**

No comment (ENG).

**ZONING CONDITIONS**

1. The development order for this particular variance shall lapse on September 19, 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 19, 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 September 19, 2003, the applicant shall obtain a building permit for the proposed screen roof screen enclosure in order to vest the variance approved pursuant to BA 2002-052. (**DATE: MONITORING-BLDG PERMIT**).
4. All maintenance of the screen roof screen enclosure shall be performed on the applicant's lot, since the rear setback of 7.5 feet is being eliminated. (**ONGOING**).

CHAIRMAN KONYK: BA 2002-053, Joseph and Amy Aquino, owners to allow an existing pool to encroach into the required side interior setback. Applicant present?

MS. AQUINO: Yes.

CHAIRMAN KONYK: Come forward and give us your name for the record, please.

MS. AQUINO: My name is Amy Aquino.

CHAIRMAN KONYK: Hi. Staff has recommended four

conditions. Do you understand and agree with those?

MS. AQUINO: Yes.

CHAIRMAN KONYK: Any opposition from the public? Any letters?

MR. SEAMAN: Two responses. One on approval and disapproval. They're afraid it will create a precedent.

CHAIRMAN KONYK: It was resolved, obviously.

MR. SEAMAN: Yes.

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

Seeing none, your item remains on consent.

MS. AQUINO: 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 site is part of a residential subdivision, which has typical rectangular shaped lots. The surrounding neighborhood supports single-family residential lots, similar in size and character. The current property owner purchased the subject lot in 1998 with the existing single-family dwelling. On March 2001, the applicant constructed the above ground pool without a permit. The lot supports an approximately 1,419 square foot single-family dwelling residence constructed in 1976 and an above ground pool (12' X 23.4') constructed without permits. According to the variance summary, the applicant did explore other design options before constructing the pool, however, existing constraints on site make this current location reasonable for the pool. The applicant is requesting this variance in order to allow an existing pool to encroach into the side interior setback. If the variance is granted, the applicant will be able to obtain a final inspection for the pool.

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

**NO.** The applicant was not aware that a permit was required in order to construct an above ground pool. If they knew that a building permit was required, they would apply for a building permit and Building staff would make the applicant aware of the ULDC requirement for pool 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.** Other residents in Palm Beach County and this subdivision have pools in their outdoor area. Due to the location of above power line and existing trees in the rear yard, the applicant chose the current location of the pool. There are existing wood fences on each side of the pool to mitigate any impacts associated with the pool.

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.** This **is the minimum** variance necessary to make a reasonable use of the pool and rear yard. The applicant constructed the pool March 2001. The applicant received a permit for the pool barrier, however, the applicant cannot obtain a building permit for the pool until a variance is granted by the Board for a side interior setback. If the applicant moves the above ground pool to comply with the code requirement, he will have to move the existing wood fence and the pool and deck. If the variance is not granted, it would work an unnecessary and undue hardship for the applicant.

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

**YES.** The granting of this variance will allow the applicant a reasonable use of their property. The applicant purchased their property in 1998 and was not aware that a building permit was required for an above ground pool. The applicant is requesting a 6.45 foot side interior setback for the existing (12' X 23.4') pool that will be mitigated by wood fences all around the pool.

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

**YES.** Granting of this variance **will be consistent** with the intent of the Code. The intent of the setbacks for residential use is to establish consistency and uniformity in appearance from all property lines. In this particular situation, the pool is surrounded by wood fences within the rear yard that will mitigate the setback encroachment. If the variance is granted, the general intent of the Code will be met.

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

**NO.** The granting of the variance **will not be injurious** to the neighborhood. The ULDC established setbacks so all structures will be at a consistent distance from property lines. This proposed above ground pool in the side interior will be screened by the existing fences all around.

**ENGINEERING COMMENT**

No comments.

### ZONING CONDITIONS

1. The development order for this particular variance shall lapse on September 19, 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 19, 2002, the applicant shall provide the Building Division with a copy of the Board of Adjustment Result Letter and revised survey in order to obtain final Certificate of Completion for the pool. **(DATE: MONITORING-BLDG PERMIT)**.
3. By February 19, 2003, the applicant shall obtain a building permit for the existing pool in order to vest the variance approved pursuant to BA 2002-053. **(DATE: MONITORING-BLDG PERMIT)**.
4. By February 19,2003, or prior, the existing pool fencing shall comply with Palm Beach County Building pool and spa Code prior to receiving a Certificate of Completion for the pool. **(DATE: MONITORING-BLDG PERMIT)**.

CHAIRMAN KONYK: BA 2002-054, Curtis & Yvonne Berryman, to allow a proposed swimming pool to encroach into the required rear setback.

Applicant present? Name for the record.

MR. BERRYMAN: Curtis Berryman.

CHAIRMAN KONYK: Staff has recommended four conditions.

Do you understand and agree with those?

MR. BERRYMAN: Yes, ma'am, I do.

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

MR. SEAMAN: One for approval.

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

Seeing none, your item remains on the consent.

MR. BERRYMAN: 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 borders a 25 foot PUD perimeter landscape buffer along the rear property line, and beyond that there is an existing nursery. Several existing factors limit placement of the proposed pool. The owner would like to maintain a seven foot separation from the existing residence to accommodate water drainage away from the existing residence. The applicant would also need to remove a larger portion of an existing concrete patio than currently planned.

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

**NO.** The applicant has approximately 28 feet between the existing residence and the rear property line. The required rear setback of 10.5 feet would require the applicant to construct the swimming pool adjacent to the existing residence. The applicant would like to move the pool away from the house to insure water drainage away from the residence and to insure safe pedestrian circulation.

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. A swimming pool is a typical amenity of a South Florida home and the surrounding area. The Board of Adjustment granted a similar variance at 5130 Mark Drive in 1984, and at 5045 Mark Drive in 1989. The existing residence, covered porch, and concrete patio limit alternative swimming pool locations.

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 Code would require the applicant to meet a 10.5 foot rear setback for the proposed pool. The property owner has limited design options due to the location of the existing residence. The Board of Adjustment has granted similar rear setback variances for swimming pools on this street. Denial of the requested variance would be an undue hardship to the applicant.

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 required to make reasonable use of the subject lot. The applicant is proposing to comply with the side interior setbacks for swimming pools, but would like to move the proposed pool away from the existing residence. The rear setback variance will be mitigated by a 25-foot perimeter PUD buffer and existing

nursery to the rear of the residence.

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 ULDC provisions related to swimming pools. The pool setback requirement is intended to maintain a safe separation from surrounding structures, and to insure that pedestrian circulation and maintenance is retained on site. The proposed pool location will meet the intent of the ULDC requirements. The applicant is proposing a 3 foot rear setback from the property line, and a seven foot distance from the existing residence that will provide space for pedestrian circulation.

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 proposed pool complies with the side interior setback requirements for single family residences. The rear property line borders a 25 foot PUD perimeter landscape buffer, and beyond the buffer is an existing nursery. Several other residences in the area have reduced the required rear setback with Board of Adjustment approval.

#### **ENGINEERING COMMENT**

No comment with regard to the requested setback variance. Please note, however, that fence encroachments in the side lot line drainage easement will require approval from Land Development Division in accordance with Section 6.5.K, ULDC.

#### **ZONING CONDITIONS**

1. The development order for this particular variance shall lapse on September 19, 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 19, 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 March 19, 2003, the applicant shall obtain approval from the Land Development Division for the existing fence in the side lot line drainage easement and obtain a building permit from the Building Division for the fence. (**DATE: MONITORING-LAND DEVELOPMENT**).
4. By September 19, 2003, the applicant shall obtain a building permit for the proposed swimming pool in order to vest the variance approved pursuant to BA 2002-054. (**DATE: MONITORING-BLDG PERMIT**).

CHAIRMAN KONYK: Board of Adjustment time extension 2002-055, Land Design South, agent for Gator Leasing, to allow a 6-month time extension on conditions 2, 4, & 6 from the approved variance.

Applicant?

MS. MORTON: Yes, Jennifer Morton with Land Design South, and we agree with the conditions.

CHAIRMAN KONYK: Okay.

VICE CHAIR BASEHART: Are these the same conditions that were originally imposed, or are they new?

MS. MORTON: No. They're the same with a 6-month time extension.

VICE CHAIR BASEHART: Okay.

CHAIRMAN KONYK: Any --

MR. SEAMAN: There are letters. Three responses -- one is for clarification and two is for disapproval, but they're not addressing the --

CHAIRMAN KONYK: The issue.

MR. SEAMAN: The issue.

CHAIRMAN KONYK: Any board member feel this item should be denied, or warrant a full hearing?

Okay. Seeing none --

#### SUMMARY OF JUSTIFICATION

**The applicant is requesting this time extension due to delays in the zoning approval process. The applicant just received BCC approval on July 25, 2002. The applicant will be submitting for final off-the-board approval on August 21, 2002. At this time, the applicant has not completed any construction on the subject property.**

#### STAFF RECOMMENDATION

Staff recommends the maximum of 12 month time extension from July 15, 2002 to July 15, 2003, consistent with Article 5.7.H.2 of the ULDC, to provide additional time for the petitioner to commence development and implement the approvals.

**The applicant shall comply with all previous conditions of BA 2001086, unless modified herein:**

1. By July 15, 2002, the applicant shall contact the Landscape Section for a final inspection on the landscaping to ensure compliance with the BA approval. **(DATE: MONITORING-LANDSCAPE)**

***Is hereby amended to read:***

By January 15, 2003, the applicant shall contact the Landscape Section for a final inspection on the landscaping to ensure compliance with the BA approval. **(DATE: MONITORING-LANDSCAPE)**

2. By July 15, 2002, the existing chain link fence shall be painted black to blend in with the required landscaping and reduce the impact on adjacent rights-of-ways and properties. At the time of the required landscape inspection of the fence will be reviewed for compliance with this condition. **(DATE:**

**MONITORING-LANDSCAPE)*****Is hereby amended to read:***

By January 15, 2003, the existing chain link fence shall be painted black to blend in with the required landscaping and reduce the impact on adjacent rights-of-ways and properties. At the time of the required landscape inspection of the fence will be reviewed for compliance with this condition. **(DATE: MONITORING-LANDSCAPE)**

3. By July 15, 2002, the applicant shall install 2 feet of fence to top of existing fence along south property line to comply with Article 6.4.D.97, supplementary requirements for screening adjacent to interior property lines for vehicle sales and rental. **(DATE: MONITORING- LANDSCAPE)**

***Is hereby amended to read:***

By January 15, 2003, the applicant shall install 2 feet of fence to top of existing fence along south property line to comply with Article 6.4.D.97, supplementary requirements for screening adjacent to interior property lines for vehicle sales and rental. **(DATE: MONITORING-LANDSCAPE)**

CHAIRMAN KONYK: BA 2002-056, Land Design South, agent for RPG of South Florida, to allow a proposed retail building to encroach into the required rear setback.

MS. MORTON: Jennifer Morton with Land Design South.

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

MS. MORTON: We do.

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

UNKNOWN SPEAKER: Yes.

CHAIRMAN KONYK: This item will be pulled from the consent.

MR. SEAMAN: And I need to correct myself. The comments I made were for 56, not 55. 55's a BATE. We don't advertise it.

CHAIRMAN KONYK: That's why I wondered but I wasn't going to bring it up but thanks. I didn't want to embarrass you again.

MR. SEAMAN: No problem.

**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 site that warrant consideration. The lot depth has been significantly reduced due to the widening of State Road 7. The subject lot is nonconforming in terms of depth and lot area in respect to the CC property development regulations. The proposed site design and area characteristics will limit the impact on surrounding parcels. The property to the north has submitted a Zoning Petition for a commercial use. The west property line borders a 25 foot landscape buffer and the civic area to the Rio POCO subdivision. There are no residential structures within 300 feet of the subject lot. The south property line borders a Lake Worth Drainage District Canal and agricultural uses. The east property line borders State Road 7, a 200 foot r-o-w.

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

**NO.** The requested variances **do not result** from actions of the applicant. The lot depth has been significantly reduced due to the widening of State Road 7. The subject lot is nonconforming in terms of depth and lot area in respect to the CC property development regulations. The lot had received Zoning approval for a greater intensity prior to the widening of State Road 7. The applicant has considered several design options to accommodate the building, parking, onsite retention, and required landscaping. The proposed building will meet all other ULDC requirements.

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 variances **will not confer** a special privilege to the applicant. The developable area available to the applicant has been significantly reduced due to the widening of State Road 7. The applicant has considered several design options to accommodate the building, parking, onsite retention, and required landscaping. The proposed building will meet all other ULDC requirements. The proposed rear setback of 10 feet will meet the intent of the ULDC to maintain separation between structures. The proposed landscape buffer reductions will be consistent with ULDC landscape buffer requirements.

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 ULDC would significantly limit the development options of the applicant and be an undue hardship. The developable area available to the applicant has been significantly reduced due to the widening of State Road 7. The applicant has considered several design options to accommodate the building, parking, onsite retention, and required landscaping. The proposed building will meet all other ULDC requirements.

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 variances are the **minimum variances necessary** to allow development on site. The lot depth has been significantly reduced due to the widening of State Road 7. The subject lot is nonconforming in terms of depth and lot area in respect to the CC property development regulations. The applicant has considered several design options to accommodate the building, parking, onsite retention, and required landscaping. The proposed building will meet all other ULDC requirements. The proposed site design and area characteristics will limit the impact on surrounding parcels.

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

**YES.** The requested variances **are consistent** with the Plan and Code. The proposed setbacks will provide a separation from surrounding structures. The landscape variances will still meet the intent of the landscape and buffering provisions to create a natural barrier between uses. Staff recommends a condition that the landscape buffer adjacent to the Rio POCO PUD be planted with canopy trees 20 feet on center and with a continuous hedge 6 feet in height, 24 inches on center.

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

**NO.** Granting the requested variances **will not be injurious** to the surrounding area. The proposed site design and area characteristics will limit the impact on surrounding parcels. The property to the north has submitted a Zoning Petition for a commercial use. The west property line borders a 25 foot landscape buffer and the civic area to the Rio POCO subdivision. There are no residential structures within 300 feet of the subject lot. The south property line borders a Lake Worth Drainage District Canal and agricultural uses. The east property line borders State Road 7, a 200 foot r-o-w. Staff recommends a condition that the landscape buffer adjacent to the Rio POCO PUD be planted with canopy trees 20 feet on center and with a continuous hedge 6 feet in height, 24 inches on center.

#### **ENGINEERING COMMENT**

The requirement that the Base Building Line for the subject property be forty (40) feet beyond the existing right-of-way of S.R. 7 is hereby waived. Said Base Building Line is hereby established at the existing west right-of-way line, being also the east property line of the subject property per the submitted survey.

#### **ZONING CONDITIONS**

1. The development order for this particular variance shall lapse on September 19, 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 June 19, 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 September 19, 2003, the applicant shall obtain a building permit for the proposed retail building in order to vest the variance approved pursuant to BA 2002-056. (DATE: MONITORING-BLDG PERMIT).
4. By September 19, 2003, or prior to Certificate of Completion, the applicant shall install the following plant material along the west property line incompatibility buffer:
  - a) native canopy trees 20 feet on center;
  - b) native continuous hedge installed 6 feet in height and 24 inches on center. (DATE: MONITORING-LANDSCAPE)

CHAIRMAN KONYK: Okay. BA 2002-058, Anna Cottrell, agent for Mantra Realty Corporation, to allow the elimination of the existing bypass lane.

Name.

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

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

MS. COTTRELL: Yes, they're all acceptable.

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

MR. SEAMAN: None.

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.** The subject property consists of approximately 1.38 acres and is part of the Sandalfoot Plaza approved via Petition 80-103. Sandalfoot Plaza is fully developed. The applicant has no additional room to provide more

queuing space or to relocate the existing bypass lane. Therefore, **special circumstances and conditions do exist** that are peculiar to the parcel of land that are not applicable to other parcels of land, structures, or building in the same area.

