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PALM BEACH COUNTY
BOARD OF ADJUSTMENT

Thursday, April 21, 2005
9:05 a.m. - 9:50 a.m.
100 South Australian Avenue
West Palm Beach, Florida

Reporting:

Ed Flaxman
Court Reporter
York Stenographic Services, Inc.

ATTENDEES

Robert Basehart, Vice Chairman

Bart Cunningham

Raymond Puzzitiello

Nancy Cardone

Donald Mathis

Alan Seaman, Senior Site Planner

Miradieu Aubourg, Planner II

Oscar Gamez, Planner I

Annie Helfant, Assistant County Attorney

David Cuffe, Land Development

Annette Stabilito, Secretary

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P R O C E E D I N G S

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3 VICE CHAIRMAN BASEHART: I'd like to welcome
4 everyone to the April 2005 Palm Beach County Board of
5 Adjustment meeting. Before we start, let me explain for
6 those of you that are not familiar with our proceedings
7 the way this Board operates. There are two types of
8 items on the agenda. One are consent items. That are
9 items that the staff has recommended approval on, and
10 there's been no indication of opposition from surrounding
11 property owners or the public, and if conditions are
12 recommended the applicant has acknowledged agreement to
13 accept those conditions.

14 Those items, we'll introduce them one at a
15 time. The applicant can come forward, acknowledge
16 agreement with the conditions, and if no one has come to
17 oppose the application and all the Board members have
18 read the staff report and are in agreement with it those
19 items will stay on the consent agenda. If any Board
20 member feels an item should be pulled or if there are
21 neighbors here to oppose that application or the
22 petitioner indicates he does not agree with the
23 conditions then those items will be pulled from the
24 consent agenda, and they will go on the regular agenda.

25 The regular agenda items that are pulled from
26 consent or items where staff has recommended denial or
27 where there's been an indication of opposition from
28 surrounding property owners, those items will be
29 introduced. Staff will give their staff report and
30 recommendation. The applicant will do the same. And any
31 member of the public here to speak on the item will be
32 given an opportunity to do so. After full discussion and
33 full hearing on those items they will be voted on on an
34 individual basis.

35 I failed to mention on the consent agenda once
36 we've gone through that everything that remains on the
37 consent agenda will be approved as a group. Your
38 approval letters have been prepared, I assume, have they?

39 MR. SEAMAN: The code policy says that we don't
40 do that anymore. We just prepare at staff meeting.

41 VICE CHAIRMAN BASEHART: Okay. All right. We
42 used to give you your approval letters on the spot, but I
43 guess from now on you will be sent within a few days your
44 approval letter. That being said, is there any Board
45 member have anything they'd like to mention?

46 (No response)

47 VICE CHAIRMAN BASEHART: We'll start then with
48 the roll call.

49 MS. STABILITO: Mr. William Sadoff.

50 (No response)

51 MS. STABILITO: Mr. Raymond Puzzitiello.

52 MR. PUZZITIELLO: Here.

53 MS. STABILITO: Mr. Bart Cunningham.

54 MR. CUNNINGHAM: Here.

55 MS. STABILITO: Chairperson Ms. Chelle Konyk.

56 (No response)

57 VICE CHAIRMAN BASEHART: Vice Chairman Mr.
58 Robert Basehart.

59 VICE CHAIRMAN BASEHART: Here.

60 MS. STABILITO: Ms. Nancy Cardone.

61 MS. CARDONE: Here.

62 MS. STABILITO: Mr. Joseph Jacobs.

1 (No response)
2 MS. STABILITO: Mr. Stanley Misroch.
3 (No response)
4 MS. STABILITO: Mr. Donald Mathis.
5 MR. MATHIS: Here.
6 VICE CHAIRMAN BASEHART: Okay. We have a
7 quorum. The next item on the agenda is the opening
8 prayer and Pledge of Allegiance, which Mr. Cunningham has
9 volunteered to conduct.
10 (Whereupon, the opening prayer was given by Mr.
11 Cunningham, followed by recitation of the Pledge of
12 Allegiance.)
13 VICE CHAIRMAN BASEHART: Okay. We have proof
14 of publication. We'll just accept that into the record.
15 the next item on the agenda is remarks of the Chairman.
16 Actually, I already made mine out of turn. So we'll I
17 guess move on to approval of the minutes. Everyone
18 received a copy of the minutes on disc. Anybody have any
19 problems with the minutes? Actually there were two
20 months. Motion?
21 MR. CUNNINGHAM: So moved.
22 MR. MATHIS: Second.
23 VICE CHAIRMAN BASEHART: Okay. Motion by Mr.
24 Cunningham, second by Mr. Mathis. And this is for both
25 February and March, is that correct? Is this March? Oh,
26 it's two disks. Okay. I'm sorry. For March. All those
27 in favor?
28 BOARD MEMBERS: Aye.
29 VICE CHAIRMAN BASEHART: Opposed?
30 (No response)
31 VICE CHAIRMAN BASEHART: Motion carries.
32 Remarks of the zoning director.
33 MR. SEAMAN: There are none.
34 VICE CHAIRMAN BASEHART: Okay. No changes to
35 the -- well, approval of the agenda is next.
36 MR. SEAMAN: There are changes.
37 VICE CHAIRMAN BASEHART: Okay.
38 MR. SEAMAN: For petition BA2005-0302, they
39 requested a 30-day postponement to May 19, and they gave
40 us a letter this morning to request that.
41 VICE CHAIRMAN BASEHART: Okay. That was the
42 last item on the agenda.
43 MR. SEAMAN: That's correct.
44 VICE CHAIRMAN BASEHART: Was that done in the
45 time period for voluntary?
46 MR. SEAMAN: No, so you would need to vote on
47 it.
48 VICE CHAIRMAN BASEHART: Okay. Is there
49 anybody here that has come to speak on petition BA2005-
50 00302? It's RSA Development LLC & Heritage Property
51 Group. Anybody?
52 MR. MCGINLEY: We're requesting a postponement.
53 VICE CHAIRMAN BASEHART: Okay. Any problem
54 from a member of the Board?
55 (No response)
56 VICE CHAIRMAN BASEHART: Okay. Motion?
57 MR. PUZZITIELLO: So moved.
58 MR. CUNNINGHAM: Second.
59 VICE CHAIRMAN BASEHART: Motion by Mr.
60 Puzzitiello, second by Mr. Cunningham. All those in
61 favor?
62 BOARD MEMBERS: Aye.

