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PALM BEACH COUNTY  
BOARD OF ADJUSTMENT

Thursday, February 17, 2005  
9:10 a.m. - 10:00 a.m.  
100 South Australian Avenue  
West Palm Beach, Florida

Reporting:  
  
Ed Flaxman  
Court Reporter  
York Stenographic Services, Inc.

ATTENDEES

Chelle Konyk, Chairperson

Robert Basehart, Vice Chairman

Joseph J. Jacobs

Raymond Puzzitiello

Donald Mathis

Alan Seaman, Senior Site Planner

David Cuffe, Civil Engineer II, Land Development

Annie Helfant, Assistant County Attorney

Miradieu Aubourg, Planner II

Oscar Gamez, Planner I

Juanita James, Zoning Technician

Annette Stabilito, Secretary

INDEX

<u>Petition</u>	<u>Page No.</u>
1	5
2	6
3	6
4	7
5	7
6	8
7	9
8	10
9	10
10	8
11	11
12	12
13	12
14	13
15	14
16	15
17	8
18	20
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P R O C E E D I N G S

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4           CHAIRPERSON KONYK: Good morning. We're going  
5 to get started with the meeting, the February 17, 2005,  
6 Board of Adjustment meeting. If anybody has got a cell  
7 phone please turn them off now, and keep the conversation  
8 down because we can't hear up here if you're talking out  
9 there. Can we start with the roll call and the  
10 declaration of the quorum?

11           MS. STABILITO: Mr. William Sadoff.

12           (No response)

13           MS. STABILITO: Mr. Raymond Puzzitiello.

14           MR. PUZZITIELLO: Here.

15           MS. STABILITO: Mr. Bart Cunningham.

16           (No response)

17           MS. STABILITO: Chairperson Ms. Chelle Konyk.

18           CHAIRPERSON KONYK: Here.

19           MS. STABILITO: Vice Chairman Mr. Robert  
20 Basehart.

21           VICE CHAIRMAN BASEHART: Here.

22           MS. STABILITO: Ms. Nancy Cardone.

23           (No response)

24           MS. STABILITO: Mr. Joseph Jacobs.

25           MR. JACOBS: Here.

26           MS. STABILITO: Mr. Stanley Misroch.

27           (No response)

28           MS. STABILITO: Mr. Donald Mathis.

29           MR. MATHIS: Here.

30           CHAIRPERSON KONYK: We do have a quorum. The  
31 next item on the agenda is the opening prayer, which I'm  
32 going to let Mr. Basehart do.

33           (Whereupon, the opening prayer was given by  
34 Vice Chairman Basehart.)

35           CHAIRPERSON KONYK: Thank you. And now the  
36 Pledge of Allegiance.

37           (Whereupon, the Pledge of Allegiance was  
38 recited.)

39           CHAIRPERSON KONYK: I have a proof of  
40 publication in the I have a proof of publication in the  
41 Palm Beach Post on January 30, 2005. For those of you  
42 who are not familiar with how this Board conducts its  
43 business, this meeting is divided into two parts, the  
44 consent and the regular agenda. Items on the consent  
45 agenda are items that have been recommended for approval  
46 by staff with or without conditions, the applicant agrees  
47 with the conditions, there's no opposition from the  
48 public, and no Board member feels that the item warrants  
49 a full hearing.

50           If there is opposition from the public or a  
51 Board member feels the item needs a full hearing or if  
52 the applicant doesn't agree with the conditions and your  
53 item is on consent, it will be pulled from the consent  
54 and reordered to the regular agenda. Items on the  
55 regular agenda are items that are either recommended for  
56 denial by staff or there is public opposition or a Board  
57 member feels the item warrants a full hearing. If your  
58 item is on the regular agenda we will start off with the  
59 introduction by staff. The applicant will give their  
60 presentation. The staff will give their presentation.  
61 If there's any public that wants to speak we'll hear from  
62 them at that point. After the public portion is closed

1 the Board Members can ask questions and vote on the item.  
2 The next item on the agenda is approval of the  
3 minutes. We do have the minutes. We received them from  
4 last month's meeting. Has everybody had an opportunity  
5 to look over them? And if so, if someone would make a  
6 motion for approval.