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

**NO.** The existing carwash located within the Sandalfoot Plaza was approved under Petition 80-103 May 31, 1989, and was later permitted to add a canopy in the parking area for car waxing and detailing operation. Only five queuing spaces are required by the ULDC for an automatic drive-thru car wash. Typically, the business operates with a maximum of six vehicles waiting for service through the automatic car wash at peak hours of operation. Due to previous approval and lot size limitation, special circumstances and conditions are not the result of the applicant.

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

**NO.** The applicant **will not be granted a special privilege** if the variance request is approved. An automatic car wash is not required to provide a bypass lane unless if there are more than five queuing spaces provided according to the footnote below the Table 7.2-5.

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

**YES.** An effective automatic car wash has its own property or an out-parcel. The existing car wash obtained approval for business expansion over the years and it's currently a very efficient operation according to the applicant. Sandalfoot Plaza is fully developed, therefore, there are no other design options available to the applicant. If the variance is not granted, the applicant will be in violation during peak hours of operation.

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 requesting the minimum variance in order to reduce potential traffic within the shopping center. As stated above, the existing automatic car wash is not located on an out-parcel by itself and the Sandalfoot Plaza is fully developed. Therefore, the applicant has no other design options available other than requesting a variance from the Board. The applicant received a code violation (C010119005) for using the bypass lane for business purposes. If the variance is granted, the applicant will be able to operate at peak hours of operation and get relief from the footnote below Table 7.2-5.



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

**YES.** The requested variance is consistent with the comprehensive plan and intent of the ULDC. A drive-thru car automatic wash is required to have 5 queuing spaces and no bypass lane. Since there is a note for the Table 7.2-5 all uses: a bypass lane shall be required if more than 5 queuing spaces are provided. The approved site plan indicates 5 queuing spaces and the existing bypass lane, however, the applicant mentioned in the justification statement that the bypass lane is currently utilized by the car wash business for peak hours of operation. The applicant is proposing to amend the site plan in order to add two kiosks at the automatic car wash and directional signs, to mitigate any negative impacts associated with the variance request.

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. Only five queuing spaces are required by Code for an automatic car wash. The applicant is proposing to amend the site plan in order to add two kiosks at the automatic car wash and directional signs, to mitigate any negative impacts associated with the variance request.

#### ENGINEERING COMMENT

No comment.

#### ZONING CONDITIONS

1. By December 19, 2002, the applicant shall amend the site plan (Pet. 80-103) to reflect the elimination of the existing bypass lane and vest this variance request. (DATE: MONITORING-DRC).
2. By December 19, 2002, the revised Site plan shall reflect all Board of Adjustment conditions prior final certification (DATE-MONITORING-DRC).
3. The variance is only for the elimination of the existing bypass lane leading to the car wash. (ONGOING).
4. If the car wash ceases or changes, the variances shall no longer be valid. (ONGOING).

So on consent we have BA 2002-050; BA 2002-051; BA 2002-052; BA 2002-053; BA 2002-054; Board of Adjustment Time Extension 2002-055; and BA 2002-058, with BA 2002-056 being reordered to the first item on the regular agenda.

VICE CHAIR BASEHART: Madam Chairman, I would like to make a motion to approve the consent agenda with the items as you just read them and 2002-056 being pulled from consent to the regular agenda. And included in my motion is the Staff report being made part of the record -- being actually the record for the hearing.

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

Your letters will be distributed and after the consent items have been taken care of, we'll start the regular agenda.

VICE CHAIR BASEHART: Everyone who was on consent can get their letter and leave.

CHAIRMAN KONYK: First item on the regular agenda is BA 2002-056, and if Staff would introduce the item.

MR. KOLB: This is Land Design South, agent for RPG of South Florida, to allow a proposed retail building to encroach into the required rear setback, to allow a reduction in the right-of-way buffer along the east property line, and a reduction in the incompatibility buffer along the west property line.

The subject site is currently a vacant lot that has a zoning designation of specialized commercial which would currently correspond to commercial low office. The site is a non-conforming lot due to the widening of State Road 7 which has reduced the lot depth and area.

The applicant is currently proposing to rezone the property to community commercial to allow retail uses on the site. The requested variances are to reduce the right-of-way buffer that faces State Road 7 from 20 feet to 15 feet, and the second variance request, as what will be shown on their site plan, will move the building back requiring a variance of 20 feet for a 10 foot rear setback, which will also require a reduction in the incompatibility buffer that is adjacent to the Rio POCO PUD from 15 feet to 10 feet.

Staff's findings is currently recommending approval. The lot depth and area were reduced due to the DOT widening, not due to the applicant. The west property line that is subject to the building setback variance and the incompatibility variance border a 25 foot landscape buffer in the civic area to the Rio POCO PUD.

The lot had currently received zoning approval for a greater intensity, a planned office business park, and the applicants reviewed several design options and settled on the site, the plan that they currently have, and they can explain further.

CHAIRMAN KONYK: Okay. Before we get into your presentation, why don't we have everyone that intends to speak on this item or any of the other items on the agenda today be sworn in.

So if you'll stand and raise your right hand if you intend on speaking.

(All respective witnesses comply)

CHAIRMAN KONYK: On all the items, yes. All items on today's agenda, anybody that intends on speaking.

THEREUPON,

the witnesses were duly sworn to tell the truth, the whole truth, and nothing but the truth, so help them God.

WITNESSES: I do.

-----  
CHAIRMAN KONYK: Okay. Proceed.

MS. MORTON: Thank you. For the record, my name is Jennifer Morton with Land Design South, and I'm here today representing Richard Elliott, RPG of South Florida.

The subject property is located on the west side of State Road

7 about half a mile north of Clint Moore Road. On the aerial, over here to the left, you can see the location of the property, and I'll just kind of go around what the surrounding uses are.

To the north of our subject site is another commercially land use parcel. It's about two acres in size as well. To the east of our parcel, is some undeveloped property as well as Valencia planned unit development. It's also known as Sussman PUD, and that's currently being developed by GL Homes.

To the south of our subject site, is a canal as well as some agriculturally approved projects -- or parcels.

To the west of the subject site, is the Rio POCO planned unit development. This is a residential community with one acre lots.

Directly adjacent to our parcel is a 25 foot landscape buffer within the Rio POCO community, as well as a four and a half acre civic site.

Can you hear me over here?

VICE CHAIR BASEHART: You can take the microphone. Just pull it out.

MS. MORTON: Okay. As you can see, this is the subject site right here, with a 25 foot landscape buffer, as well as a four and a half acre civic site. Within this civic parcel is a lake and a tennis court.

This graphic basically shows that our building is located approximately 350 feet from the nearest residence. This graphic right here is a copy of the survey that was done for the property.

This survey identifies the parent piece as being approximately two acres. This is the subject site. This is the canal. This is the Rio POCO buffer, and this is the future commercial parcel to the north. This is State Road 7 right here.

Back in the last 1980's, they did a widening project for State Road 7 and actually took approximately 165 feet of right-of-way for the widening of State Road 7. This significantly impacted this parcel and reduced it in size by more than half. And basically what they were left with at its narrowest point was 180 feet of depth. So this graphic basically where the highlighted line is shows the reduction in the parcel.

Just to give you a brief history of development on this site, this is a 1995 aerial, and I'd like to pass out a copy of this. Basically, this aerial was shot in 1995, and what it shows are the existing buildings that were located on this facility.

This tract of land -- basically this parcel and this parcel have been commercially used parcels since approximately the late 1950's. We have letters from the developer of this parcel saying that the building predates 1997.

So the history of commercial on these parcels have existed for a very long time. Then back in the 1980's these parcels got what they call rehab on the building and were improved at that time. Then as I mentioned earlier in 1999, FDOT, because of the widening, came along and demolished all the buildings located on the subject property.

There were four buildings located on this parcel. You can see in that aerial, and they were just under -- total square footage was just under 20,000 square feet. The commercial that was in place was much more intensive. We have photographs of some of the commercial uses between these two parcels. There was a country store. One of them called it a hotel building; an office park. So some very intensive type retail office uses.

Next I'd like to go to the site plan and what we are proposing to do in the after condition, after the DOT widening. This graphic is oriented with north pointing this way; this is State Road 7 right here; this is the Lake Worth Drainage District canal. Again, Rio POCO on the south side; and this is the future

commercial to the north of our subject site.

The parcel has been reduced from a little under two acres to 7.8 acres in size. The intensity of the development has significantly been reduced. We are proposing a 3,397 square foot building, just under 4,000 square feet. That building coverage is 10% FAR -- 10% building coverage point one zero FAR. So it is significantly less than what is in the before condition.

As you can see from this graphic, there are no residential buildings located directly adjacent to the property. This is the Rio POCO 25 foot landscape buffer, and this area back in here is the civic site.

In conclusion, I'd just like to mention that there are several unique circumstances. Number one, this parcel has had commercially land use and zoned property for many years dating back to the late 1950's for this area.

This variance is not a result of any actions that the applicant took. The FDOT came along, widened the right-of-way, and reduced this parcel size by more than half. The variances that we are asking for are the minimal variances to make use of what land area we have left over.

This graphic right here shows the Rio POCO community; shows State Road 7 right here; and you can see how insignificant our building is in comparison to the overall community. It is the minimum amount of square footage that our client can put on here in order to make reasonable use of the property.

The variance, again, is not injurious to the health, safety, and welfare of the parcel, and just as far as the overall approval process, this is our first step in the approval process. Assuming we receive approval on these variances, then we will proceed through the zoning process which is another six to eight month process.

So this is the first step and then once we get a recommendation from this Board, then we will proceed through the zoning process.

If you have any questions, I'll be glad --

CHAIRMAN KONYK: I have one point of clarification. It's a two acre site that went down to a point seven eight, correct?

MS. MORTON: Right. It's one point nine I believe.

CHAIRMAN KONYK: Okay. But you had said it went to 7.8. I was just clarifying that.

MS. MORTON: Oh, sorry.

MR. JACOBS: When did your client acquire the property?

MS. MORTON: I am not sure of when our client actually acquired it. I know that he owned it during the right-of-way taking.

MR. JACOBS: That's really my question.

VICE CHAIR BASEHART: Couple questions.

What's the average house of -- size of the houses in Rio POCO? It would seem to me that they're probably bigger than this building, aren't they?

MS. MORTON: I would think so, yes. I'm not sure of that.

VICE CHAIR BASEHART: Probably you can't give me an answer to this but I still have the question.

Why didn't DOT just take the whole property? It seems to me they messed him up pretty well. I mean, they took more than half his property, and it's pretty obvious that this site can't be developed without numerous variances. That being the case, why didn't they just -- did you represent Mr. Elliott during the eminent domain proceeding or --

MS. MORTON: No. We were not his representative at that time. He came to us with the parcel and basically what he was asking, What can I do with this piece of land? It's got a commercial land use. It's commercially zoned. What can I do? This is what I have left. And so that's kind of where we are right now.

CHAIRMAN KONYK: Okay. We'll hear from the public now. If you would state your name for the record.

MR. SOLER: Yes. My name is Ken Soler. I am the property manager for the Rio POCO Home Owners' Association, and I appreciate the opportunity to speak with you about this matter.

We have 90 one-acre minimum size parcels in Rio POCO. Rio POCO was developed in 1978. The property values have obviously gone up. You were questioning the size of the homes in Rio POCO. The minimum size home that can be built is 2600 square foot. The typical size home being built to this day is approximately 4400 square feet.

We have homes going up presently in the range of 9500 square feet. We have market values in the community on properties, recent parcels, vacant land, that sold for \$700,000. We have knocked down homes that are currently selling for that same price range. I probably have six sets of building plans in on the community right now for approval or have already been approved.

I'm here representing those 90 homeowners. They've asked me to come speak in front of this Board. The community is adamantly opposed to having commercial building within 30 foot of the Rio POCO area. The community has a history with adjacent neighbors long before DOT came through on this particular parcel to cut it down in size.

The parcel to the north that's being developed, I think was previously mentioned by the young lady that was up here, to be two acres. It in fact, according to your forms, shows up as point nine one acres, and this is point seven one I believe or point seven two. It's a very small parcel.

I think a couple of the concerns that this community has is they are currently researching and trying to take that portion of the civic area and expanding it into one additional residential lot. In that particular corner of the community, there is a lake. That area's been beatified in the last couple of years. The adjacent neighbors who have been owners, by the way, since dating back on the tax records into the 1980's have been fairly neglect in taking care of that property.

We may have talked about a hotel I believe was the term that was used. It was more of a migrant camp. We had -- it turned into -- instead of a high class office area, this basically was landscapers on this particular tract, and I believe a Quik store or Quik Mart of some type.

They were fairly neglectful in cleaning up this particular parcel for a great many years. They created illegal underground drainage from their tract onto the Rio POCO tract where the pipes still exist that I had capped off personally. And it hasn't been a pleasant picture over the course of the years.

The community very much objects to giving up that 30 foot buffer from a commercial property, from an aesthetic standpoint, from a financial standpoint, with considerations of lighting, the impact on the community, the security of the community. We're talking about a community that spends between \$125,000 to \$140,000 a year for a 24-7 guard in the front of the community. And they just want to feel comfortable that they can be secure.

So we have requested the opportunity -- we're requesting from this Board the opportunity to meet with the developer, the owner, or their representatives, to try and accommodate the community with their concerns. We've written a letter. I have another letter I'd like to have entered into the record today which basically states that we are requesting a 30 to 45 day postponement in order to meet with the proper parties to discuss our concerns at this time.

Does anybody -- oh. And Mr. Basehart, I think your question was very well asked as to why this parcel is the size that it is. Because we went through the same give up of land to DOT at the same time, and I'm very familiar

with the people that I was dealing with. And when I questioned them as to what was the delay in the area, if everybody was cooperating, the person that was involved in this told me that it was being held up strictly because of those two parcels from the amount of money they were demanding for their land.

That's why they have as little piece of land as they have today. So possibly because of their greed, we don't want to impact the beautiful residential community that Rio POCO is today and is becoming even more so.

CHAIRMAN KONYK: Thank you.

MR. SOLAR: Thank you.

CHAIRMAN KONYK: Your name for the record.

MR. DRAW: My name is Jack Draw. I'm the past president of the association.

CHAIRMAN KONYK: Do you have a letter of record to speak on behalf of the association?

MR. DRAW: No, I'm just the past president. I'm a resident speaking.

CHAIRMAN KONYK: So you're speaking on behalf of yourself.

MR. DRAW: Myself. And my main concern in all of this is security. We pay a lot of money for security. They're going to build within 10 feet of our property line. They have dumpsters located at the back of this proposed development.

It's going to be easy access to our subdivision. If you'll notice here, they have no access to this property on the new northbound lanes of 441, which means they have to come up to our left turn land, to our property, to turn around to go back southbound to these. I think personally and I have -- I can't back this up -- but with this type of development and the parking, it certainly encourages something like a 7-Eleven which I don't think would add very much value to our property.

The present condition of the property is deplorable. It hasn't been cut, cleaned, or maintained since the State took the property away from them. So my main concern, as a resident, is simply the security of it. We'd like to have some type of a security barrier if you're going to grant this variance. Thank you.

CHAIRMAN KONYK: Thank you.

Is there any other speakers on this item?

Staff, do you have anything to add?

MR. SEAMAN: Not really, no.

CHAIRMAN KONYK: Before you get back up, I'm going to go ahead and close the public portion of this hearing, and if the agent would come forward.

MS. MORTON: Yes, Jennifer Morton. Just to respond to a couple of the issues that were raised, I know a lot of discussion took place about the commercial use going on the property.

Well, it was commercial before. It's staying commercial. I don't think commercial is really the issue at this point.

VICE CHAIR BASEHART: While you're on that topic, you mentioned that if the Board grants the variances that are requested, you have to go to the Board of County Commissioners. Why is that? It seems that the building is under the threshold that would require board review.