1 VICE CHAIRMAN BASEHART: Opposed?
2 (No response)
3 VICE CHAIRMAN BASEHART: Motion carries.
4 That's 30 days.
5 MR. SEAMAN: And we also have some corrections
6 to conditions, but I'll go over those as we get to each
7 petition.
8 VICE CHAIRMAN BASEHART: Okay. Next item,
9 everyone that intends to speak today, please rise to be
10 sworn in. That would be if you intend to speak in favor
11 or in opposition.
12 (Whereupon, the speakers were sworn in by Mr.
13 Flaxman.)
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20 VICE CHAIRMAN BASEHART: Okay. That takes us
21 to the consent agenda. We'll go through these one at a
22 time. The first item is BA2004-00788. Is the applicant
23 here, petition of Kilday & Associates?
24 MR. BRINK: Damian Brink with Kilday &
25 Associates representing the applicant, Curtis Lewis.
26 VICE CHAIRMAN BASEHART: The staff has
27 recommended approval of your application with no
28 conditions.
29 MR. BRINK: We agree to the five conditions.
30 VICE CHAIRMAN BASEHART: Yeah, five. I'm
31 sorry.
32 MR. BRINK: With the revision to item three.
33 VICE CHAIRMAN BASEHART: Okay. What's the...
34 MR. SEAMAN: If you want to turn to page 05 of
35 your report, the third condition. Completely strike it,
36 and here is the revised written condition. I'll read it
37 for the record. Number 3, by October 21, 2005, the
38 applicant shall install between the existing chain link
39 fence and road rights-of-way the six foot at time of
40 planning ficus hedge with a minimum spacing of 24 inches
41 apart. The requirement is applicable to the west, south,
42 and east parking lots. Shade corner clips shall be
43 landscaped per Article 7, Section 13, corner clips.
44 VICE CHAIRMAN BASEHART: Do you agree to that?
45 MR. BRINK: Yes, sir.
46 VICE CHAIRMAN BASEHART: This again is a public
47 hearing. Is there anybody here to speak in opposition to
48 this application?
49 (No response)
50 VICE CHAIRMAN BASEHART: Seeing none, are there
51 any letters?
52 MR. SEAMAN: There are no letters.
53 VICE CHAIRMAN BASEHART: Okay. Any member of
54 the Board feel this item needs a full hearing?
55 (No response)
56 VICE CHAIRMAN BASEHART: You'll stay on
57 consent, and that's with modified condition number 3.

58
59 BOARD OF ADJUSTMENT CONDITIONS

60
61 1. The owner shall cease permitting restaurant patrons
62 from using back-out parking onto Shawnee Avenue

1 immediately.

2

3 2. By October 21, 2005, the applicant shall install
4 plant materials as required, pursuant to Art.7 of the
5 ULDC, within all reduced compatibility and
6 incompatibility buffers along property lines at the West,
7 South and East parking lots.

8

9 3. By October 21, 2005, the applicant shall install
10 between the existing chain link fence and road rights-of-
11 way the six foot at time of planning ficus hedge with a
12 minimum spacing of 24 inches apart. The requirement is
13 applicable to the west, south, and east parking lots.
14 Shade corner clips shall be landscaped per Article 7,
15 Section 13, corner clips.

16

17 4. By October 21, 2005, the applicant shall pave the
18 West parking lot (employee parking), as required by Art.6
19 of the ULDC.

20

21 5. By June 21, 2005, the owner shall remove existing
22 striping at location of back-out parking onto Shawnee
23 Avenue, saw cut a minimum of five feet of asphalt along
24 south foundation of restaurant, and install landscaping
25 approved by the landscape inspectors.

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32 VICE CHAIRMAN BASEHART: The next item is
33 BA2004-01001, again Kilday & Associates.

34 MS. POLSON: Good morning. Jan Polson for
35 Kilday & Associates.

36 VICE CHAIRMAN BASEHART: Okay. The staff has
37 recommended approval of your application with one
38 condition. Do you agree with that?

39 MS. POLSON: Yes, we do.

40 VICE CHAIRMAN BASEHART: Okay. Is there any
41 member of the public here to speak in opposition on this
42 item?

43 (No response)

44 VICE CHAIRMAN BASEHART: Seeing none, any
45 letters?

46 MR. SEAMAN: There are two letters, and they
47 are in disapproval but what they're asking for is they
48 want the area to remain as a preserve which in fact is
49 what it is and what it will remain as.

50 VICE CHAIRMAN BASEHART: Okay. Any member of
51 the Board feel this needs to be pulled?

52 (No response)

53 VICE CHAIRMAN BASEHART: Okay. This item will
54 stay on consent as well.

55 MS. POLSON: Thank you.

56

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BOARD OF ADJUSTMENT CONDITIONS

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59 In the event ownership of the preserve parcel should be
60 transferred to a private entity, the preserve parcel
61 shall be platted pursuant to the regulations of the ULDC.

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VICE CHAIRMAN BASEHART: The next item is BA2005-00005, the application of Harold & Kathleen Shafer. Is the applicant here? Your name for the record?

MS. SHAFER: Kathleen Shafer.

MR. SHAFER: Harold Shafer.