7 VICE CHAIRMAN BASEHART: Madam Chair, I make a  
8 motion that the minutes from our January meeting be  
9 adopted.

10 MR. JACOBS: Second.

11 CHAIRPERSON KONYK: We have a motion by Mr.  
12 Basehart, a second by Mr. Jacobs. Any discussion?  
13 (No response)

14 CHAIRPERSON KONYK: All those in favor?  
15 BOARD MEMBERS: Aye.

16 CHAIRPERSON KONYK: Opposed?  
17 (No response)

18 CHAIRPERSON KONYK: Motion carries unanimously.  
19 Remarks from the Zoning Director.

20 MR. SEAMAN: Two points. I want to introduce  
21 Oscar Gamez. He's our new Planner I to the Board. Oscar  
22 has taken Chris' place, Chris Berry. I also want to  
23 remind the Board that next month is the scheduled  
24 workshop.

25 CHAIRPERSON KONYK: Okay. Anything else?  
26 MR. SEAMAN: That's it.

27 CHAIRPERSON KONYK: The agenda, are there any  
28 changes?

29 MR. SEAMAN: There are additional postponements  
30 we need to add when we get to that point, and a  
31 withdrawal, and moving one item from regular agenda to  
32 consent agenda, so I'll bring it up as we go along.

33 CHAIRPERSON KONYK: Okay. The first item is BA  
34 -- I'm sorry. Is there anyone in the public that's going  
35 to speak at this meeting, if you would stand now, raise  
36 your right hand, and be sworn in. On any issue today.  
37 (Whereupon, the speakers were sworn in by Mr.  
38 Flaxman.)  
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45 CHAIRPERSON KONYK: Okay. The first item on  
46 the agenda is a postponed item, BA2004-00485, agent for  
47 William Coleman, to allow a reduction in the required  
48 number of parking spaces. Is the applicant present,  
49 Colteur Hearing, Inc.?  
50 (No response)

51 CHAIRPERSON KONYK: No?  
52 MR. SEAMAN: This is a 60-day postponement and  
53 their last. This will be the six month, so after this  
54 month they'll be...  
55 CHAIRPERSON KONYK: Have to reapply?

56 MR. SEAMAN: Well, actually what's happening is  
57 they're being annexed into Jupiter so it will just go  
58 away. They want to keep their options open. That's why  
59 they're still here.

60 CHAIRPERSON KONYK: Okay. So this is not by  
61 right. Does someone want to offer them a postponement?  
62 VICE CHAIRMAN BASEHART: Is anybody here that

1 wants to speak on it?

2 CHAIRPERSON KONYK: Is anybody here to speak on  
3 this item?

4 (No response)

5 CHAIRPERSON KONYK: No.

6 VICE CHAIRMAN BASEHART: Madam Chair, they've  
7 requested 60 days?

8 MR. SEAMAN: It's going to go away because it's  
9 going to be annexed into Jupiter but they're keeping  
10 their options open. That's why it's still on the agenda.

11 VICE CHAIRMAN BASEHART: Yeah, I remember that  
12 from last month. Okay. I make a motion we grant a 60-  
13 day postponement to this item.

14 MR. PUZZITIELLO: Second.

15 CHAIRPERSON KONYK: We have a motion by Mr.  
16 Basehart, a second by Mr. Puzzitiello. All those in  
17 favor?

18 BOARD MEMBERS: Aye.

19 CHAIRPERSON KONYK: Motion carries unanimously.  
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26 CHAIRPERSON KONYK: The next item on the  
27 postponement is BA2004-00789, Land Design South, agent  
28 for D.S. Realty Corp., to allow a wall to exceed the  
29 maximum height. Anybody here to speak on this item other  
30 than the applicant? Are you the applicant? Okay. Can  
31 you come forward? Okay. Is this by right, Alan?

32 MR. SEAMAN: No, it's by vote.

33 CHAIRPERSON KONYK: Okay.

34 MR. SEAMAN: It's postponing 30 days.

35 CHAIRPERSON KONYK: Any Board member have an  
36 objection to this being postponed for 30 days? Can  
37 someone make a motion? Mr. Jacobs.