MS. MORTON: Right. It's because of the zoning designation. Right now it's specialized commercial is the zoning designation. That's not a recognized zoning category within the AG-reserve/CL, so we met with Staff on that, and they told us that we would need to go through the process to zone it CC rather than what it's currently zoned.

VICE CHAIR BASEHART: Basically --

MS. MORTON: A clean up.

VICE CHAIR BASEHART: A clean up, okay.

MS. MORTON: Exactly. And also it was mentioned that they were considering turning the civic site, which is approximately four and a half acres, into a residential lot. Based on my understanding of the AG-reserve, I don't think that that's possible. The minimum lot size in the AG-reserve right now is five acres.

So unless you do a PUD -- a 60/40 or 80/20, which I'm not going to get into, but I'm sure Bob is familiar with that -- that it's not possible to do, to create another -- whether it be one acre, two acre, three acre lot in here, it doesn't meet the county regulations so they would not be able to do that.

CHAIRMAN KONYK: Go ahead.

MR. CUNNINGHAM: Has there been any dialogue with the homeowners' association in which they're asking for a 30 or 60 day --

MS. MORTON: Sure.

MR. CUNNINGHAM: Or is your client open to that?

MS. MORTON: Well, we planned -- we actually have a meeting scheduled for next Tuesday with the homeowners, and my only comment is that I had sent out plans last Monday, full size sets of plans, and have tried to follow up throughout this two-week period to see if there are any questions, and I haven't heard anything until I got a call from Staff yesterday asking for the postponement.

So, you know, we do plan on meeting with them. This is like the first step in the overall process. It looks like it's going to be another six months before we're through, so we will have time. But if we can't get this approved, you know, if we could go ahead and move forward with the variance, that still gives us time to meet with Staff and -- also, during the zoning process, you really work out the details of the site plan, you know, will we do trees. I think there's a condition, trees 20 feet on center, what kind of hedge material, what kind of buffering. All those are really spelled out in the zoning process.

So if we need to meet with them two or three or four times, however many times, to address their concerns, we'll be glad -- we'll make that commitment that we'll do that. It's not a problem. But we have -- the minute when we got a telephone call from them, we called them back. I sent out plans and am willing to work with them.

CHAIRMAN KONYK: So you weren't aware that there was opposition until two weeks ago. Is that what it was?

MS. MORTON: Well, even two weeks ago I wasn't aware that they were going to come out and oppose the project. I offered to send them copies of our plans, which I did, and then I followed up with a telephone call -- two telephone calls -- and was not notified that there was any concern until Staff called me yesterday.

CHAIRMAN KONYK: A lot of the concerns that the residents have are more zoning issue concerns. They're not really to do with the variance, and it would be my opinion that you would have sufficient time to iron out the details with the association, and it's been my observation that you usually work very hard to do that -- your company has at least. And I'm sure that your -- I'm not sure that your client would want to, but I would hope that your client would want to work out the details with the homeowners.

MS. MORTON: I'm sure we can make that commitment. We're going to be there next Tuesday. As soon as we got the call, we made an appointment for next Tuesday so we're more than willing to meet with them, you know, and try and work out any concerns that they may have.

And also just to conclude, as you go through the zoning process, they mentioned some of the concerns about drainage and keeping up the

site. Once we get that plan approved, Staff will have something to go back. If those landscape buffers aren't installed, they can go back and check them and cite them if they're not keeping the site up to standards and drainage-wise, you know, they have to get their paving, drainage, water, sewer plans approved.

So everything will go through the county process and would hopefully clean up any issues that they may have from that standpoint.

CHAIRMAN KONYK: Okay.

VICE CHAIR BASEHART: Just, you know, I don't want to reopen the hearing but one of the relevant concern that I heard spoken was that the community feels that the building is too close into the property line.

And you are requesting a variance there but, you know, because of the constraints of the site, I think you've done a really great job of minimizing the impact to the residential area because if you look at that plan, virtually the whole -- except for the building footprint -- the whole west end of the site is landscape and buffer, it would seem to me because of the site constraints the only other option would be to forget the rear setback variance; move the building closer to the road; and get a front setback variance. But then you'd have to put the parking and the circulation at the rear of the site which I think would create more activity and more impact on the community than what you've done now.

I mean, you have no vehicular circulation or parking behind the building which means there will be no people activity back there, and I would presume you're not going to put windows back there?

MS. MORTON: I would not. I would think it would be a wall back there. It would act as if it was a wall.

VICE CHAIR BASEHART: Well, it says retail on the site plan. It's going to be a retail building?

MS. MORTON: Right, right. And a lot of retail buildings, because of the narrowness of the site, we couldn't get that loading access area in the back that you probably have seen on many of your retail centers.

So we actually have the building pushed all the way up to the buffer.

MR. CUNNINGHAM: Jennifer, Land Design has come in numerous times for different postponements.

MS. MORTON: Okay.

MR. CUNNINGHAM: As a gesture, I would feel more comfortable in voting on this if you all would consider the 30-day postponement. I mean, it's -- as you stated, it's a long drawn out process. There's a lot of other areas that you're going to have to take care of. But as a good neighbor, as a gesture --

VICE CHAIR BASEHART: Have you filed the zoning petition yet?

MS. MORTON: We have submitted a zoning petition, and what happens is, if we postpone this month, then we won't be able to get certified, and we'll have to be up again next month and still won't be able to get certified by DRC.

So it would be November before we would be able to certify our DRC item to even move through the public hearing portion of it.

CHAIRMAN KONYK: Let me say something to Bart. Bart, most of their concerns, the homeowners' concerns, really do have to do with the zoning issues, and that would be the more appropriate forum for them to be heard on the issues that they have.

We can't address the issues that they have. We can only address the variance. So I don't think postponing it would solve anything. I think that if Land Design South doesn't make the appropriate appointments with the homeowners and resolve their concerns, then they're going to be very vocal at the



zoning meeting.

MS. MORTON: That would give us -- I mean, we will be working with them. We will be working with them and, you know, trying to address their site planning issues and buffering issues and, you know, I can make that commitment. We have that meeting next Tuesday.

It's just that if we don't move forward it's, you know, a significant delay to our client. And I know it's not really your issue but we have gone through a lot even just to get here so --

CHAIRMAN KONYK: Mr. Soler wants to say something. I'm going to open up the public portion of the hearing for his comment.

MR. SOLER: Thank you very much. Timing is, obviously, of the essence to Land Design South and their client, as timing is of the essence to us. This is a community that tries very hard to self-govern itself. They work very hard to develop this community.

They hold homeowners' meetings once a month. The homeowners' meetings are always held on the fourth Tuesday of the month. If you open up a calendar to the fourth Tuesday of last month, we were not notified in time to even discuss this with the homeowners' association.

The fourth Tuesday of this month is next Tuesday, which is when the homeowners' association will be meeting. I have had numerous calls to my office. Obviously, we have not had an adequate time to answer the concerns of all of our homeowners because we have not been able to have our public forum. Time was of such a short notice to us that we had to conduct an emergency board of directors meeting this past week to request the postponement.

So time is a factor. We have been short on time. We have operated diligently from the moment we were notified of certified mail which happened to be the identical day the yellow signs were posted on the lot. We have been diligently working towards this. We came back up here to get the plans to the adjacent lot to review this, copy, distribute to all board members, and hold a special meeting.

We're not asking for a long period of time, but I feel as though if this board goes ahead and grants that variance on that rear setback, which is our primary concern, that the trump card has changed hands. I thank you.

VICE CHAIR BASEHART: Do you have anything else to say?

MS. MORTON: Well, just to kind of -- we do have plenty of time to meet with the residents. I mean, today we have the meeting which is the Board of Adjustment meeting. We will be up at DRC next month which is October. Then we will hopefully be certified in October which would allow us to go to zoning commission in December and then the Board of County Commissioner approval at the beginning of January.

So between January and today we have several months to be able to meet with the residents and work out the issues and work out the details of the site plan. So I would just ask if we could move forward with this item.

That would be our request.

VICE CHAIR BASEHART: One question of Staff -- and maybe you can't answer it -- but the question is: Would the Staff be willing, provided all other certification issues are resolved, to certify this application, pending the Board of Adjustment will meet again before it would actually go to a hearing.

So it would be pending -- certified pending Board of Adjustment approval or can't you do that?

MR. SEAMAN: Ask me again. I'm not quite sure what we're suggesting here.

VICE CHAIR BASEHART: It seems that the issue is that the residents would rather that we didn't act on this variance until they had a chance

to meet with the applicant. The applicant has a problem with, you know, having a month's delay. I mean, the whole thing is a domino effect because, you know, they're saying they can't get certified if this variance isn't acted on.

MR. KOLB: As the agent mentioned, this is not the final public hearing on this project, and the issues regarding the rezoning from CS to CC will be handled at a public hearing process.

VICE CHAIR BASEHART: Well, and, you know, I think the answer is, is that you would not certify this application even if all other issues are resolved if this variance was still outstanding.

MR. SEAMAN: The word I'm not catching is certified.

VICE CHAIR BASEHART: Certified to go to public hearing.

CHAIRMAN KONYK: For example --

MR. SEAMAN: That's talking about a different section. We're Board of Adjustment and we either support the variances as they're suggested.

VICE CHAIR BASEHART: Well, I think I know the answer. I've been through this before. It seems to me that -- well, let me make a statement and then I'm prepared to make a motion.

You know, it's obvious that this property can't be developed without a setback variance. Whether that be a front setback or a rear setback variance, one of the two is going to have to happen for this property to be developed.

So without the variance I don't believe that the property owner would have a reasonable use of their land. You know, the question is, is would it be preferable to move the building forward and get front setback variances, or keep it where it is and get the rear setback variance. It seems to me, given that choice, if I lived in the adjacent development, I'd rather see the variance that's been requested because it keeps the actual physical impact on the community to a minimum.

If the building were moved forward, all that parking and circulation that you see would have to be put on the rear of the building, and that's what really creates the impact. If there is no pedestrian or vehicular access to the back of the building, then it becomes a quiet area and doesn't generate any impacts.

If there was an existing single family house that backed right up to that, I might have a concern. But, you know, it's a civic site. You know, regardless of whether the community can somehow get around the Code and make that a residential lot, whoever bought that lot would recognize that there's already a building and an activity there, and I know that site. I worked for the County up till seventeen years ago, and I know when I left the County that site was a commercial site. I mean, it's been a commercial site forever.

And frankly, I think you've done a really good job at site planning this site with a minimal impact on the community, and the site plan appears to work and minimize impacts. And I really do believe you've demonstrated that you've met the criteria that's necessary for the granting of a variance, and one other thing that you should be aware of is -- not you, I know you are -- is that it maybe a moot point if we approve -- approval of this variance will allow the plan to move forward.

When you get into the public hearing process with the Board of County Commissioners and with the zoning commission, if there's a better alternative, and you can identify that better alternative, they can require through conditions of approval that the building be moved. They can't require it to be moved closer to you, but they could make it be moved further from you if this isn't the best solution.

So in effect, if we grant the variances that are requested today,

it doesn't approve the project. It doesn't approve the use. It simply allows the project to move forward to the public hearing process, and in my mind, the applicant has demonstrated that the criteria necessary for a positive vote from this Board have been met.

So based on that, I'm going to make a motion that this variance be approved subject to the conditions -- and you agree with the conditions?

MS. MORTON: Yes, we do.

VICE CHAIR BASEHART: The conditions that are recommended by Staff.

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

MR. MISROCH: Second.

CHAIRMAN KONYK: Second by Mr. Misroch.

Do we have any discussion?

I have a comment before we take the vote. When you move forward on this project to the public portion, to the zoning process, and all the other processes, that's really where you'll have the forum to bring these complaints, and these concerns that you have. Possibly they'll be resolved before it even gets that far, but if it's not, this granting of this variance, if we do grant this variance, is not going to stop you from demanding that things are done differently. And if the commissioners or the zoning board agree with you, they will be.

This is not going to make the project go through. So I just want to make that perfectly clear.

VICE CHAIR BASEHART: And this board cannot deal with use issues. That's not our job and that's not within our authority. If you think the use is wrong and it should be another use, then that's really an issue with the Board of County Commissioners, not with us.

CHAIRMAN KONYK: Okay. Any more discussion?

MS. CARDONE: Yeah, just before we take the vote, just to let the Staff know, I do sympathize with the people in that community. Two weeks notice apparently is not appropriate when you have an entire community that can't get together that fast. And their concerns have validity there. They really do. All public hearings, you know, should be held appropriately.

CHAIRMAN KONYK: No, no, no. It's posted thirty days in advance. It was taken care of.

MR. SEAMAN: The signs were posted.

CHAIRMAN KONYK: They had to post this thirty days in advance of this --

MR. SEAMAN: No, the signs are posted fifteen days prior.

CHAIRMAN KONYK: Fifteen? Oh, sorry, fifteen.

MS. CARDONE: And you may want to take a good look at that when you have a community that may not be able to cohesively have some discussion to come forward, you know, as a cohesive group in that amount of time.

MR. JACOBS: I agree with Ms. Cardone. I personally would be much more comfortable if we delayed action on this application for thirty days.

CHAIRMAN KONYK: We have a motion and a second. We haven't --

MR. SEAMAN: The thing I want to bring up again, what Ms. Cardone said, is that we did send out 300 foot notices certified mail to all people in the area within the 300 feet. So I'm assuming that if they were within 300 feet they received notification that way which was done a long time ago.

MR. KOLB: And the signs are posted by Code fifteen days prior.

CHAIRMAN KONYK: When did the letters go out? Do you have a date?

MR. SEAMAN: Juanita, could you tell me the date the letters went out?

CHAIRMAN KONYK: When are they required to go out?

MS. WILLIAMS: They went out Sunday, September 1st. They go out the beginning of the month.

CHAIRMAN KONYK: Okay. So that's three weeks.

MR. SEAMAN: And my understanding it's all courtesy. It's not really required. They're all courtesy notices that we send out.

CHAIRMAN KONYK: Okay.

MR. JACOBS: Yes. But given the fixed nature of the monthly meeting of the homeowners' association, they wouldn't have had a chance to really address the problem.

CHAIRMAN KONYK: Okay. We have a motion and a second. Are we ready to vote?

MR. JACOBS: Yeah.

CHAIRMAN KONYK: All those in favor?

KONYK, BASEHART, CARDONE, PUZZITIELLO, MISROCH: Aye.

CHAIRMAN KONYK: Opposed?

CUNNINGHAM, JACOBS: Nay.

CHAIRMAN KONYK: I don't know who was Nay.

Okay. The motion carries -- is there seven of us -- five to two.

MS. MORTON: Thank you.

CHAIRMAN KONYK: The next item on the agenda is BA 2002-043. If Staff would introduce the item, thank you.

MR. KOLB: The item 2002-043 is Dr. Casey Homasey, agent for Muslim Community Center, to allow the proposed furthest off-site parking space to be located more than 600 feet from the primary entrance of the use served.

The subject site is a vacant lot that has multi-family residential zoning. The applicant is proposing to utilize the vacant lot to serve as an off-site parking area as allowed by Article VII, Section 7.2, number 10. The off-site parking area would serve an existing Mosque, and the variance is required because the spaces -- the parking spaces are approximately 970 feet, by Staff's calculation, from the entrance of the Mosque and the Code requires a maximum of 600 feet.

Staff is recommending denial of this request due to existing site conditions. The vacant lot is accessed by a 20 foot wide ingress/egress easement that is currently a 9-foot wide shell rock road. In addition, pedestrians would have to walk approximately 360 feet behind the back out parking areas for two multi-family dwelling units and cross Purdy Lane, an 80 foot right-of-way.

CHAIRMAN KONYK: Your name for the record.

MR. HOMASEY: Good morning, Casey Homasey, on behalf of Muslim Community, Palm Beach.

CHAIRMAN KONYK: Have you been sworn in?

MR. HOMASEY: No.

THEREUPON,

DR. CASEY HOMASEY,

a witness, duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

THE WITNESS: I do.

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CHAIRMAN KONYK: We'll hear from you now.