VICE CHAIRMAN BASEHART: Okay. Staff has recommended approval of your variance with four conditions. Are you familiar with them?

MS. SHAFER: Yes.

MR. SHAFER: Yes.

VICE CHAIRMAN BASEHART: Do you agree with them?

MS. SHAFER: Yes.

MR. SHAFER: Yes, we do.

VICE CHAIRMAN BASEHART: Any member of the public?

MR. SEAMAN: May I make a comment?

VICE CHAIRMAN BASEHART: Okay.

MR. SEAMAN: If the Board will note, you got a separate sheet that was given to you that says 2005-0005 with all four conditions have been modified so you have a complete new sheet there. And I'm not sure if I need to read them into the record or not.

MS. HELFANT: They can just be entered into the record as part of the record.

VICE CHAIRMAN BASEHART: Okay. Everybody has read them and you've read them?

MS. SHAFER: Yes.

MR. SHAFER: Yes, we have.

VICE CHAIRMAN BASEHART: Okay. So it's four conditions. Any member of the public here to speak on this item?

(No response)

VICE CHAIRMAN BASEHART: Any letters?

MR. SEAMAN: There are none.

VICE CHAIRMAN BASEHART: Okay. Any member of the Board feel this matter needs to be pulled?

(No response)

VICE CHAIRMAN BASEHART: Okay. Stay on consent.

BOARD OF ADJUSTMENT CONDITIONS

1. By June 21, 2005, or before submitting the application for a special permit, the applicant shall install glass blocks in the windows on the east side of the proposed accessory dwelling. (DATE: BUILDING: ZONING)

2. By June 21, 2005 or before application for a special permit, the applicant shall install a 6 feet wood fence along the east property line. (DATE: BUILDING: ZONING)

3. By October 21, 2005, the applicant shall obtain a special permit to convert the existing one story garage into an accessory dwelling in order for BA-2005-0005 to

1 be vested. (DATE: ZONING: ZONING)

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3 4. By April 21, 2006, the applicant shall secure a
4 building permit in order to convert the existing garage
5 into an accessory dwelling. (DATE: BUILDING: ZONING)

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12 VICE CHAIRMAN BASEHART: The next item is
13 BA2005-00285, Hugo & Maria Fernandez.

14 MS. FERNANDEZ: Maria Fernandez.

15 VICE CHAIRMAN BASEHART: Okay. Ms. Fernandez,
16 staff has recommended approval of your application with
17 two conditions. Do you agree with them?

18 MS. FERNANDEZ: I agree.

19 VICE CHAIRMAN BASEHART: Any member of the
20 public here to speak on this item?

21 (No response)

22 VICE CHAIRMAN BASEHART: No one is here.
23 Letters, Alan?

24 MR. SEAMAN: We got five that are in support.

25 VICE CHAIRMAN BASEHART: Any member of the
26 Board feel this item needs to be pulled?

27 (No response)

28 VICE CHAIRMAN BASEHART: It will stay on
29 consent as well.

30
31 BOARD OF ADJUSTMENT CONDITIONS

32
33 1. By October 21, 2005, the applicant shall secure a
34 building permit in order to vest this variance.
35 (DATE: BUILDING: ZONING)

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37 2. The variance request is only for the existing
38 converted carport. All other improvements shall meet the
39 ULDC requirements. (ONGOING: ZONING: ZONING)

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46 VICE CHAIRMAN BASEHART: The next item is
47 BA2005-00286, Sachs, Sax & Klein.

48 MR. RODRIGUEZ: Michael Rodriguez from the firm
49 Sachs, Sax & Klein on behalf of the petitioner.

50 VICE CHAIRMAN BASEHART: Okay. Staff has
51 recommended approval with one condition. Do you agree
52 with it?

53 MR. RODRIGUEZ: Yes, I do.

54 VICE CHAIRMAN BASEHART: Any member of the
55 public here to speak on this item?

56 (No response)

57 VICE CHAIRMAN BASEHART: Seeing none, letters,
58 Alan?

59 MR. SEAMAN: We got four, and of the four three
60 -- I'm sorry, two disapprove, and the comments are that
61 they'd like the area that the applicant is -- that's the
62 subject of the application to remain as open space. They

1 also think that this will clutter the community.
2 VICE CHAIRMAN BASEHART: Okay. Any member of
3 the Board feel this item needs to be pulled? You've all
4 read the staff report.
5 (No response)
6 VICE CHAIRMAN BASEHART: Okay. This will
7 remain on consent as well.

8
9 BOARD OF ADJUSTMENT CONDITIONS

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11 By April 21, 2006, or prior to DRO certification, the
12 applicant shall amend the site plan to reflect the
13 variance approval pursuant to BA2005-286.
14 (DATE:DRO:ZONING)

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21 VICE CHAIRMAN BASEHART: The next item is
22 BA2005-00288, Gentile, Holloway O'Mahoney & Associates.
23 MS. MAHR: Wendy Mahr with Gentile, Holloway &
24 O'Mahoney.

25 VICE CHAIRMAN BASEHART: Wendy, the staff has
26 recommended approval with two conditions. Do you agree
27 with them?

28 MS. MAHR: Yes, we do.

29 VICE CHAIRMAN BASEHART: Any member of the
30 public here to speak on this item?

31 (No response)

32 VICE CHAIRMAN BASEHART: Seeing none. Alan,
33 letters?

34 MR. SEAMAN: No letters.

35 VICE CHAIRMAN BASEHART: Any member of the
36 Board feel the item needs to be pulled?

37 (No response)

38 VICE CHAIRMAN BASEHART: Stay on consent as
39 well.

40
41 BOARD OF ADJUSTMENT CONDITIONS

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43 1. By April 21, 2006, or prior to DRO certification,
44 the applicant shall amend the site plan to reflect the
45 variance approval pursuant to BA2005-288.
46 (DATE:DRO:ZONING)

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48 2. All plant material require by the ULDC within the 50
49 feet landscape buffer, shall be installed within the
50 approved condensed 15 feet landscape buffer. (ON-
51 GOING:LANDSCAPE:ZONING)

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58 VICE CHAIRMAN BASEHART: Next item is BA2005-
59 00289, Boose Casey Ciklin Lubitz, agent.

60 MR. RUBIN: Good morning. Len Rubin, with
61 Boose Casey Ciklin on behalf of the property owner.

62 VICE CHAIRMAN BASEHART: Okay. Staff has

1 recommended approval with three conditions. Do you agree
2 with them?

3 MR. RUBIN: Yes, we do.

4 VICE CHAIRMAN BASEHART: Is there any member of
5 the public here to speak on this item?

6 (No response)

7 VICE CHAIRMAN BASEHART: Seeing none. Alan,
8 letters?

9 MR. SEAMAN: Six letters, and five in approval
10 and one just for clarification.

11 VICE CHAIRMAN BASEHART: Okay. Any member of
12 the Board feel this needs to be pulled?

13 (No response)

14 VICE CHAIRMAN BASEHART: Okay. You'll stay on
15 consent.

16
17 BOARD OF ADJUSTMENT CONDITIONS
18

19 1. The variance is subject to the property being
20 rezoned as industrial light (IL). If the property does
21 not get rezoned to IL, then the setback variance will
22 become void.

23
24 2. By April 21, 2007, the applicant shall obtain
25 Special Permit for the existing Single-Family dwelling to
26 be used as a caretaker/security quarters.

27
28 3. All the screening materials shall be install
29 according to Article 7's Landscape Code of the ULDC.
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36 VICE CHAIRMAN BASEHART: The next item on the
37 agenda is BA2005-00290, Land Design South, agent, for
38 Brian and Susan Poehls.

39 MR. KURBANSADE: Good morning. Marc Kurbansade
40 from Land Design South for the property owner.

41 VICE CHAIRMAN BASEHART: Okay, Marc, the staff
42 is recommending approval with two conditions. Are they
43 acceptable?

44 MR. KURBANSADE: Yes, sir, they are.

45 VICE CHAIRMAN BASEHART: Any member of the
46 public here to speak on this item? Ma'am, step forward.
47 If you could, give us your name for the record.

48 MS. COOK: My name is Elizabeth Cook. I live
49 adjacent to the property on the street. I'm not in
50 opposition of the building. The biggest concern I have
51 if you look at the pictures is County Road is a very,
52 very narrow one-way street. It's almost alley like.
53 There's no curb, no sidewalk, absolutely no parking on
54 that street. With the existing plans of three driveways
55 that appear to be what, maybe 20 feet at the most?

56 MR. KURBANSADE: They're wide enough for two
57 car garage to allow two vehicles.

58 VICE CHAIRMAN BASEHART: One thing that we need
59 to mention this is the Board of Adjustment. Our only
60 authority is to review and approve or deny specific
61 variances from the code. So all opposition that would be
62 considered by us would have to be related to the

1 variances requested. Now the applicant has requested a
2 reduction in -- where are we here? Yeah, here we are.
3 Requested a variance for reduction of the front setback
4 by five feet, and the side street setback by 15 feet, the
5 right-of-way buffer width on both streets. So if you
6 have legitimate opposition to those issues, that's
7 something the Board can consider. But the width of the
8 street or the proposed land use or anything like that is
9 not within the purview of this Board.

10 MS. COOK: Well, the other issue is the way it
11 exists now, and you can see in the photograph, it's just
12 flat straight parking that adjoins the property on the
13 south, and it's all paved straight through there.

14 VICE CHAIRMAN BASEHART: Right.

15 MS. COOK: Now the site plan shows landscaping
16 to go in there. What's going to happen, can I ask you,
17 with the property next door? Do they know they're going
18 to have to take out their parking?

19 MR. KURBANSADE: We're just affecting our
20 property and we want to put a nice buffer along side of
21 our property and properly landscape it according to the
22 current standards that are in Article 7 right now. It's
23 not landscaped according to that, and we're just
24 following code standards. As far as the adjacent
25 property owners, we don't have any influence over
26 adjacent property owners as we can't affect their
27 driveways. We have no...

28 VICE CHAIRMAN BASEHART: Is that something
29 maybe graphically it was a misrepresentation? You're not
30 intending to take the neighbor's parking away?

31 MR. KURBANSADE: Absolutely not.

32 MS. COOK: No, but as it is now it's one
33 continuous paved area.

34 VICE CHAIRMAN BASEHART: Right.

35 MR. KURBANSADE: There's no buffer right now so
36 the parking connects to the south. We're going to have a
37 buffer planted there on our property, not affecting the
38 neighboring property, so I'm not sure how that affects
39 the neighboring property other than they're not going to
40 see a continuous sea of asphalt. They're going to have
41 the landscape buffer on the property.

42 MS. COOK: I'm not in opposition of the
43 building. It's just a very concern of the tightness of
44 it appears from what I can tell from the site plan that
45 these driveways at the most are 20 feet long.

46 MR. KURBANSADE: They're the same distance as
47 what is currently there. They're actually a little bit
48 longer than what's currently there in parking, the
49 parking spaces that are currently there.

50 MS. COOK: And you're going to have a two-car
51 garage?

52 MR. KURBANSADE: Two-car garage so vehicles
53 would be within the building.

54 MS. COOK: Two-car wide or two-car long?

55 MR. KURBANSADE: Two-car wide.

56 VICE CHAIRMAN BASEHART: Okay. The question
57 remains do you have any opposition to the variances being
58 requested? I understand your concern about the project
59 in general but that's not something this Board can do.