MR. HOMASEY: Well, we have -- there's one, I think it's very important -- due to the nature of the religion, the occupancy of the building, by this worship, it's higher than the religious -- since the worship are not seated, that mean

this is where, when you have in the area as far as seats, we don't have no seated Mosque in there. It's all stand up. When you stand up, the people inside the Mosque -- I mean, we have over 500 people. They do pray almost every Friday of the month, and the fire department already issued an approval for 500 seats. And to go ahead and bring 500 people into the Mosque, we need over 66 parking. And we have no -- not enough parking. We do have the property in the back of this road, on Haven Road, and this is the only place to accommodate the people who comes into the Mosque.

Plus, we have another things in there. As far as the parking issue, it's just every Friday from 1:00 to 2:00 o'clock --this is the only time we do park in this property. It mean four times per month for one hour every Friday. And this is where all the school kids -- they're in schools. Everybody at work. That mean the whole area is vacant. There's no transits, no movement in this street.

All this -- there's something I can see -- I mean, we can put some condition will guarantee for the community to go ahead and shell rock this three to nine feet. We try to go ahead and get it wider.

MR. KOLB: The first issue regarding occupancy, Petition 92-48B, one of the Board of County Commissioner conditions limits the maximum occupancy of the Mosque to 186 people. So although they have received approval from the fire department, they have not received Board of County Commissioner approval to exceed 186 people.

It is the applicant's idea that if the variance is granted, they would then submit to the Board of County Commissioner for a development order amendment to add land area and also to increase the occupancy of the Mosque. According to Staff's calculations, the proposed 94 spaces would allow up to 282 additional people.

That is also one of the reasons why Staff is recommending denial of the request, because these 94 -- a maximum of 94 vehicles would be utilizing this 20-foot access easement. This is not a 60-foot wide county-maintained roadway. This is a 20-foot wide access easement, so approximately 94 cars would be utilizing this access easement and a maximum of perhaps 282 people would also utilize the same 20-foot wide access easement and cross Purdy Lane and walk past the multi-family residences that are in the area.

CHAIRMAN KONYK: Just a question. In order for them to proceed to the county commission, wouldn't they have to have the parking spot variance so that they could prove that they could have the parking spots for the additional --

VICE CHAIR BASEHART: Right. That's why they're here before they go to the board.

CHAIRMAN KONYK: Right.

MR. KOLB: Right. The variance is the first step in the process, however, if they do not receive the variance, the process stops.

CHAIRMAN KONYK: Okay. And was there a reason why the county commissioners limited the number of people in the building initially?

MR. KOLB: The existing Mosque site is a relatively small site. There's a maximum of 62 parking spaces I believe on the existing site, so the existing site is very limited. It's surrounded by existing single family and multi-family residential development. So there is very limited room for expansion, however, a parking lot is not a typical use in a multi-family residential zoning district.

Although the Code allows it, it allows parking lots -- off-site parking -- when the zoning district is equal or greater than. And in this case, the Mosque has an RS zoning district with a special exception; so therefore, that's why they're actually even able to apply for something like this. This is not a typical circumstance I guess that a 94 space parking lot will be developed in an existing

multi-family residential area.

MR. PUZZITIELLO: Where are they parking now?

DR. HOMASEY: We've been parking for the last seven years in this property, the one we're requesting the variance on.

MR. KOLB: The property owners received violations both in '97 and 2002 from Code Enforcement which is why they're back before the Board of Adjustment for utilizing the existing lot which has been completely shell rocked for existing parking.

MR. JACOBS: It's my understanding that there was a minimum of 62 parking spaces. How many actual parking spaces do you have at the moment?

DR. HOMASEY: Sixty-two.

MR. KOLB: There's no additional room on the existing lot.

CHAIRMAN KONYK: Was the limiting of the number of people using the building a concession that was made to the residential area so that the Mosque could be built there, or was it just -- what was the driving force behind that?

MR. KOLB: The Mosque approval -- as he mentioned, there are no seats, but they use the same calculations that a church would use which is typically three seats per one parking space.

So that same parking calculation was used to come up with the maximum occupancy.

CHAIRMAN KONYK: I don't mean the parking. Oh, okay, the parking calculation is what came up with the occupancy.

MR. KOLB: Right. So based on the number of parking spaces, three people per car, there came up with a maximum occupancy.

MR. PUZZITIELLO: There's an existing one-story building residence on that --

DR. HOMASEY: Excuse me. Can you repeat that?

MR. PUZZITIELLO: There's an existing one-story building next to the Mosque that is taking up some of the area for parking. Is there somebody living there now? Is that --

DR. HOMASEY: Living where?

MR. KOLB: The caretaker's quarters.

MR. PUZZITIELLO: The caretaker's quarters.

MR. KOLB: That's shown on the existing Mosque site plan. Yeah, there is an existing caretaker's quarters on the site.

DR. HOMASEY: Okay. No, there's no one is living inside.

MR. PUZZITIELLO: My question is: Could that be torn down and used for parking?

DR. HOMASEY: Maybe five parking spaces.

MR. PUZZITIELLO: If you take that whole property there, you probably can get a lot more than five.

DR. HOMASEY: We have tried in there and we saw it through our engineering, and they said what you're going to gain, it's almost --

VICE CHAIR BASEHART: You know, it looks like you might be able to -- you'd gain about a dozen spaces, but then you'd have to take a couple out so you might gain ten spaces.

DR. HOMASEY: Well, believe it or not, we're not looking for ten parking spaces. We're looking for 94 parking spaces; plus there is something is very important. In our community, there is no such Mosque taken from Jupiters all the way down to Pompanos. We are the only Mosque in this area, and this is why we cannot go ahead and close the doors and tell the people not to come inside and pray. I mean, we are forced, you know, by the people from the Muslim community

to come in and pray. We are trying to accommodate parking spaces for them.

And sometime we cannot even control it when people comes in over 500. I mean, what are we going to say? Tell them just please don't come in.

MR. CUNNINGHAM: You say you can't control it?

DR. HOMASEY: We cannot control all the people coming into our Mosque, to pray inside the Mosque, because when people comes in, either church or temples or Mosque, people comes in from everywhere. Even, you know, some people that come in from the north, and they trying to find, Where is the Mosque? And they will tell them, This is the Mosque. That mean they will just go ahead and walk into the Mosque.

MR. CUNNINGHAM: So if I'm hearing you correctly, if a thousand people showed up, and it's in my neighborhood and I'm living there, you can't control it. I respect your religion, but you're saying you can't control it. So a thousand people would be allowed to just come into that neighborhood?

DR. HOMASEY: I'm sorry. There is some misunderstanding. I mean, the standing inside the Mosque -- it's maximum. When people comes in, they don't see no place to go ahead and go inside and pray, it mean they're not going to be able to go ahead and push and try to go ahead and stand up. It mean, there is no place. It mean they will just walk out and go somewhere else.

But the seating -- we have property inside able to accommodate over 600 people. It's not 500; over 500 -- almost 600. It mean everybody has been inside. It mean we have -- the Sheriff has came in and showed the way. The people -- they pray -- and when he came in and he saw over 500 people, and this is when we said, Let's go ahead and change the occupancy in this building in there. We don't want to have a problem with the Sheriff or the insurance -- with the fire chief or the insurance.

And this is what we have changed and we said, Okay, let's go ahead and get the parking -- variance as well. And this is what we looking from you to go ahead and consider, What can we do.

I mean, you know, there is -- you will have gone to the church and you have seen people -- sometime they come in and what they do, they park right in the middle of the street because you cannot accommodate parking for them, and that's what we trying to do. We trying to go ahead and compromise with the people who coming into the Mosque, to go ahead and provide some parking for them. And there is no place in the whole area.

We try to go ahead and work with the neighborhood, if we can purchase the property, but it's very hard. It's not easy. And this the only place that we do own. It's all the way in the back. We own it for the last seven or eight years, and everybody knows this is our property, and that's why they go and park.

MR. PUZZITIELLO: That Haven Road is just the only access in and out. There's no other back ways to get in. Everybody has to come in and out of that little 9-foot --

DR. HOMASEY: Yes.

MR. PUZZITIELLO: What's on the other side of that parking lot in the back? I mean, you showed us that there's multi-family between the street.

MR. KOLB: The aerial of the existing Mosque site is here. The proposed parking location is here. There is multi-family residences here, and all along the rear of the property. This is an existing -- I mean vacant lot -- but that is zoned multi-family. So, you know, potential development down the road.

That's pretty much it. And once again, regarding the occupancy, there's a Board of County Commission condition that limits occupancy to 186 people.

MR. PUZZITIELLO: So Haven Road is --

CHAIRMAN KONYK: Because of the parking, though, because there's 60 parking spots. It wasn't because the residents said if you -- right? it was just because of the parking.

It's a normal condition. It's not an added condition. Anybody who builds something there would have that same condition, correct?

VICE CHAIR BASEHART: Well, my experience has been -- I mean, the Code would limit it, you know.

CHAIRMAN KONYK: That's what I mean. Is it a code requirement?

VICE CHAIR BASEHART: They didn't need to put that condition on the approval. They do it -- well, what I've been told is they do it so that the applicant is fully aware of what the code limitations are. But the condition itself doesn't add a limitation. A limitation's already there by Code.

CHAIRMAN KONYK: So it's just a restating of the Code.

VICE CHAIR BASEHART: Right. Except that when something like this happens and they find alternate parking, under the Code, if that condition wasn't there, they could have just built the parking lot and expanded the church.

Now, because of that condition, they have to go back to the Board and get that condition modified.

MR. SEAMAN: And it's my understanding because it was in the Code, as a code requirement, and then it was placed on the Petition as a condition of approval, and it's there. It needs to be met at that threshold.

CHAIRMAN KONYK: I know. I was just trying to establish why it was on as a condition approval, if something else was driving it or if it was just because it's standard procedure.

And I've been -- the question's been answered. It was standard procedure. Nothing else drove that.

MR. KOLB: Well, the limiting size of the site.

CHAIRMAN KONYK: I understand. You know, but we put variances -- conditions on variances because homeowners come forward and they complain about something, and we say we see your point. We'll put a condition. I just wanted to make sure that the condition wasn't added because of some driving force.

MR. SEAMAN: To be honest with you, this Staff can't answer that question. We weren't at that meeting. You'll have the verbatims here. If there was some particular issue that we should know, maybe the verbatims could say that or you were at the meeting yourself when it took place.

You would know.

DR. HOMASEY: Well, we never had a problem. The community never complained about our parking.

MR. SEAMAN: You were at the actual board -- the County Commissioners' hearing. You would know better. You were at that particular hearing so --

VICE CHAIR BASEHART: I guess the question is: When the Board of County Commissioners approved the project, was that condition added because of discussion about the size of the facility, or was it just put there by Staff to reflect what the Code already represented?

DR. HOMASEY: Well, it's not been added. No, it's --

CHAIRMAN KONYK: Okay. Thanks.

MR. PUZZITIELLO: That Haymond Road -- is that a --

CHAIRMAN KONYK: Haven.

MR. PUZZITIELLO: Haven?

MR. SEAMAN: Haven.

DR. HOMASEY: Haven.



MR. PUZZITIELLO: Is that servicing other properties to the south of there below the subject parking area?

MR. SEAMAN: It only services the parking lot and the multi-family that's to the east of the picture there.

MR. PUZZITIELLO: Okay. So it doesn't go any further.

MR. SEAMAN: It's a dead end.

DR. HOMASEY: There's two apartment building on this road, right in the front of this parking, and the first complex -- this is the first building -- each building has got like four apartments. I will say the first building -- there's a three apartment owns -- I mean, been rented by the Muslim community. I mean, this is where there is no complaint.

The one behind -- there's another four apartment -- and we have not had any major problems with the people and we trying to go ahead and fix the road -- instead, have it as a dirt road.

And we have worked with the people who owns the property, and by all mean, they do like what we trying to do.

CHAIRMAN KONYK: Okay. Yeah, is there members of the public here to speak on this item?

If you would, how many are there? Can you stand up and let us know who's going to speak?

Okay. Just don't repeat each other. If you have something different to say -- first person -- you want to sit down and let them have an opportunity to speak? And you've all been sworn in, correct?

ALL: Yes.

CHAIRMAN KONYK: Name for the record.

MR. FARRELL: My name is Sam Farrell. I own the two duplexes that he's referring to, and I'd like to say a few things.

It is a 9-foot shell rock road. It is not a county maintained road. It is maintained by me, and he's very, very lenient on the amount of people that come to his service. I mean, there's in excess of 300 cars there every Friday. And there's so many that they park in my spots; they block the road.

There is people in every one of those apartments every day, all day long. There's mothers with small children.

Now, if an emergency vehicle needed to get down that road, it could not do that because the road is effectively blocked off when their service is in effect. Now, I don't know who's liable for that because the County is allowing this to continue, but you know, it is -- there is quite a bit of liability going on there, and he's also forgetting about Ramadan.

During the month of Ramadan, their services go on 24 hours a day, 7 days a week. And also they tend -- if a member does not have a place to live, they can live there in the parking lot in their car, and it's okay. I've talked to the Sheriff's Department about it, and they said, Well, if they have permission, it is fine.

We can't do anything about it because it's private property, and the owner has granted the person in the car permission to live there.

Now, I don't think that's right. I don't think anybody else would think that was right.

CHAIRMAN KONYK: Okay. The only thing that we can address, though, are the items that have to do with the variance. They're asking for 92 parking spots. Why do you think they shouldn't get them?

MR. FARRELL: Because there's no road. It needs to have a county approved road with sidewalks. There's no way they should be able to put a parking lot there without putting a road in first. I mean, it would be crazy to think that. You cannot have the number of cars going up and down that road at that time when the road is only a 9-foot wide dirt road that they tend to park in and block off.

The road should come first with sidewalks.

Then let's talk about a parking lot.

VICE CHAIR BASEHART: If this Board were inclined to approve the variance but place the condition requiring the paving of the access easement from the road back to the parking lot, would that satisfy your concerns?

MR. FARRELL: Yes. If they put in a county approved road with sidewalks that's paved, I wouldn't have no problem with the parking lot.

CHAIRMAN KONYK: This is a right-of-way to do that?

VICE CHAIR BASEHART: No, there's not a -- this is a 20-foot access easement. I mean --

MR. FARRELL: Well, there's seven acres next to it. Dennis Shay owns the seven acres.

VICE CHAIR BASEHART: Right.

MR. FARRELL: He would like to sell it or put apartments on it. Well, he has no road. Eventually, he's going to have to give up some property for a road.

CHAIRMAN KONYK: Well, that doesn't have anything to do with this issue, though.

MR. FARRELL: Yes. But the potential for the easement is there.

VICE CHAIR BASEHART: Do you know how that -- I don't know that the county allows it to be done anymore, but a lot of this happened over the years where people had excessively deep lots, and they wanted to split them.

MR. FARRELL: Well, that's what these two -- there's two five acre tracts, and that's what happened.

VICE CHAIR BASEHART: Right. Were you the owner -- you're the owner of the property in front?

MR. FARRELL: I own the two duplexes.

VICE CHAIR BASEHART: All right. Did you grant the easement or was that in place when you bought --

MR. FARRELL: No, the easement's on my property.

VICE CHAIR BASEHART: Right, I know, but it was granted by the original -- the property owner.

MR. FARRELL: The original owner who lived at the house at the end of the road which they now own -- there was two 5-acre tracts, and she built a house at the end, and then split it up into lots and sold the lots off and I bought two of the lots.

VICE CHAIR BASEHART: Okay. So you weren't the one that granted the access easement.

MR. FARRELL: No.

VICE CHAIR BASEHART: Okay.

MR. FARRELL: But I think the road should come first before the parking lot.

VICE CHAIR BASEHART: Okay.

MR. FARRELL: Thank you.

CHAIRMAN KONYK: Thank you.