60 MS. COOK: I guess I'm out of luck.

61 VICE CHAIRMAN BASEHART: Okay.

62 MS. COOK: Were there any other letters?

1 MR. SEAMAN: There are letters.
2 VICE CHAIRMAN BASEHART: Okay.
3 MR. SEAMAN: We have seven letters. One was
4 for approval, four for clarification, and two were
5 disapproval, and they basically said it's going to reduce
6 their property values.
7 VICE CHAIRMAN BASEHART: Okay. Well, does any
8 member of the Board feel that the issues raised warrant
9 pulling this from the consent agenda?
10 (No response)
11 VICE CHAIRMAN BASEHART: Okay. Then is there
12 anything else you'd like to say?
13 MS. COOK: No, thank you.
14 VICE CHAIRMAN BASEHART: Okay.
15 MS. COOK: Thank you.
16 VICE CHAIRMAN BASEHART: This item will remain
17 on consent.

18
19 BOARD OF ADJUSTMENT CONDITIONS
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- 21 1. By April 21, 2006, the applicant shall obtain a
22 building permit for the proposed town-homes in order to
23 vest the variance approved subject to BA2005-290.
24
25 2. Prior to Certificate of Completion, all landscaping
26 materials required by Article 7 (Landscape of the ULDC)
27 within the 15ft right-of-way buffer shall be installed
28 within the reduced 10ft buffer along the north property
29 line.
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36 VICE CHAIRMAN BASEHART: BA2005-00291, Moyle
37 Flanigan.

38 MR. MILLAR: Good morning. Chuck Millar with
39 Moyle Flanigan.

40 VICE CHAIRMAN BASEHART: Mr. Millar, the staff
41 is recommending approval with two conditions.

42 MR. MILLAR: We accept the conditions.

43 VICE CHAIRMAN BASEHART: You accept them. Any
44 member of the public here to speak on this item?

45 (No response)

46 VICE CHAIRMAN BASEHART: Seeing none. Any
47 letters?

48 MR. SEAMAN: Four letters, and two for
49 approval, two for disapproval, and two for clarification.
50 The two that are in disapproval say that they feel that
51 the variance will take up too much of the neighborhood
52 owners yard, and the other one was just they
53 misunderstood the variance.

54 VICE CHAIRMAN BASEHART: Okay. Any member of
55 the public here? I asked. There isn't any. Any member
56 of the Board feel this item needs to be pulled?

57 (No response)

58 VICE CHAIRMAN BASEHART: Okay. This will
59 remain on consent as well.

60 MR. MILLAR: Thank you.
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1 BOARD OF ADJUSTMENT CONDITIONS

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3 1. By April 21, 2006, or prior to DRO certification,
4 the applicant shall amend the site plan to reflect the
5 variance approval pursuant to BA2005-291.
6 (DATE:DRO:ZONING)

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8 2. The 1.79-acre lot, which seeks to be deleted from
9 the Boca Rio MUPD, shall conform to all current code
10 requirements when developed, including previous surface
11 area. (ONGOING:ZONING:ZONING)
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18 VICE CHAIRMAN BASEHART: The next item, last item
19 on consent, is BA2005-00292, Geoffrey Sluggett, agent,
20 for Deerhurst Partnership.

21 MR. SLUGGETT: Good morning. For the record,
22 Geoff Sluggett for the petitioner.

23 VICE CHAIRMAN BASEHART: Okay. Staff is
24 recommending two conditions of approval. Do you agree
25 with them?

26 MR. SLUGGETT: We agree with them, but there
27 was one modification to one condition.

28 MR. SEAMAN: If you want to look at page 52 of
29 your packet. Under conditions the first one, we're
30 deleting it, and I'll read the new condition. Condition
31 number one, the variance request is only for the wall
32 signs that correspond to the tenants in the corner of the
33 building in bays 104, 106, 107 and 108. All future sign
34 permits shall meet the ULDC requirements.

35 VICE CHAIRMAN BASEHART: Okay.

36 MR. SLUGGETT: We agree with that.

37 VICE CHAIRMAN BASEHART: All right. Any member
38 of the public here to speak on this item?

39 (No response)

40 VICE CHAIRMAN BASEHART: Seeing none. Any
41 letters, Alan?

42 MR. SEAMAN: We got two letters, one for
43 clarification and one for disapproval, and it says there
44 are too many neon signs. Thought Boca had a sign
45 limitation.

46 VICE CHAIRMAN BASEHART: This isn't Boca.
47 Okay.

48 MR. SEAMAN: No. It's unincorporated. It's
49 Palm Beach County.

50 VICE CHAIRMAN BASEHART: Okay. Any member of
51 the Board feel this item needs to be pulled?

52 (No response)

53 VICE CHAIRMAN BASEHART: Okay.

54 MR. SLUGGETT: Thank you.

55 VICE CHAIRMAN BASEHART: You stay on consent.
56

57 BOARD OF ADJUSTMENT CONDITIONS

58
59 1. The variance request is only for the wall signs that
60 correspond to the tenants in the corner of the building
61 in bays 104, 106, 107 and 108. All future sign permits
62 shall meet the ULDC requirements.

1
2 2. By October 21, 2005, the applicant shall obtain any
3 necessary building permits for the wall signs.
4 (DATE:BUILDING:ZONING)
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11 VICE CHAIRMAN BASEHART: So the consent agenda
12 is just as printed. Nothing was pulled. So we're ready
13 for a motion with respect to BA2004-00788 with a modified
14 condition number 3, five conditions total, BA2004-01001,
15 BA2005-00005, and that was with amended conditions as
16 well, BA2005-00285, BA2005-00286, 00288, 00289, 00290,
17 00291, and with modified condition number 1, 00292.
18 We're ready for a motion.

19 MR. MATHIS: So moved.

20 VICE CHAIRMAN BASEHART: Motion by Mr. Mathis
21 to approve the consent agenda.

22 MR. PUZZITIELLO: Second.

23 VICE CHAIRMAN BASEHART: Second by Mr.
24 Puzzitiello. And I assume that's...

25 MR. MATHIS: And the staff report is part of
26 it.

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

29 BOARD MEMBERS: Aye.

30 VICE CHAIRMAN BASEHART: Opposed, no.

31 (No response)

32 VICE CHAIRMAN BASEHART: The consent agenda is
33 passed unanimously. We'll give a couple minutes for
34 those that are finished to leave the room.
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41 VICE CHAIRMAN BASEHART: Okay. We're ready to
42 start the regular agenda, which consists of two items,
43 actually one because we postponed the other one. So
44 we'll introduce -- staff, are you going to introduce
45 BA2004-00794 into the record?

46 MR. AUBOURG: Yes. Petition number 2004-794,
47 Douglas and Laurie Brown, owners, to allow an existing
48 accessory structure to encroach into the required rear
49 setback. Location, 2019 Rolling Green Road on the
50 northwest corner of Ellison Wilson Road and Rolling Green
51 Road in the RS Zoning District.

52 VICE CHAIRMAN BASEHART: Okay. This is a
53 public hearing. If could give us your name for the
54 record.

55 MR. BROWN: Doug Brown.

56 VICE CHAIRMAN BASEHART: Okay. Have you been
57 sworn in?

58 MR. BROWN: Yes, I have.

59 VICE CHAIRMAN BASEHART: Okay. What we'd like
60 to do then is start off by we'll have you make your
61 presentation, indicating your justification for the
62 granting of the variance. Staff will make their

1 presentation. If there are any members of the public
2 here which doesn't appear there -- okay. We do have
3 members of the public. They'll have an opportunity to
4 speak, then we'll vote. So proceed.

5 MR. BROWN: Well, I guess I made a mistake in
6 not getting a permit but I didn't do it to try to beat
7 the system. A friend of mine told me that you didn't
8 need a permit if it was under 1,000 square feet as a
9 detached structure, and in the Florida building statute
10 it says that so obviously I was wrong. I know a lot more
11 now. I'm not in the construction industry. But the
12 problem with the building is that when I put the two
13 columns in closer to my neighbor, the two back columns on
14 the west side, I placed them 18 inches too far to the
15 west. That's the only problem with the structure. There
16 is no other problems except for those two columns.

17 So to not allow the variance would mean I would
18 have to tear down the whole thing and then rebuild it
19 with the columns, two 12 x 12 columns 18 inches to the
20 east. That would be the only difference. There's no --
21 none of my neighbors have complained about the structure
22 itself. One neighbor to the west has complained about
23 noise but the structure doesn't create the noise. The
24 pool and the barbecue creates the noise, so that variance
25 wouldn't -- it wouldn't affect the variance at all. I
26 have some other pictures if you want to see other
27 pictures. They're not as big as that one but I can hand
28 them to you if you want to see them.

29 VICE CHAIRMAN BASEHART: Okay. You're familiar
30 with the seven criteria that we're supposed to consider
31 in a variance. If you could, it might be a good idea if
32 you could address those criteria. We understand that you
33 didn't know you needed a permit, and we understand that
34 it's only an 18-inch encroachment, but in order for us to
35 support the variance you'll have to show us why this
36 structure couldn't have met the setbacks. We understand
37 -- because self-created hardship is not by virtue of the
38 code and the statutes a legitimate argument for the
39 granting of a variance.

40 In other words, if you knew you needed a permit
41 and you knew what the setback requirements were, why is
42 it that you couldn't have met them?

43 MR. BROWN: There was a mistake in the
44 construction. It wasn't that they weren't met for the
45 structure. It was a mistake when it was built. The
46 columns were placed in the wrong place.

47 VICE CHAIRMAN BASEHART: But your intent was to
48 have them be 18 inches further into the lot?

49 MR. BROWN: Yes.

50 VICE CHAIRMAN BASEHART: Okay. Did you build
51 this or did you have a contractor?

52 MR. BROWN: No, no. I built it.

53 VICE CHAIRMAN BASEHART: Okay. So it was a
54 measuring mistake?

55 MR. BROWN: Correct.

56 VICE CHAIRMAN BASEHART: Okay. Staff, if you'd
57 like to make your presentation.

58 MR. AUBOURG: Yes. The required setback for
59 the subject gazebo is 5 feet since it's located in the RS
60 zoning district. The applicant is proposing 3.6 feet for
61 1.4 feet variances. The applicant bought the property in
62 2002, and according to the main frame the applicant asked

1 for previous building permit for windows, so staff is
2 saying that the applicant was aware of the building
3 process.

4 MR. BROWN: I pulled that permit after this.
5 That was after this.

6 MR. AUBOURG: Well, the main frame shows 2004.

7 MR. BROWN: No, it was after this. I learned a
8 lot with this.

9 MR. AUBOURG: The staff feels that the variance
10 from the -- variance that will be a reasonable use of the
11 land, and also granting the variance will send a negative
12 message to the residents that setbacks are not
13 consistently enforced in the neighborhood. Also, the
14 ULDC establishes setbacks so all structures will be set
15 back at a consistent distance. By letting the applicant
16 build that within the required setback basically will be
17 injurious to the area. Therefore, staff is recommending
18 denial on that.

19 VICE CHAIRMAN BASEHART: Okay. This is a
20 public hearing, so we'll now open the floor to anyone
21 that wishes to speak for or against this application.
22 And please indicate your name and if you've been sworn
23 in.