MR. SHAY: Dennis Shay. I own the seven acres, and this is my wife, Tiffany. I don't think this should be granted because they don't meet the criteria for getting the permission to do this. There's seven criteria they should meet. They don't meet any of them. I don't know how you can grant them approval if they don't meet the criteria, and we'd like to -- my wife will read the response to each of the seven criteria they are supposed to meet and haven't.

MRS. SHAY: Well, this directly impacts us because we do own that seven acres, five of which are directly west of the 20-foot easement, and

two of which are south of their property.

The property is unsightly which impacts us. It makes our land less desirable for sale, and we are currently negotiating with a buyer and have been for months and months and months to buy it and develop it. It is zoned for multi-family use. That's what he intends to do.

What these people have already done and are proposing to continue doing is not helping the sale at all. They have built up this lot with a huge amount of shell rock. It now drains on all the surrounding property including ours. It's a safety hazard on Purdy. Purdy connects two major north, south roads in this county -- Haverhill and Military -- and that particular section of Purdy is constantly used.

There are not very many residents right there now who are impacted, but if we can complete the sale and this man goes ahead and develops our land, there will be a lot of new residents on this little road, and these people driving up and down and parking right across from this residential development will be a problem. It will be a safety hazard, and it will be an unsightly problem.

There are no special circumstances and conditions that are peculiar to this parcel of land. It's a standard residential lot surrounded on all four sides by residential property. No geographical or topographical characteristics which would necessitate a need for a variance. Nothing at all which would prevent it being used for residents which is what it's zoned for.

There are no special circumstances and conditions affecting the property which have resulted from the actions of others. Granting the variance would definitely confer on the applicant privileges denied to others in the area.

There are several places of worship in the immediate area. Are they all to be granted permission to just buy a random, vacant lot away from their facility in the middle of other residences and turn it into a parking lot? If you grant this today, you have to grant that for all the other places of worship in the area.

Enforcement of the Code would not deprive the applicant of rights common to other parcels of land in the area. The land owners in the area all have the same rights to develop their property as a residential property.

That's what it's been developed as forever. Absolutely nothing would prevent the applicant from exercising the same rights all land owners in the area have which is to develop the land for residential use according to its zoning.

The variance is not required to make reasonable use of the land. It's zoned for residential, and there are no conditions peculiar to this land preventing it. It's used as such.

Granting the variance is not consistent with land use plans. Surely, a random parking lot stuck in the middle of residences is not compatible with the surrounding homes; would not improve the residential nature of the neighborhood; and would certainly have a negative impact on the quality of life and the property value of the surrounding residences.

It's already had a negative impact on our property. Another negative impact is on the road itself. There's no county maintenance of the road grade or drainage, and it's not adequate for usage by several hundred cars every time the Mosque has a service or any special observance. It's not fair to the local residents that their road is subjected to usage which makes the road surface itself harder for them to drive on.

The variance would be injurious to the area and detrimental to the public welfare. Again, sticking a random parking lot in the middle of a housing area, I mean, definitely negatively impacts the quality of life.

To use this lot for parking, people must cross Purdy Lane in the middle of a block where there is no traffic light or sign. Quite often members of the Mosque themselves direct the traffic, standing in the middle of the street stopping

cars. The spot where they cross is a short distance from Haverhill Road, which is a major north, south roadway, and I mentioned before, the access between Haverhill and Military.

In order to get to this off-site lot, people from the Mosque are walking across the street between cars -- traveling between two major county roads. Once they get across, they must walk several hundred feet down a small unpaved road with no sidewalks and is only twenty feet wide.

As Sammy said, the people who live in the housing must back out of their driveways while watching out for all this traffic. Right now there's a small number of those people. In the near future, we hope there will be significantly more. It's just not a safe situation. They've been knowingly using this lot as a parking lot in violation of zoning for years.

There's a simple solution. They can do what other groups of faith all over this county, all over this country do. When they have a parking problem, a site space problem, they simply add an additional service. This group can do the same thing. It solves their problem; it solves our problems. It makes the neighborhood safe. There's no reason they can't do that very thing which is what all other churches have to do when their membership increases and their space is limited. Thank you.

CHAIRMAN KONYK: Thank you. Do you have anything you want to add?

DR. HOMASEY: Well, there's a couple of answers to the neighbors. We do perform the pray on Friday, and every person who comes -- comes in from work directly to the Mosque. That mean there is no car pools. That mean when we perform what other religions on Saturday or Sunday, that come in straight from the house, and they do car pool. It mean we cannot go ahead and control the people who comes in with their cars. If we have 186 seat occupancy with the old permit we do have, it mean if 186 cars comes in, where we going to go ahead and park?

That's why we're trying to go ahead -- plus in the area, we try to go ahead and see if we can park somewhere else. We try to park in an area where it's Forest Hill and Military Trail -- there's a K-Mart. And K-Mart find out that we park, and then they said, Please don't park or we going to go ahead and start to tow the cars.

This is when the neighbors -- actually, we have two neighbors, and that's the only two neighbors that complain. But we try to work with them. I try to meet with one of the owners -- with Dennis Shay. He's asking for a huge amount of money in that seven acres. We do have an acre -- a little over an acre, and we're going to have the same problem what he's got if we're going to buy his property. Plus we do not own a bank, because he's asking big money for his property. And he's the only person -- actually, he's been coming every time.

He called the Code Enforcement, and he comes over here and trying to go ahead and tell us what's right and what's wrong. But we trying to work with all the neighbors. We don't have no hotels. According to the other person, Mr. Sam Harper, he said we have people sleep over. We don't have no hotel in the parking. We never had any people park in this area and sleep over.

But other thing, as far as on Friday, there is a deputy from the Sheriff's Department who comes in every Friday, and he direct the traffic. Plus, we have couple people from our community to help the Sheriff's Department as well. We trying to work with the neighborhood, and we want to go ahead and fix this road, but we're going to go ahead -- there is a condition. We will try to go ahead and accommodate a sidewalk on the same street. We will shell rock it, and we'll accommodate a sidewalk.

Plus, as far as the drainage, the drainage is well directed.

There is no person has a problem with our drainage, but if they have a drainage, it mean the whole area has a drainage problem. It's not just our area because when it rains too much, there is no control.

But we already brought in engineering people who work on this area and trying -- because we used to have a swamp in there, and that's why we went and fix it. We put some shell rock, and once in a while Mr. Sam Harper -- he does work with us and he try to go ahead and clean the road and asphalt the road as much as he can, and this is what he's been helping us. I mean, we're not trying to destroy the area -- no, we trying to help the area. We trying to work with the neighbors and accommodate as far as -- asphalt the road, we'll asphalt the road. Drainage -- we'll fix the drainage. Whatever the neighbors want and whatever the variance wants we will work with them. Thank you.

MR. JACOBS: Question, sir. Do women attend your services?

DR. HOMASEY: Yes.

MR. JACOBS: So the car traffic would be families?

DR. HOMASEY: Sometime.

MR. JACOBS: Okay.

MR. CUNNINGHAM: I have a question. How many of your members live in the immediate area roughly?

DR. HOMASEY: Twenty maximum.

MR. CUNNINGHAM: Thank you.

CHAIRMAN KONYK: What are you looking at me for?

VICE CHAIR BASEHART: You're the chairman.

CHAIRMAN KONYK: Do you have any other letters or opposition from the --

MR. SEAMAN: There was just one letter. One was a disapproval and that was the Shays who spoke.

CHAIRMAN KONYK: We need to base the granting of a variance on the seven criteria, and if a member of the board feels that the applicant has demonstrated compliance with the seven criteria, they'll make a motion in favor of your variance. If they don't feel that you've made -- demonstrated that you've met the seven criteria, then they won't make a motion in favor.

Do you want to just real quickly show us how you feel that you've met the seven criteria, because you really haven't done that yet.

DR. HOMASEY: Well, the first one we already discussed as far as the occupancy, and plus there is no Mosque in the area except ours and from Jupiters all the way down to Pompanos.

CHAIRMAN KONYK: Okay. That one you discussed.

DR. HOMASEY: Okay. The second one, as far as -- there is a configuration of the site -- off-site parking existence from it.

On the third one, as far as we do perform just on Friday for just one hour from 1:00 o'clock to 2:00 o'clock, jut one day a week -- for one hour. I mean, one day a week for one hour, and this is number three. Number four --

CHAIRMAN KONYK: Let me ask a question about that.

DR. HOMASEY: Yes.

CHAIRMAN KONYK: When she suggested that you add another service, is that a possibility so you can split the impact on the community?

DR. HOMASEY: We are trying to work and trying to find another place because --

CHAIRMAN KONYK: No, I don't mean another location. Can you hold two services on Friday?

DR. HOMASEY: The Mosque -- the Muslim religion requirement, just by God, it's not by human being -- when it said Friday pray, it's a Friday pray. You cannot go ahead and perform your Friday pray instead noon time

to go ahead and say, Well, we're going to do it at night.

This is just like in the Christians, when you perform your pray for like 9:00 o'clock or like 12:00 o'clock, it mean you cannot say, Well, let's go ahead and do it at 12:30 or 1:00 o'clock. It's --

CHAIRMAN KONYK: Okay. Well, I just needed you to clarify that. That was one of the things she had suggested, that you hold two services on Fridays. It's not a --

DR. HOMASEY: It does not apply in the Muslim religion, or in the Jewish religion either. I mean, you know, when you have to pray, you got to pray. That's it. I mean, you can't just go ahead and say, Well, let's go ahead and split. No, you cannot split.

CHAIRMAN KONYK: Okay. Thank you. Number four.

MR. JACOBS: Excuse me. What about Ramadan that was mentioned?

DR. HOMASEY: Ramadan is just --

MR. JACOBS: Do you have services all month long?

DR. HOMASEY: Well, according to what he said, it's twenty-four hours. There is no such a twenty-four hours on any days. I mean, you know, people has to go to sleep. And when they sleep, it means they sleep at home. They don't sleep in the parking lot or sleep in the Mosque because we don't have no hotel.

MR. JACOBS: No. But during Ramadan how -- what percentage of the day is the Mosque used?

DR. HOMASEY: Ramadan -- it's an exception. The time of pray would be on sunset -- we perform the pray every day of Ramadan on sunset.

MR. PUZZITIELLO: Only at sunset, not at sunrise or --

DR. HOMASEY: No, sunset.

CHAIRMAN KONYK: How many days is Ramadan?

DR. HOMASEY: Ramadan is thirty days.

CHAIRMAN KONYK: Okay, thanks.

DR. HOMASEY: Sometime it's 29 days. It depends -- just like the February.

MR. FARRELL: Which means cars will only be there from 6:00 to 7:00 this month during Ramadan this year?

CHAIRMAN KONYK: The public portion of the hearing is closed.

All right. Number four -- literal interpretation, enforcement of the terms. You're going to address that.

DR. HOMASEY: Well, this is -- number four, as we said, there is no Mosque in the whole area except ours from Jupiters all the way down to Pompanos.

Number five would be the site parking -- off-site parking. And this is the only single property that we own in the area. And we've been owning it for many years and as far as Mr. Sam Harper mentioned, that we've been parking for the last five, six, seven years in there.

Sometime we do have violations. The reason of violations, you can go to the records -- Code Enforcement -- the people behind me, the one that complained, that's when they called the Code Enforcement.

CHAIRMAN KONYK: That's what they're there for.

DR. HOMASEY: We try to comply but, you know, when you don't -- sometimes you don't violate your neighbors, sometime he just want to pick on you, and we do have these circumstances.

CHAIRMAN KONYK: Well, it's their right to call Code Enforcement if you're breaking the Code. That's their right to do that. That's why

we have Code Enforcement. If we had it so people could be mean to each other, they'd be called a lot more, I'm sure.

DR. HOMASEY: Well, I called -- excuse me, I try to work with Mr. Dennis Shay. I said, Can you give us some of the easement property from you or if you can sell us some of the area to go ahead and make wide street and two-way traffic. He said, No, I'm going to sell the whole property, the seven acres. I said, One acres, two acres -- no, he wants to sell the whole lot. We don't even have the money.

You know, we trying to, as far as the parking, whatever the property we are parking, we trying to clean the area, and that's why we put shell rocks in there because it used to be a swamp before. And it bring a lot of mosquitoes, you know, for the environment, and now we have no swamp in there. We have the whole area is shell rock. It mean it's -- there is no dirt inside, and we try to go ahead and develop it properly as far as decent parking lot. We put some trees and flowers to be very nice into the community.

CHAIRMAN KONYK: Okay. Thank you.

DR. HOMASEY: Thank you.

VICE CHAIR BASEHART: Are you ready?

MS. CARDONE: Madam Chairman, I would like to move that we support Staff's position for this item. I do not believe that the applicant has met the seven criteria which is necessary for the granting of a variance.

MR. JACOBS: I second that motion.

CHAIRMAN KONYK: We have a motion by Ms. Cardone. A second by Mr. Jacobs.

Is there any discussion?

VICE CHAIR BASEHART: Just before we vote, I'd just like to say that I understand the Mosque's problem. It's a growth problem is what it is, and it's like your personal residence.

If your family grows and you outgrow the residence, if you can buy the property next door and expand your house, that's great. If you can't, then you have to move.

I think the situation here is that it would be appropriate, I think, if you were able to acquire adjacent property and expand your parking facilities, you know, I don't think anybody would have a problem with that. Short of that, if you can't have multiple services like a lot of churches and synagogues do when the membership outgrows the facility, then I think that's really what happened here is that the congregation has outgrown the facility.

Then I think the approval of a remote parking lot like this would inappropriately impact, you know, the neighborhood, and I don't think there's any way around the conclusion that the criteria haven't been met.

I'd like to help out and I'd like to see a way for your parking area to grow, especially given the fact that apparently the building itself is adequate to handle the amount of people that you need to accommodate. But short of finding a way to expand the usability of the parking on the side of Purdy Lane that the facility is on, I don't think that there's a solution that appropriately balances the needs of the Mosque and the public interest. So I'm going to support the motion.

CHAIRMAN KONYK: Okay. Anything else?

Ready to vote? All those in favor?

ALL: Aye.

CHAIRMAN KONYK: Opposed?

Motion carries unanimously.

The next item on the agenda is BA 2002-045, James Burg Custom Homes, agent for William and Roberta Thompson, to allow a proposed

single family dwelling to encroach in the required side, rear, and front setbacks.

CHAIRMAN KONYK: Do you need a break, Madam court reporter?

COURT REPORTER: No, I'm fine.

CHAIRMAN KONYK: Okay. Are you all ready -- Staff?

MR. SEAMAN: Okay. This is BA 2002-045, and it is James Burg Custom Homes, agent for William and Roberta Thompson to allow a proposed single family dwelling to encroach into the required side, rear, and front setbacks, and to allow a roof to exceed the maximum overhang.

You'll find the back up on pages one through -- or one hundred through one fifteen -- and a quick summation is that the applicant proposes to build a residence on an irregular shaped lot -- irregular shaped lot right here.

The yellow area is the actual residence, and --

CHAIRMAN KONYK: Did you get the mike?

VICE CHAIR BASEHART: You know the rules.

MR. SEAMAN: And you can see also the residence that is shown here and the setback from the side interior is seven and a half feet required, they're proposing five. To the rear -- or the front of the property -- at the front of the property there's a 25-foot setback requirement and they're going down to zero for a variance of twenty-five feet, and that would be right here (indicating).

On the side is seven and a half feet down to five feet; and to the rear, it's fifteen feet down to two feet, which is a variance of thirteen feet. The roof overhang, which is this green area here, they're allowed two and a half but they're proposing seven feet.

And this shows you the location of the lot itself again, with the dark area showing the residence, and it's Staff's opinion that granting the variances will not conflict with the ULDC's requirement for ample separation, open space between structures. As you can see, there's ample space between the residence home and the lot to the east, which has a home on it now. There's ninety-one feet separation here. There are no homes to the south. There is a forty-four foot separation between the front of the home and Palmwood Road, and there's nothing to the north here.