24 MR. ESTABROOK: I've been sworn in. My name is
25 Robert Estabrook. I'm not sure what he's got here, but
26 my property is adjacent to his on the north side, and I
27 have bedrooms back adjacent to the structure in question.
28 I'd prefer that you approve it and not -- first of all,
29 it's a nice looking structure. They've done a lot to the
30 house. And just recently like they were saying put these
31 windows in. They've put a lot of money and a lot of work
32 into the house. If this thing is moved the only thing
33 it's going to accomplish is putting us through some
34 construction and putting him through some grief.

35 I mean I watched it go up, and I have a little
36 bit of construction experience. It was built well. The
37 esthetic value of it is nice. There's no noise problem.
38 The gentleman complaining about the noise is a little bit
39 of a different individual, and he's actually caused noise
40 for all of us in retaliation. From my standpoint and
41 from the neighbors I know of, I don't know of any other
42 neighbor other than the one that you're talking -- that
43 registered the complaint that has a problem with it.

44 VICE CHAIRMAN BASEHART: Okay. Any other
45 member of the public who would like to speak?

46 (No response)

47 VICE CHAIRMAN BASEHART: Okay. We'll open the
48 floor to questions from the Board. Any Board member have
49 any questions?

50 MR. MATHIS: Isn't there some middle ground
51 here, some way to get somewhere?

52 MR. SEAMAN: Well, that's the purpose of the
53 seven criteria, and if some of them aren't being met then
54 perhaps there can be some mitigation that would turn that
55 specific criteria that wasn't being met around.

56 MR. BROWN: I'd be happy to do landscaping or
57 anything in that regard that would...

58 VICE CHAIRMAN BASEHART: I have a question. I
59 know the code allows eaves to encroach into the setback
60 area. The main concern I think on a structure if you
61 look at the structure it's four posts and a roof. Is the
62 roof overhang within the allowed distance?

1 MR. SEAMAN: Yes.

2 VICE CHAIRMAN BASEHART: So the only thing that
3 we're talking about that really encroaches into the
4 setback requirement are two posts.

5 MR. SEAMAN: Correct.

6 VICE CHAIRMAN BASEHART: So if the applicant
7 could construct two new posts inside of the ones that are
8 there and then cut the old ones off without affecting the
9 structural integrity the setback would be resolved.

10 MR. SEAMAN: Correct.

11 VICE CHAIRMAN BASEHART: But in terms of -- I
12 can see that there are high fences around the property so
13 it seems to me the only thing that the neighbors see is
14 the roof.

15 MR. BROWN: Yes, sir.

16 VICE CHAIRMAN BASEHART: And the roof doesn't
17 violate setbacks.

18 MR. SEAMAN: Correct.

19 VICE CHAIRMAN BASEHART: Okay.

20 MR. SEAMAN: It was only staff's recommendation
21 that he do modify the two columns so he met the setbacks
22 and he wouldn't be here today.

23 VICE CHAIRMAN BASEHART: Okay. Any Board
24 member have any comments?

25 MR. MATHIS: I just -- when you go to doing
26 that, what does that do to the structural integrity in
27 terms of where the columns are for the roof and the
28 balance for the roof and everything else. I mean 18
29 inches isn't much but you move columns in from corners of
30 buildings and the roof weights and everything else get to
31 be real interesting. I understand the issues and I
32 understand the rules, but it seems kind of insane when
33 you got a really good piece of property that has improved
34 property values for the whole neighborhood and everybody
35 is kind of in agreement, okay, we made a mistake. How do
36 you get from A to B. There's got to be somewhere in the
37 middle is my thought process on it but I'm kind of the
38 rookie here and don't know that much about it.

39 MR. SEAMAN: If I could also say that the
40 determination for recommendation of approval of denial is
41 based on them meeting seven criteria. This gentleman
42 does not meet the seven criteria so staff has no choice
43 but to recommend denial. Again, through some kind of
44 mitigation if that's your choice perhaps you can
45 determine that the criteria would be met through some
46 kind of mitigation.

47 MR. MATHIS: What would be a suggested
48 mitigation, I guess is what I'm talking about. Any
49 ideas?

50 MR. SEAMAN: Landscaping, fencing, and I
51 understand there is fencing there now. I see some
52 beautiful coconut palm trees there, perhaps some on the
53 other side. I'm just saying that that's probably the way
54 to argue that it does meet the seven criteria but without
55 mitigating the staff recommends denial.

56 VICE CHAIRMAN BASEHART: If he wanted to plant
57 some other type of plant, a hedge plant or something,
58 where the posts are that wouldn't violate setbacks,
59 right?

60 MR. SEAMAN: No, or palm trees with the fronds
61 that are high enough so that the roof is the part that's
62 screened.

1 VICE CHAIRMAN BASEHART: Yeah, but the roof
2 doesn't encroach anyway. I mean I think if you were
3 trying to create a rational nexus between the variance,
4 you know, and a mitigation issue it would be something
5 that would hide the appearance of the encroachment of the
6 posts, not the roof, because the roof doesn't violate the
7 setbacks anyway.

8 MR. BROWN: I put the fence in. The fence
9 covers most of the...

10 MR. SEAMAN: You could also get two for one by
11 putting in a tree that does both. That's all I'm saying.

12 VICE CHAIRMAN BASEHART: All right. I think
13 we're ready for a motion. I don't know if anyone wants
14 to discuss it more or if somebody has an idea, include it
15 in the motion.

16 MS. CARDONE: I'm just going to make a comment,
17 and the Board can do as they see fit, but I'm sorry that
18 it's only 1.4 feet. It still doesn't meet the seven
19 criteria. And we are seeing more and more of these items
20 come forward to us. Between this month and last month,
21 we continue to see people who have erected structures,
22 and to my mind the fact that a structure has been erected
23 is not an undue hardship because it was created by the
24 applicant. And so I cannot justify that.

25 And I don't think setting precedent by starting
26 to approve these just because they're small is within our
27 purview either because that could be used as
28 justification later on as these distances increase. So
29 my inclination is going to be to deny this.