So there is still ample space and ample separation to meet the intent of the Code where they have to have ample light and open space and separation. Further, there is no really other design solution for this home other than what we've proposed here.

The home is a three-story proposed structure, but it doesn't exceed the thirty-five foot maximum which is allowed by Code. As you can see, the proposed home is thirty-five feet high, which even though it's a three-story structure, it doesn't exceed the thirty-five feet allowed by Code. The nearest home to the east is a two-story structure, but you can see the difference -- there's only about three to four feet.

So Staff, therefore, recommends approval because it feels the seven criteria have been met, and the conditions can be found on page 105.

CHAIRMAN KONYK: You're recommending approval?

MR. SEAMAN: Recommending approval with conditions.

CHAIRMAN KONYK: Now, was that your introduction of the item or was that also your presentation?

MR. SEAMAN: That was my presentation.

CHAIRMAN KONYK: Okay. Now we'll hear from the applicant. Has everybody been sworn in that's going to speak to this item?

UNKNOWN SPEAKER: No.

CHAIRMAN KONYK: Anybody that's going to speak on this



item, please stand, raise your right hand, and be sworn in.

THEREUPON,

all remaining witnesses were duly sworn to tell the truth, the whole truth, and nothing but the truth, so help them God.

WITNESSES: I do.

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CHAIRMAN KONYK: Unless you think that you need to it twice.

MR. GROSSO: Good morning, my name is Joe Grosso. I represent the applicant. I'm going to speak on behalf of Jim Burg.

Certainly, if there's any questions that come up with regard to the specific site issues and the plan, Jim's going to speak to that.

Let me talk briefly about this site that we have. As you can see, it's a very irregular shaped site with extreme physical constraints for the construction of the residence which is, of course, what's permitted under the Code.

This particular -- the legal description, and the legal configuration -- this site was created back in 1973 by deed and hasn't changed legally since then. However, there have been additional physical changes that have caused further problems and further constrain the development of the site in some measure due to erosion at the site and, from what we understand, in large measure, due to the dredging of the site by the developer of Cypress Point across the drainage canal here.

So you can see that we've got severe physical constraints to work with here. We're going to be very brief because we know there's folks from the public here that want to speak to this. We believe that, as Staff recommends, that we've met the criteria. As a matter of fact, in our view, I don't think we could imagine a site that more fits the criteria.

We've got a site here that's physically constrained. There's no other way to build -- construct what's permitted under the Code than the way the applicants present it. The constraints to the site are in no measure due to any activity by the current owner, which I think is a significant issue here.

I want to point out and kind of stay focused on the fact that what we're looking for here are variances to the setbacks, nothing else. We're not here for, you know, a building permit or development plan or -- we've got no requests for variances -- the height or anything -- just the setbacks. And if you look at the report, one thing I wanted to mention that Mr. Seaman failed to note in talking about the setback variances we're requesting.

The front setback -- while it's a zero setback, it's a zero setback from the base building line, not from the road. So there's still a fifteen foot setback from the front boundary of the property. Again, of course, what we're seeking is the rear setback. We're looking to go to two feet. We're looking to go to five on the side, and we've got the overhang setback.

In terms of, again, focusing on what we're requesting, we're only requesting variances for the setbacks, I think it's important to focus on, in terms of considering any objections that we've got here, whether or not it's the variance itself that's creating any additional impact to any of the neighbors. I don't think it has.

So with that in mind, we concur with Staff. We believe that we met the criteria, and we'd ask that you approve the requested setback variance.

CHAIRMAN KONYK: Thank you. I guess you're going to speak now, Dennis. Are you with the opposition?

MR. KAYLOR: Yes, ma'am. If you'll allow me to proceed.

First of all, I'm Dennis Kaylor. I'm the local attorney with offices in West Palm Beach, and it's my pleasure to appear here on behalf of Mr. Scott

Porter, who owns the existing home directly across Little Cypress Creek from the property.

And unlike the Staff report's suggestion that his home is ninety-one feet away, it's actually about sixty feet away from the facade of this building, if it's approved.

Let me comment to the Board of Adjustment, and welcome Don Mathis. I wonder if he knows what he's getting into, but it's always nice to have a gentleman of his background on the Board.

It's been a while since I've appeared before you. Typically, I represent the property owners on behalf of variance requests. But this is one that's really unusual, and I would hope that as you looked at your Staff report and saw these drawings you thought, My goodness, I don't think I've ever seen a piece of property so irregularly configured as this one.

I've handled some doozies in the past, but nothing that even begins to approach this. And what we're going to be doing -- Mr. Porter and his neighbors are all here, is running through some of our opposition, obviously, to this proposal. I'm going to be focusing on the Staff approvals -- I should say Board of Adjustment actions that they cite as precedent which I'll be suggesting are really not. And then Mr. Porter's going to take off the tests for relief.

I will tell you that based on my review of the standards and my long experience, I would suggest that at least five of the seven tests or standards for variance relief have not been met. And as you stated earlier, Madam Chair, you've got to meet all these tests if you want to get an approval, at least legally.

Let me just now move to introduce a few documents into the records. First of all, Madam Chair -- but there's four of them, and perhaps we could do it collectively. First, I have a petition signed by twenty-three of the neighbors who live in the nearby surroundings opposing the development.

Second, I have a letter from the Cypress Island Property Owners' Association. This was sent to Mr. Seaman opposing the granting of the variances requested.

Third, I have a letter from the Little Cypress Point Homeowners' Association. It is a little association. There's only four members.

But Mr. Porter is here and all four of the members of that association are here today. That's the third letter.

And then finally, an interesting letter that I received from an attorney named Keith Seldane, dated August 22, basically saying if you don't back down in your opposition, we're going to sue your client, Mr. Porter. Interesting.

And if you've taken a look at the sketch, we do want to thank Staff, by the way, for working with us by granting a thirty day postponement from last month because there was what I'd call the Porter slice of property. In fact, the original application was based on an inclusion of some of my client's property.

The petitioner since reduced or eliminated that -- in fact, if you saw the dock -- I don't know, if maybe Staff can put the drawing back up on the board, you'll see that a portion of their dock is eliminated as a result of no longer considering the piece of Mr. Porter's platted lot in the application. I don't know that that --

MR. SEAMAN: It's C, Juanita.

MR. KAYLOR: Number C. That's the one in your left hand.

So these four letters, at this point -- well, the three letters plus the petition signed by twenty-three folks I'd like to ask be collectively accepted as the opponent's first exhibit.

CHAIRMAN KONYK: Can I have a motion to accept?

VICE CHAIR BASEHART: So moved.

MR. PUZZITIELLO: Second.

CHAIRMAN KONYK: Motion by Mr. Basehart.

Second by Mr. Puzzitiello.

MR. KAYLOR: And then just before we came here today -- and this I think it will interesting for you -- Mr. Porter, who's a certified public accountant -- he also took a shot in public office here last week for the School Board -- he prepared a little sketch that if all of the existing setbacks were applied to this property, this shows you what would be left to develop. And as you can see, it's about a postage stamp piece of property.

I would ask that that also be accepted into evidence.

MS. CARDONE: So moved.

CHAIRMAN KONYK: Motion by Ms. Cardone. Do you have anything else?

MR. KAYLOR: No, that's all to be introduced.

VICE CHAIR BASEHART: Second.

CHAIRMAN KONYK: Second by Mr. Basehart.

Can I ask a question? You said there's twenty-three people that have signed this petition. I only see nine.

MR. KAYLOR: It's the whole package that has twenty-three people.

CHAIRMAN KONYK: Oh, okay. So only nine people signed the petition.

MR. KAYLOR: The top sheet but as you go through, you'll see the rest of them.

MR. JACOBS: Are the twenty-three people, twenty-three different families or does it include multiple members of one family?

CHAIRMAN KONYK: Are we taking more than vote per lot?

MR. KAYLOR: Mr. Porter would have to answer that since he was involved in gathering the petition.

MR. PORTER: For the record, Scott Porter, 14211 Little Cypress Circle. There is one duplicate in there, and the duplicate is my signing on behalf of Little Cypress Point Homeowners' Association, and my wife and I signing as lot owners.

CHAIRMAN KONYK: So how many lots --

MR. PORTER: Twenty-two.

CHAIRMAN KONYK: -- are voting? I'm not talking people. How many --

MR. PORTER: Oh, there's twenty-two. There are no duplicates.

CHAIRMAN KONYK: So there's twenty-two different lots that oppose this.

MR. PORTER: Plus 140 in Cypress Island if you read their letter.

CHAIRMAN KONYK: Okay. But I'm just talking about your petition right now, okay.

MR. PORTER: Yes.

MR. KAYLOR: And let me, again, state to the Board, I understand that citizen opposition alone can never be the basis for a land use decision. But it's significant that there's an awful lot of people, in fact, virtually all of the people who live in the neighborhood are opposed.

Let me comment about their request. I think this is an example of outrageous excess.

As I said, I've never seen such an extreme request for variance relief in my career. Perhaps you folks have. You sit in judgment every month. Mr. Basehart I know often represents clients, and maybe he's had some he's

represented that have been equally extreme, but I certainly haven't seen anything like this.

VICE CHAIR BASEHART: Not here.

MR. KAYLOR: The DER has issued a permit for a dock. Well, you saw by excluding this, what I call the Porter slice, the dock is cut in half. So that DER permit, by the way, it still hasn't been challenged by Mr. Porter but certainly that's an outstanding issue. There is no valid permit that can be pulled today to build that dock.

Another comment -- Mr. Burg knew of the lot's limitations when he entered into a contract with the property owner. I mean, literally you can't do anything with this lot unless you basically ignore the County's land development regulations. It seems to me that what he did was tell his architect, Look, this is a very difficult lot to work with. Give me a design that maximizes the ability to develop this lot.

And as you've seen, they have a three-story structure which is unprecedented in the entire area, and when you add the roof top, it approaches forty feet. It's unprecedented. There are no other three-story homes anywhere along Palmwood Road, and certainly none in the immediate surrounding neighborhood.

I respectfully suggest to you that the variances requested far exceed the minimum necessary to achieve a reasonable use of the property. That's a key test. He didn't have to go three stories. He didn't have to put a covered carport and storage area that further extends the request for a variance relief.

Although Staff has told you that no other design solution is available, I respectfully suggest you could come up with something substantially smaller, still requiring variance relief. But, again, the test is, is this the minimum variance necessary to allow reasonable use of the property. We suggest respectfully that it's not.

Let me talk a few moments about the cases that have been cited, Board of Adjustment cases as precedented by Staff. There's three of them. And one of them involved Mr. Dale Earnhardt, who is no longer alive, but his family owns the property.

The first is BA 97-74. This is an application by Steve and Nancy Zeiger that was considered back in '97, and what I want to show you about this -- talk a little bit about it -- to distinguish it, this property, the Zeiger's property, was a little larger than three-quarters of an acre, while this piece is almost one-tenth of an acre -- zero point one two acres, an incredibly small piece of property before you even begin to apply the setbacks.

The Zeigers were looking for two side interior setbacks and a rear setback -- four feet, five feet, and five feet respectively -- and what they were doing was replacing an older home, an existing home, with a proposed modern structure.

They were looking for variances that would allowed a larger home that would have been consistent with the surroundings. And I would just want to show the Board, just for you to look at, this is that petition. You see a relatively irregular shaped lot, again, three-quarters of an acre. And I've highlighted in yellow where the variances that they were looking for appear. Again, if the Board wants to look at that, pass it around.

VICE CHAIR BASEHART: I assume you're going to remind us we denied that.

MR. KAYLOR: Actually, whatever your actions were, it would be great for my case. I'm just pointing out the physical differences in the cases.

The second one, the Dale Earnhardt case. That's up on Bay Circle in Mayhue Estates. This was a point four acre property -- an existing

residence -- and it was an unusually shaped lot, and the Earnhardts were looking to add a maintenance and storage room addition to their existing detached garage. And they were looking for a ten foot variance from a fifteen foot rear setback. The structure they were proposing was completely screened from view.

And again, I'd like to show the Board a sketch -- and I apologize for not having the larger sketches. This is the area of the variance that the Earnhardts were looking for. And as you can see, it's a minimal variance. Again, a somewhat smaller property but it's four times as large as the one you're considering today.

The third case Staff cites as precedent is 98-084, the Cibaldi case, again residential zoning up in Rolling Green Road in unincorporated North Palm Beach. This is a third of an acre of property. Here we're getting close to this tenth of an acre parcel. They were looking for a two and a half foot variance from a ten and a half foot side interior setback for their swimming pool, and a three foot variance from a seven and a half foot side interior setback requirement for their pool roof screen enclosure. Again, an existing home looking to build those structures, and what's interesting about this case is -- and I suspect the Board granted this -- because they had no other place to go on the property, there was an existing live oak tree and a septic tank and drain field that limited their ability to put this screen enclosure -- and this shows you were that variance occurred.

So what I'm suggesting to the Board is, there is absolutely no comparison between the variances that this petitioner is asking for and the three cases that have been cited as precedent by your Staff. Of course, the question that runs through my mind is, How is it that Staff did this? Obviously, they're sympathetic to the property owners plight. I would suggest that Mr. Burg knew well in advance in contracting to purchase this property that it had these severe limitations, and we just don't think it makes any sense to -- and I suggest it's not legal -- to ignore your regulations; ignore the tests for granting variances -- no matter how sympathetic you might be to the property owner -- and allow this kind of over development to take place.

We suggest that an approval of a variance under these conditions would make a mockery of your land development regulations. Why even have them if you're just going to piecemeal ignore them to allow this kind of structure to be built at this location. Board members, that completes my presentation. I do know that quite a number of residents would like to add their thoughts as well. Thank you very much.

CHAIRMAN KONYK: I have one question, I'm sorry. You gave me these and I read them. On this Little Cypress Point Homeowners' Association and we have Cypress Island Property Owners'. These are two separate associations, correct?

The Cypress Island Property Owners' Association represents 140 homeowners, correct? This one says that the Little Cypress Point Homeowners' Association and all residents in our development and that's four?

MR. KAYLOR: Correct.

MR. PORTER: It's a little. We're small --

CHAIRMAN KONYK: Okay. I just wanted to --

I wouldn't have known that, though, if Dennis hadn't told us.

MR. PORTER: Scott Porter, for the record, and if it will please the Chair, what I would like to do is give each member a copy of the seven conditions and our analysis of those conditions which is in that package that you received, but just so each member --

CHAIRMAN KONYK: Yeah, we have it.

MR. PORTER: Do you have it?

CHAIRMAN KONYK: If it's in the package, we have it.

MR. SEAMAN: That was given to you first thing this morning on --

MR. PORTER: Okay. One thing, if I could, before we start out, if we could put the drawing back up that shows the comparison of the roof heights, just to get that part out of the way. This is my house so I know this quite well. The difference here, what --

VICE CHAIR BASEHART: Excuse me, Mr. -- the microphone.

MR. PORTER: What is so important here is, yes, the roof heights are very similar, but what they're not telling you is this portion of my house is over one hundred feet from my property line -- one hundred feet. This is two -- two. Big difference.

If I could, what I'd like to do is just run through these seven criteria very quickly. I'm not going to read them or bore you with reading them.

As Dennis indicated, the Staff recommendation is that there is no other option other than these four variances. I would disagree. I think certainly that the outparcel building that constitutes the storage room and the pool, and I would question the seven and a half foot setback if there is a pool involved because I believe, as your Staff would tell you, that the requirement there is ten and a half -- not seven and a half. But at any rate, be that as it may, there are some differences that can be adjusted in these setbacks if we had something reasonable to deal with.

This was talked about -- am I wrong -- tell me if I'm wrong before I keep going.

MR. SEAMAN: Go ahead.

CHAIRMAN KONYK: About the ten and a half and the seven and a half?

MR. SEAMAN: Well, the pool is actually on the second floor.

MR. PORTER: Oh, so it doesn't count then, if it's on the second floor.

MR. SEAMAN: No, it counts but the actual structure of the facility is meeting the requested setback of reduction down to five feet.