30 MR. MATHIS: I guess I'll make the motion.
31 I've of the other side of this in terms of I think our
32 code books are about as thick as you can get, and every
33 once in a while there's some little things here that you
34 don't have to be exact. I'd make a motion that staff
35 come up with some mitigation items that would make sense,
36 and we approve this particular application with
37 mitigation suggestions, be it landscaping which seems to
38 be what we were talking about before.

39 VICE CHAIRMAN BASEHART: I guess where we are
40 is we're asking you to give us recommended conditions of
41 approval should be approve this variance.

42 MR. SEAMAN: Yes, we could do that. I need to
43 ask a question though as far as the area in which we
44 could perhaps put some cluster palms, maybe areca palms.
45 What's the planting area that you have there by your
46 columns?

47 MR. BROWN: Two feet.

48 MR. SEAMAN: You have two feet.

49 MR. MATHIS: Put a hedge along the back and put
50 a palm on the other side.

51 VICE CHAIRMAN BASEHART: What I think the Chair
52 was saying is that columns are the issues, and if we
53 mitigate their intrusion although it's a foot and a
54 quarter that those particular landscape items need to go
55 in front of those columns where they're closest to your
56 neighbor to the north.

57 MR. BROWN: He actually planted the palms on
58 the other side of my fence right now, but I have room to
59 plant like a dracaena or a palm right next to the column
60 that would hide the column in total.

61 MR. SEAMAN: And you could put two areca palms
62 in there to screen the columns.

1 MR. BROWN: Yes.

2 MR. SEAMAN: And I think staff will feel
3 somewhat more comfortable because we're mitigating the
4 issue, not just approving it with some sort of
5 mitigation, so we're looking for a condition...

6 MR. PUZZITIELLO: Then he's going to have a
7 permit for the structure too.

8 MR. SEAMAN: That's one of the conditions he
9 has now.

10 MR. BROWN: I'm already working on that.

11 MR. SEAMAN: If you're going towards the
12 approval we do have some conditions already written. We
13 also in the meantime would like the landscaping, so would
14 you like us to read the other conditions we have?

15 VICE CHAIRMAN BASEHART: Yes.

16 MR. AUBOURG: The first one is the development
17 order. The development order for the subject variance
18 shall lapse on April 21, 2006, one year from the approval
19 date.

20 VICE CHAIRMAN BASEHART: That's if he doesn't
21 get a permit.

22 MR. AUBOURG: The first condition is by October
23 21, 2005, the applicant shall obtain a building permit
24 for the existing gazebo in order to vest the variance
25 approved pursuant to BA2004-794. And Alan is writing the
26 second condition for the landscaping.

27 MR. BROWN: To get an actual -- to apply for
28 the permit or have it...

29 MR. AUBOURG: To obtain a building permit for
30 the existing gazebo. You have six months to do it.

31 MR. BROWN: Okay. As part of the code
32 enforcement I need to have it done by the beginning of
33 next month so I'm already working on that.

34 MR. SEAMAN: You're already under pressure
35 there for that.

36 MR. BROWN: Yes, sir.

37 VICE CHAIRMAN BASEHART: Is six months enough
38 to get an accessory structure permit?

39 MR. BROWN: It keeps taking longer and longer
40 every week.

41 MR. SEAMAN: Okay. I think I have something
42 here. This should be condition number two. By October
43 21, the applicant shall install an areca palm 8-10 feet
44 overall planted at the north property line.

45 MR. BROWN: What property line?

46 MR. SEAMAN: You know, I'm not so good at this
47 anymore. I want to say by October 21, the applicant
48 shall install two areca palms 8-10 feet, one placed at
49 each column between the north property line and the
50 column itself.

51 VICE CHAIRMAN BASEHART: West property line.

52 MR. SEAMAN: West property line.

53 VICE CHAIRMAN BASEHART: The encroaching
54 property line is the west one.

55 MR. SEAMAN: Okay.

56 MR. BROWN: One in the northwest corner and the
57 southwest corner, right?

58 VICE CHAIRMAN BASEHART: Yeah.

59 MR. SEAMAN: Well, they have to go at the
60 column.

61 MR. BROWN: At the column. No problem.

62 MR. SEAMAN: Did anybody get that what I said?

1 Annette will get it off there for the final condition for
2 the result letter.

3 VICE CHAIRMAN BASEHART: Okay. Do you agree
4 with those conditions?

5 MR. BROWN: Yes, I do.

6 VICE CHAIRMAN BASEHART: Okay. We're ready for
7 a motion. Okay. We have a motion by Mr. Mathis. Second
8 by Mr. Puzzitiello to approve the variance with the
9 conditions that have been read into the record. All
10 those in favor? Opposed?

11 MS. CARDONE: Aye.

12 VICE CHAIRMAN BASEHART: Okay. Motion carries
13 4-1, Ms. Cardone dissenting.

14

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16 BOARD OF ADJUSTMENT CONDITIONS

17

18 1. By October 21, 2005, the applicant shall obtain a
19 building permit for the existing gazebo in order to vest
20 the variance approved pursuant to BA2004-794.

21

22 2. By October 21, the applicant shall install two areca
23 palms 8-10 feet, one placed at each column between the
24 north property line and the column itself.

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31 VICE CHAIRMAN BASEHART: That concludes our
32 agenda, so the next item on the agenda would be to make a
33 motion for adjournment.

34 BOARD MEMBER: So moved.

35 BOARD MEMBER: Second.

36 VICE CHAIRMAN BASEHART: Motion and second.

37 All those in favor?

38 BOARD MEMBERS: Aye.

39 VICE CHAIRMAN BASEHART: Opposed?

40 (No response)

41 VICE CHAIRMAN BASEHART: The meeting is over.

42 (Whereupon, the meeting was adjourned at 9:50

43 a.m.)