MR. PORTER: Oh, okay. But isn't it a pool that requires ten and a half?

MR. SEAMAN: Typically, a pool that's in the ground, you need to have a three foot setback from the edge of water, and depending on the side, and that side, you're right, would be ten and a half foot set back.

MR. PORTER: I'll leave that to the experts to resolve. But at any rate, the second piece which I think is more important to the discussion here today, is the original owner of this piece, the person who Mr. Burg is representing as an agent, bought this parcel in 1986. This parcel hasn't changed significantly since 1986. These setbacks existed in 1986. Substantially the same. When this person bought this property, the Thompsons bought this property, it was in this configuration.

When they bought the property, they did not have a survey conducted at the time they purchased it, and apparently, they did no due diligence to determine what could or could not be placed on this property.

In my mind, I will be the first one to stand here and support everybody's right to use their property, however, I will also be the first one to say everybody owes themselves a duty of care to exercise due diligence. And the fact that this was not done, is not my problem; it's not the County's problem; and it's not the problem of all these people in this room. It's one person's problem.

And what they're asking you to do by granting these variances is to bail them out of a bad business decision. It's that simple. Now, admittedly Mr. Burg's attorney claims that there was some loss due to erosion and over dredging

and all these things. Well, I would submit to you that in the ten year period of time, fifteen years to date, if you were losing property to erosion, would you not take steps to mitigate that? They claim they lost fifteen feet. Well, I say if you put the fifteen back, where does that leave you with the variances. The claim they're making against my piece of property that cuts out the slice of the dock is based on a 1972 survey that predates their ownership by over fourteen years.

You can't have it both ways. You can't use 1972 to stake your claim to the property and then use today's property boundaries to say I need a variance. It's one or the other. That, I think, in my mind, is the single most critical fatal flaw in the Staff analysis and the presentation by the applicant.

The next thing I wanted to point out is on the second page, and it's an analysis of this variance request compared to the other three that you have. A couple of things that I want to point out. At the bottom of the first table -- the last two lines reflect two standard statistical analysis methods -- an arithmetic mean and a median. This variance request is in the seventy percentile rank in terms of what they're requesting from standard requirements. Look at the other three.

Now, I believe I could show this to almost anybody in the room, and they could make a judgment on what's reasonable and what's unreasonable. And I would submit to you that seventy some percent, and it will be even more than that if you consider the setbacks that will be required from my property line for these docks that are accessory structures, that the staff has not considered in their analysis. Right now it's zero but there's no variance requested for it. It should be seven and a half feet. This number will be over 80%, I guarantee it.

The closest comparable home in this neighborhood is on Palmwood Drive that Dennis alluded to. That home is an AR zoning district, not RS -- entirely different. The other homes are over two miles away from this neighborhood. They're not even in the ballpark.

So I would submit to you that none of this is comparable in terms of this piece of property as support for this variance request. Not only is it not comparable, it's outrageous and unreasonable. In addition to that, look at this. Would you like that in your back yard? Now, we can put up -- I know, I'm just asking a rhetorical question. This building --

CHAIRMAN KONYK: The tree or the house?

MR. PORTER: Either one.

CHAIRMAN KONYK: Okay.

MR. PORTER: But you bring up an interesting point with the tree. The Staff recommendation indicates that one of the reasons this should be approved is because it's adequately screened by landscaping and vegetation. Well, I would submit to you those trees hardly screen anything. In addition, in the rear setback, by being cut down to two feet, I doubt will allow for large coconut palms to be planted, let aside anything else that can even begin to screen the appearance of this (indicating) in my back yard, and the appearance of this structure to the other people living in this neighborhood.

Not only that, if you consider Ordinance 2001-28 that was recently passed by the County commission with respect to commercial structures and architectural design features, one of the most critical considerations in that Ordinance, and one of the most critical things that had been added to the ULDC in the last few years deals with size and massing of structures. And I would submit to you that any structure that came before you under those requirements, which are not applicable to residential, but the intent expressed in the resolution or in the ordinance is the same. And that is four 35-foot high straight vertical walls with no articulation is unacceptable under any conditions -- absolutely unacceptable.

CHAIRMAN KONYK: How big is the house that they're proposing -- how many square feet?

MR. PORTER: It doesn't say on the plans. The footprint is 950 square feet approximately, from what I understand, three stories high, 2800 to 3000, if you include the pool structure that's separate.

MR. SEAMAN: It's about three thousand square feet.

CHAIRMAN KONYK: Okay.

MR. PORTER: And the other piece of this, as long as we're talking comparability, most of the homes on the opposite side of the street are far less than three thousand square feet, substantially less.

CHAIRMAN KONYK: But that's not a huge house. I mean, I got the impression it was going to be like a twenty thousand square foot house. It's just like -- I didn't realize that. But I mean, I'm just saying -- okay. I got it.

MR. PORTER: I mean, if you take a basketball and try and put it in a thimble, it's pretty big.

CHAIRMAN KONYK: Right.

MR. PORTER: If you put a basketball on I-95, you won't see it. And that's really the issue here: It's what is compatible, what is reasonable, considering the piece of property that you're dealing with.

MR. SEAMAN: Comments --

MR. JACOBS: Mr. Porter, do you have any idea why there was no attempt to build on this property in the last fifteen years?

MR. PORTER: No. I do not know. The owner bought it in 1986, and he lives in the area across the street. In fact, I think that's one of the reasons that I think many people are upset is because we're claiming a fifteen foot loss to erosion and these other actions; and yet the man, through his inactions, condoned it; failed to mitigate it; failed to take any action against the over dredging; and now comes back and asks you to bail him out of a bad decision; and continuing bad decisions resulting from his negligence.

MR. JACOBS: Thank you.

MR. PORTER: Standard six -- I spoke to the expressed intent and the resolution were related to commercial buildings -- massing, size, and monolithic appearances, and those are not my terms. Those are the terms that appear in the county ordinance. Certainly, if anything qualifies as monolithic, massing, and out of scale, it's this structure.

You know, seven, granting the variance will not be injurious to the area otherwise detrimental to the public welfare. Ladies and gentlemen, I've got to tell you, if it wasn't, you would not have over 160 families, over three hundred individuals represented here today, in opposition to this. We are not unreasonable people, but this is an unreasonable request, and I would suggest to you that the number of people that are here opposing this, that the size and the number of variances that you're dealing with, it is unreasonable and it should absolutely unequivocally be denied.

Thank you.

MR. SEAMAN: I just wanted to say something about property zone regulations -- that the County does support zero lot size with zero lot lines at forty-five hundred square feet, and this lot is approximately that same size. So there are lots in the county that are that size.

MR. PORTER: And he's right. This lot I think is 44, 55. And of that 44, 55, 3200 of it is dry. The rest is under water. So the analogy, while worth pointing out, is absolutely incomparable to the situation at hand.

The other thing I would like to point out and if Staff brought -- I was going to do this earlier -- Staff brought the survey of the site. I would like to point out that the survey -- do you have the big survey?

MR. SEAMAN: Not a big one. It's in the staff report on page 102.



MR. PORTER: Okay. If you look at that survey -- and I don't have a copy of one big enough to really read but I'll refer to the one that I have here -- thank you.

This would be the one on the top. If you look at the dock, the area immediately behind the dock on the property side is a bulk head -- a twelve inch bulk head -- you can't see it on the small diagram but that's what it is. The dotted line right here, and that solid line -- you can't see it on the small copy but it is marked as the edge of the water line, April 24, 2002, okay.

The DEP permit obtained for this piece of property explicitly states, there shall be no back filling of any kind, of any surface waters. This plan submitted to you is in violation of the DEP permit on its face.

And I haven't been able to meet with my homeowners, but I certainly intend to file for an administrative hearing with the Office of the General Counsel of DEP to object to this on its face. And I've spoken to the DEP. They have reiterated specifically their permit does not permit any, zero, back filling of surface waters.

And if you look at this, you can see it not only in that area, it also underlies the house in another area. So I don't know how you're going to build this structure without back filling it, but I, for one, intend to get to the bottom of it with DEP.

There are also numerous mangroves in the area where the corner of my lot is. How are you going to bulk head that and put a dock over the top of it without destroying it? Again, the DEP permit says explicitly, There shall be no destruction of mangroves in order to complete these improvements. On its face, this thing fails the DEP permitting process and it should fail, I think, all seven of your criteria; if not, at least the five that Mr. Kaylor referred to. Thank you.

CHAIRMAN KONYK: Thank you. Any other members of the public who wish to speak?

Your name for the record, and you need to attest that you've been sworn in.

MR. KOCH: And what?

CHAIRMAN KONYK: Have you been sworn in?

MR. KOCH: Yes, I have. Robert B. Koch -- K-O-C-H. 14491 Cypress Island Circle, Palm Beach Gardens. I am a director on the Cypress Island Property Owners' Association, and we do agree with the previous statements that Mr. Porter and his attorney have quite adequately indicated in opposition.

I would like to just point out a little bit how this affects the Cypress Island PUD.

CHAIRMAN KONYK: Do you have a letter? Are you representing the Cypress Island --

MR. KOCH: No letter.

CHAIRMAN KONYK: From them saying that you have the permission to speak for them?

MR. KOCH: I am a director. I have the right --

CHAIRMAN KONYK: No, you don't. You have to have a letter directing that you can speak even though you're a director.

MR. KOCH: All right. I'll just point out facts then.

CHAIRMAN KONYK: So speak from your own perspective. That's all.

MR. KOCH: Speaking as an individual, I will advise you that I am a director of an association composed of 140 homeowners, and slip owners. They can speak for themselves, but I am a director of their association.

I will submit the seven criteria have not been met in any way,

and I do agree with the previous statements by Mr. Porter. I will point out also that it is specifically self-created here because, by their own application, it is indicated that they permitted this erosion to occur which caused this lot to be substantially more substandard. That is right in their application.

I also submit and agree with what was previously stated that none of the seven criteria have been met. This project will substantially decrease the value of every home in the PUD of Cypress Island. It will substantially infringe on the privacy, the right to sunlight, and recirculation of air to the adjoining properties in Cypress Island. So we, as an association composed of 140 homeowners and slip owners in that association, I am opposed to the application and the association of which I am a director is opposed to the application.

Thank you.

MR. PINCHEN: Good morning. My name is Bruce Pinchen. I live at 14402 Cypress Island Circle. I'm president of the Cypress Island Property Owners' Association and agree with all statements that have been made regarding this issue and confirm our stance against this waiver completely.

I further would like to point that there is presently considered an extension of Frederick Small Road to US One, which is an eastbound, westbound road that is located approximately a quarter to a half mile above this property.

Should that ever occur, this street would be widened to the point of its maximum available capability of being widened which would further mean that this property would be located literally yards from the street, and would have no place for parking or easy access and provide a safety hazard.

It was also my understanding over a decade ago when I purchased my home and this property and asked about the use of this particular property, that this particular property was used by the homeowner or the property owner who lived across the street strictly for the docking of their vessel and was not to be a developed piece of property.

So, again, the 140 representatives or residents of our community are vehemently opposed to this application. Thank you.

MS. PHILLIPS: My name is Mildred Phillips. I live at 14282 Cypress Island Court. I am the closest resident to this piece of property. I've written a letter. I've talked to Veradue about this and have expressed my strong opposition to this. The structure -- the base of the structure may be within these rights -- boundaries that they speak for, but then every single floor, including the roof overhanging all of this, is extending even further. I've viewed the lot -- said lot -- from both land and water.

We took our boat, a little dinghy, and went around to look and see what this property looked like from the water as well as from the land and cannot possibly conceive how they're going to build anything there at all on this small piece of property with mangroves, with the other threes. They're going to take all the vegetation away from the birds. They're going to take all the privacy away from anyone, especially us and Cypress Island.

I've also had a letter, an anonymous letter, sent to me in the mail in the last two days saying that the Thompsons do not intend to live in this house -- and you might address this to Mr. Burg -- but Mr. Burg is to build it in their name and then put it up for sale. In other words, he's building a spec house. None of these criteria have been addressed; not any of these criteria that he's asked for have not been satisfactorily met, and I strongly oppose this piece of property. Thank you.

CHAIRMAN KONYK: Would anybody else like to speak from the public?

Seeing none, the public portion of the hearing will be closed.

MR. KAYLOR: Time for just one quick closing comment, Madam Chair, hopefully?

CHAIRMAN KONYK: Got to come forward and state your name.

MS. DAVIS: My name is Chris Davis. I live at 14191 Little Cypress Circle. My property abuts the south property line of the applicant, and I would agree with Scott Porter's comments.

I just want it on the record for saying so.

CHAIRMAN KONYK: Thank you. Wait a minute. We've got another one.

MR. MULON: My name is Jim Mulon. I live at 2904 Miller Drive which is directly across the street and down a little bit from the proposed site.

My concern really -- I live on the waterway there of Cypress Creek -- is the navigability of the waterway if they do put this proposed structure far out. It's a very narrow waterway, and at this point now it is very difficult to get around. If they put a dock out there with boats hanging out further than that, it's going to make it nearly impossible and probably a hazard. at that point, to get through that in a boat so --

CHAIRMAN KONYK: Do you have a dock?

MR. MULON: Yes, I do, but I live on the other side of the waterway. The development going in across the water from me has also been declined docking privileges for that reason. It just makes too narrow. Thank you.

CHAIRMAN KONYK: Okay. Anybody else?

Okay. Name for the record.

MS. CRAWFORD: Cathy Crawford and my residence is 14227 Leeward Way. I'm on Paradise Point. It's a four street subdivision. Our home is located across Cypress Creek and kitty-corner, and I think one of the objections that we have -- we purchased our property four years ago -- because of the privacy and the quaintness of the area, everyone in our surrounding area well-respects the limits. Their homes have more than adequate setbacks with heavy foliage. It is a true place of paradise.

This would strip that totally, and it will have a definite deficit on the value of our home and privacy because the elevation of this. We strongly oppose and further would just support everything that has been previously said. Thank you.

CHAIRMAN KONYK: Thank you.

MR. KAYLOR: In quick summary, Madam Chair and board members, you know, the burden of proof is always on the applicant to demonstrate that he or she has met the standards. We think that they haven't been able to do that.

Although Staff has offered their positive comments, we think that we've countered that with the great weight of evidence that you've heard this morning. We respectfully ask that you not only hear the word of the people who say that granting the variance would not be compatible with their neighborhood, but also follow strictly the standards for granting variance approval contained in your own Code.

We respectfully ask that you deny this variance application. Thank you.

CHAIRMAN KONYK: The public portion of the hearing is closed.

Applicant?

MR. GROSSO: Where to begin.

CHAIRMAN KONYK: Start with the criteria.

MR. GROSSO: We heard a lot about how we don't meet the criteria, but I know that I heard many specific references to how. And I'd like to address something before we talk about the criteria -- address some of the issues that we think are relevant to this whole analysis and also probably some of the misconceptions that have been talked about here.

First of all, the fact that Mr. Burg knew about the constraints of this property and entered into a contract to buy it -- I don't see how that has anything to do with whether or not he should be entitled to the variance because of the existing situation. He didn't cause it. We want to talk about the configuration of the lot and want to talk about changes to the plan and the dock.

There's an issue here about ownership and what's owned by this property. We believe that we actually own -- well, we don't believe -- but Mr. Thompson owns further into the drainage ditch than is even shown on his '86 survey that we're presenting here. And that's an issue that we're addressing. I don't know that that's important for this Board to address.

But the issue of ownership -- if the variance is granted and they continue to claim ownership to what we believe Mr. Thompson owns, that will have to be addressed. It doesn't necessarily have anything to do with whether we've met the seven criteria.

VICE CHAIR BASEHART: No, but it would reduce some of the variances if it turned out you owned additional land.

MR. GROSSO: If it turned out that we've won or lost, right, it would affect where the home could be constructed. But we also haven't heard, you know, I think there's a couple of things that demonstrate what's really happening here.

First of all, Mr. Porter submitted -- and I haven't seen the sketch -- I've haven't seen any of the letters in opposition, a sketch that he prepared that presumably shows what could be constructed at this site if no variances were provided, and that was nothing. I mean, if anything, I think that supports our request for our variance.

In addition, Mr. Porter addressed the issue of the DEP permit. Well, the DEP permit prohibits back fill above waters of the state. Not that I think that that's even relevant to your consideration -- the same thing with mangroves -- what that has to do with the variance request, I don't know, but these aren't waters of the state. This is the drainage ditch, the land here below the water is all privately owned. So that is just irrelevant.

We talked about the height. Mr. Kaylor talked about the height being forty feet and we can look at the plans -- Mr. Burg is going to address that. I don't believe the height of the proposed structure is forty feet.

I want to talk about criteria. We'll go through it. It's zoned for a single family home. The first criteria -- special conditions exist peculiar to this parcel of land. I mean, we all need to do is look at the physical configuration of the land to determine that we meet that criteria. In terms of whether or not Mr. Thompson, or Mr. Burg through Mr. Thompson, should somehow be estopped now from coming in and seeking variances because they didn't do it earlier in time, to me doesn't make any sense. They want to say, Why didn't you do something sooner? Well, he didn't. It just -- I don't think that's relevant to the variance request.

The second -- special circumstances and conditions are the result of actions of the applicant. Well, the answer is no. I mean, any erosion that's occurred; purely, that's not the result of anything that Mr. Thompson did or Mr. Burg did. The illegal over dredging of the canal by the developer of Cypress Point clearly is not something he did. So I don't see how anybody can claim that we haven't met criteria number two.

MR. JACOBS: Let me stay with that one for a minute.

Assuming there had been no erosion, wouldn't you have still required to have a variance to build what you want to build?

CHAIRMAN KONYK: Not all of them.

MR. JACOBS: Wouldn't you have to have some variances?

MR. GROSSO: We would need some variances.

MR. JACOBS: So in a sense whatever you're doing, your requirement of a variance is a result of a self-created hardship.

MR. GROSSO: Well, no, it's a result of the subdividing and the creation of a lot back in 1973; perhaps -- I'm not even sure -- before the zoning code -- the second revision of the Code.

I know it occurred sometime in '73 was even adopted. That what would be the cause.

MR. JACOBS: But when your client acquired the property, he brought it with whatever baggage was attached to the property by way of zoning requirements.

MR. GROSSO: And whatever rights would accrue to that owner to seek variances for things that complied with the criteria.

MR. JACOBS: But when he bought the property he knew he had to have variances to build a house, so he bought subject to the risk of not getting the variance.

MR. GROSSO: Absolutely.

VICE CHAIR BASEHART: No, he didn't buy it subject to or he could give it back. He bought it knowing --

MR. JACOBS: Yeah, that's what I meant.

VICE CHAIR BASEHART: Well, I have a question. In looking at the aerial and the surveys and things, the big question that comes to my mind is, How did that lot get there in the first place? From what I've heard, it seems like it maybe a left over piece of property when the adjacent properties were platted and the road was built, this thing was kind of like left over.

MR. GROSSO: It was actually the other way around. This lot was created by the entity who owned all of what was eventually platted as Little Cypress Point.

Prior to conveying the property which eventually made its way to the developer, Little Cypress Point -- they conveyed this lot.

UNKNOWN SPEAKER: That's not true.

(Public comments were made that were inaudible)

CHAIRMAN KONYK: It doesn't matter. That doesn't have anything to do with that.

MR. GROSSO: That's what we're saying. We're saying the small parcel was created before Little Cypress Point. That's true.

We provided documents to change the title. We've tried to address the issues about ownership with Mr. Porter. They've got all the information. This wasn't a left over. It was actually created first.

VICE CHAIR BASEHART: It was conveyed off by the developer before he platted the property.

MR. GROSSO: Well, not the developer, but a predecessor in title.

VICE CHAIR BASEHART: All right.

MR. GROSSO: Back to the criteria.

And again, you know, I've heard a lot of comments about how everybody's opposed to this, and they're going to be impacted but no real specifics in what manner anybody's going to be impacted. Really what's happening here is, the property's existed in an undeveloped state for a long time. These other

developments came along. They built first, and they like their view. They'd rather see this remain undeveloped. Essentially, they'd ask you to deny the variances so Mr. Thompson or Mr. Burg can't develop the site as its been zoned residence as the Code requires but in a sense, dedicate it in perpetuity for the benefit of the other owners as a green space park, open space.

And that's really what they're doing. Again, I haven't heard any specifics. I just heard a lot of irrelevant statements.

Back to the criteria -- literal interpretation of the enforcement, terms, or provisions of the Code will derive applicant of rights commonly enjoyed and so on. Well, clearly, I mean, without the variance -- as Mr. Porter has demonstrated, he can't build a home as the Code permits.

Granting the variance will be consistent with the purposes and goals of the Comprehensive Plan. You know, this raises an issue of compatibility. I think that the objectors kind of want this two ways. What Mr. Burg's done is not go to his architect and say, Can you construct, you know, maximize the use of this space or in maybe in some respects, but what they've done is said, Design a plan that's most compatible and will most, you know, will most maintain the value of this property when the house is built.

They can't say they want compatibility and then say we want a smaller home that's not consistent in terms of value and other criteria with the surrounding residences. So I think it is consistent and Staff obviously thinks it too.

And then item seven, the granting of the variance will be injurious to the area. We're looking for setback changes. You know, all the other homes in the area constructed -- if you look at Little Cypress Point -- they're closer to each other than this home. The cramping of a setback variance to construct a residence here won't be injurious at all because all the purposes of the setbacks will be met, you know, at above what other homes in the existing neighborhood meet right now, in terms of open space and all the criteria for why we have setbacks. So clearly it won't be injurious to the area.

I think we've demonstrated that we met the seven criteria, and I don't think we've heard any specific information about how we don't.

Did you have anything?

MR. BURG: As far as the setbacks are concerned, from what Staff and what I've --

CHAIRMAN KONYK: Your name for the record.

MR. BURG: Jim Burg, sorry.

CHAIRMAN KONYK: And you've been sworn in?

MR. BURG: Yes. We're as far away as ninety feet. The opposer said sixty feet but that's the closest house we're to -- sixty feet. We're well beyond any setback of any other house that's ever been built closer, with any subdivision around here. Every other home in the neighborhood surrounding the area are within twenty feet of each other, if you look at the aerial. They're all so close to each other, and we are by ourselves out there. The closest structure is out here which is ninety feet. This is over a hundred feet. This is well over a hundred and there's nothing here. As far as space between the road, we're forty-four feet. These are just over fifty feet. There's one as close as thirty-nine just below it, from what I've heard from Staff. And they're closer to the road through this area.

Currently the lot is inundated with Brazilian peppers, and there's a couple of Australian pines. All the exotic material on the lot by the County's I guess future plan is they must be removed within the next three to four years.

So this whole lot is going to have to be cleared at some point. Yes, there are some mangroves. I'm not asking you to give me any variances to any state organization that allows mitigation of mangroves and trimming of

mangroves. In addition to the survey comment where they say that the line of the water goes underneath the house, that has been created by the Cypress Island subdivision because they have created a swale behind the sidewalk that eventually drains across this property, and that's why it picks up in here. This water drains through this property illegally and creates this indentation.

And that's why that is there. Along with the over dredging that occurred by New Age Development company that filled this property, it took away the property here and that is what we have left. I've designed a home that has three bedrooms and four bathrooms, a pretty typical home. I'm sorry it has to be -- and I'm staying under the height of -- the median roof height of thirty-five feet. I'm not asking for a variance for that, but to maintain a home -- to maintain the value of these houses here I have to build a three bedroom -- at least a three bedroom, three bath home. It's a three bedroom, four bath home -- or 3 ½. We have designed it to do the minimum -- build the minimum house we can and still maintain a value that will help enhance the neighborhood.

I think that I've answered a few of these questions. I think that's it. And I will be adding -- I will build -- design -- we have a landscape plan that I will adhere to screen it. I'm preserving -- there's a large oak tree in the front yard, and I will preserve that live oak tree, and I will add the landscape per the plan to help bring back some of the vegetation that's going to be lost due to -- because there's exotic material lost. Okay.

CHAIRMAN KONYK: Do you have anything to add, Staff?

MR. SEAMAN: It pretty well covers what was presented to the Board.

CHAIRMAN KONYK: Any questions?

Does any of the board members have any questions of the Staff or of the applicant, or of the public before we proceed for a motion?

Is someone prepared to make a motion on this item? I can't help you.

What do you want to do? Does anybody have a deck of cards?

VICE CHAIR BASEHART: I think the problem here is that both sides have made really good arguments. I mean, it looks to me like the lot probably shouldn't even be there but it's there, and we can't deal with the issue of whether the lot should be there. It was created legally, I guess. It's a valid parcel, and it's zoned for a single family home, and the owner of the property is entitled to have a single family home, you know, and I think that you've met most -- I'm convinced you met most of the criteria. But my personal conclusion, after looking at the aerials and looking at the plans, and listening to the argument is that approval of the variance will result in the constructing of a house that will in fact have a negative impact on the neighborhood.

That's not a motion.

MR. JACOBS: Well, let me make a motion.

And I would make a motion that this Board reject the Staff's position on BA 2002-045 and not grant the requested variances.

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

VICE CHAIR BASEHART: Tell us why.

MR. JACOBS: Because I don't think they've met the seven criteria.

MR. SEAMAN: In what way?

CHAIRMAN KONYK: Wait a minute.

MR. JACOBS: I think the hardship is a self-created hardship.

MS. CARDONE: May I second the motion so it can be discussed?

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

Jacobs. A second by Ms. Cardone.

Any discussion?

Let's take a vote. The motion is to deny the variance, correct?

MR. JACOBS: Correct.

CHAIRMAN KONYK: Second by Ms. Cardone.

MS. CARDONE: Amy, let me just ask you something. With our guidelines, all seven criteria must be met?

MS. PETRICK: YES.

MS. CARDONE: So if we have a question about any one of the criteria at all, no matter what one it may be --

MS. PETRICK: If you make a finding that one of the criteria have not been met, even if some of the others are really met, you cannot grant the variance under my understanding of your power.

Is there one that you feel hasn't been met?

MR. JACOBS: Yes.

MS. PETRICK: No, I'm talking to Nancy. She's the one that asked the question.

MS. CARDONE: Well, this is very difficult because both presentations are very good presentations, and facts have been presented in a very clear way, and both parties have done an excellent job, and that's why we have some questions, as to some of the criteria because -- and it's not, you know, per se, a question that I could throw out for you to answer because you have both provided information on both sides of some of these questions. That is clear. And that's why we're having some problem here.

So that's why I need to make sure what our guidelines are so that we are following our guidelines and fulfilling our obligation as a Board. Those are my comments.

MR. JACOBS: Madam chair, there is a motion and a second.

CHAIRMAN KONYK: She was finishing her question. Can we have a vote? Do a roll call.

You can't start with me. This is voting to deny the variance.

MS. PETRICK: Can I just clarify the motion to make sure, for the record, because I imagine one or the other sides will want to appeal.

So that we clarify that this motion is based on a finding that the element of a self-created hardship has not been satisfied.

CHAIRMAN KONYK: Is that the one --

MR. JACOBS: That's the one that I'm addressing.

MS. PETRICK: Okay. And that's the only one that the motion on the table has as its basis for rejection?

VICE CHAIR BASEHART: And that's why I think the roll call is good. I think every member should explain which criteria they, you know, if they support the motion, haven't been met.

MS. PETRICK: Okay. But the motion, as it's passed, when it's reduced to an order really should explain what the Board's pleasure is as to each issue.

CHAIRMAN KONYK: Each board member shouldn't need to explain what their -- we should just vote on the motion when we're to vote.

The discussion is when we should discuss what we want to say about what we feel hasn't been met. But when we take the roll call, we say yes or we say, no.

MS. PETRICK: Right. So if you choose to amend the motion to add additional factors that you feel have not been met or something to that effect, that's a possibility so that your final order represents your total findings of fact on each criteria.



CHAIRMAN KONYK: Okay. So do a roll call.

MS. WILLIAMS: Mr. Puzzitiello.

CHAIRMAN KONYK: Are you supporting the motion or --

MR. PUZZITIELLO: I support the motion but not for that one.

There's others too --

CHAIRMAN KONYK: Okay. So you support the motion?

MR. PUZZITIELLO: Yes.

MS. WILLIAMS: Mr. Bart Cunningham.

MR. CUNNINGHAM: Yes.

MS. WILLIAMS: Ms. Chelle Konyk.

CHAIRMAN KONYK: I vote last.

MS. WILLIAMS: Mr. Robert Basehart.

VICE CHAIR BASEHART: I support the motion, and I would like the record to reflect that the reasons that I believe -- the criteria that I believe are not met are number one. I believe that the granting of the variance will be injurious to the character and the quality of the area which is a criteria; and secondly, I think the variances are warranted here, but I don't believe that the applicant has requested the minimum variances that would be necessary to grant a reasonable use of the property.

And those are the two criteria that I don't believe were met.

MS. WILLIAMS: Ms. Nancy Cardone.

MS. CARDONE: I vote to support the motion citing Mr. Basehart's reasons as mine also.

MS. WILLIAMS: Mr. Jacobs.

MR. JACOBS: It's my motion so I have to support it, and I also believe that the reasons expressed by Mr. Basehart with respect to the effect of the granting the motion on the property -- on the neighborhood -- is another reason for my motion. But I'd also point out that to the extent that the applicant, as pointed out by Mr. Basehart, has not applied for the minimum variance that he might have applied for, it just supports the concept that I had that this is a self-created hardship.

MS. WILLIAMS: Mr. Stanley Misroch.

MR. MISROCH: No. Opposed to the motion because I believe I don't have any strong feelings that any of these criteria have not been met. I believe that all the seven criteria have been met -- substantially been met.

MS. WILLIAMS: Ms. Chelle Konyk.

CHAIRMAN KONYK: I'll vote, no, just for the record. I felt they met the seven criteria.

Motion carries five to two.

Okay, wait. Let's just wait for the meeting to adjourn, please. We're going to adjourn the meeting in just one minute.

The next item that we have on the agenda is the attendance record for last month.

We have Mr. Jacobs on vacation, and we have Ms. Cardone away on business. We would need a motion to accept these as excused absences.

VICE CHAIR BASEHART: So moved.

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.

MS. PETRICK: Madam Chair, I wanted to bring to the Board's attention a recent resolution regarding attendance policies for advisory boards and

let you know that that resolution does not apply to this Board currently, and the Board of County Commissioners may further consider the issue but right now -- the other resolution was that boards that don't have an attendance policy, that each of the members would have to make like three-fourths of the meetings. That does not apply to you currently so I just wanted to --

CHAIRMAN KONYK: Does it apply to everybody but us or how does it apply?

MS. PETRICK: It was a resolution so those boards that are created by ordinance are, obviously, are not affected since the resolution cannot go and amend an ordinance.

So boards that have been created by some structure that does not address attendance would be affected, and then those boards that are not created by something as formal as an ordinance would be affected.

VICE CHAIR BASEHART: Doesn't this Board have an attendance policy in our by-laws?

MS. PETRICK: Yeah, you do, which is why the resolution does not affect you.

VICE CHAIR BASEHART: So that continues to apply.

MS. PETRICK: Right.

CHAIRMAN KONYK: So in other words, the ordinance the county approved or passed -- the resolution says that there can be only so many absences whether they're for a valid reason or not.

MS. PETRICK: Exactly. Just wanted to let you know that. Because I do have questions on my other boards so --

CHAIRMAN KONYK: Motion to adjourn.

VICE CHAIR BASEHART: So moved.

CHAIRMAN KONYK: Actually, we don't even need a motion to adjourn.

(Thereupon, the meeting concluded at 11:50 a.m.)

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 11th day of October, 2002.

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Rhonda Latham  
Certified Shorthand Reporter