38 MR. JACOBS: I move that this item be postponed  
39 for a 30-day period.

40 MR. PUZZITIELLO: Second.

41 CHAIRPERSON KONYK: Okay. We have a motion by  
42 Mr. Jacobs, second by Mr. Puzzitiello. All those in  
43 favor?

44 BOARD MEMBERS: Aye.

45 CHAIRPERSON KONYK: Motion carries unanimously.  
46 This item will be postponed for 30 days.  
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53 CHAIRPERSON KONYK: The next item to be  
54 postponed is BA2004-00993, Dror Tregar, agent, for Anya  
55 Group, to allow a single family development to encroach  
56 into the required front setback. Your name for the  
57 record?

58 MS. LHOTA: Good morning, ladies and gentlemen.  
59 My name is Janna Lhota with the law firm of Holland and  
60 Knight with offices at 1 East Briar Boulevard, Suite  
61 1300, Fort Lauderdale, Florida, here on behalf of the  
62 applicant, Anya Group, Inc.

1           CHAIRPERSON KONYK: Is this by right?  
2           MR. SEAMAN: This is by vote.  
3           CHAIRPERSON KONYK: Okay. Does any Board  
4 member object to this having a 30-day postponement?  
5           MR. SEAMAN: 30-day postponement.  
6           CHAIRPERSON KONYK: Okay.  
7           VICE CHAIRMAN BASEHART: Is there any other  
8 member of the public here on this one? I don't see any.  
9           CHAIRPERSON KONYK: No. 30 days.  
10          MR. PUZZITIELLO: Motion for 30 days.  
11          CHAIRPERSON KONYK: Motion by Mr. Puzzitiello.  
12          MR. JACOBS: Second.  
13          CHAIRPERSON KONYK: Second by Mr. Jacobs. All  
14 those in favor?  
15          BOARD MEMBERS: Aye.  
16          CHAIRPERSON KONYK: Motion carries unanimously,  
17 30-day postponement.  
18          MS. LHOTA: Thank you very much.  
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25          CHAIRPERSON KONYK: Kilday & Associates,  
26 BA2004-01001, for South Florida Water Management, to  
27 allow an exemption from platting of a preserve area.  
28          MS. POULSON: Jan Poulson with Kilday &  
29 Associates.  
30          CHAIRPERSON KONYK: Anybody here to speak on  
31 this item?  
32                (No response)  
33          CHAIRPERSON KONYK: Seeing none, is this by  
34 right or by...  
35          MR. SEAMAN: By vote.  
36          CHAIRPERSON KONYK: By vote. Okay. Anybody  
37 object to this having a 30-day postponement?  
38                (No response)  
39          CHAIRPERSON KONYK: Does someone want to make a  
40 motion?  
41          VICE CHAIRMAN BASEHART: So moved.  
42          MR. PUZZITIELLO: Second.  
43          CHAIRPERSON KONYK: Motion by Mr. Basehart,  
44 second by Mr. Puzzitiello. All those in favor?  
45          BOARD MEMBERS: Aye.  
46          CHAIRPERSON KONYK: Opposed?  
47                (No response)  
48          CHAIRPERSON KONYK: Motion carries unanimously,  
49 30-day postponement.  
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56          CHAIRPERSON KONYK: The next item on  
57 postponement is Popper & Associates, BA2004-01125, agent  
58 for Schumacher, to allow sign faces to exceed the maximum  
59 square foot. Is the applicant present?  
60                (No response)  
61          CHAIRPERSON KONYK: Anybody here to speak  
62 against this item?

1 (No response)  
2 CHAIRPERSON KONYK: Where's the applicant?  
3 MR. SEAMAN: It's 30 days by right.  
4 CHAIRPERSON KONYK: Oh, it's 30 days by right?  
5 Okay. 30-day postponement.  
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12 CHAIRPERSON KONYK: All right. The next item  
13 is Joseph and Debra Hughes, BA2005-00008. Is the  
14 applicant present?  
15 (No response)  
16 CHAIRPERSON KONYK: Is this by right?  
17 MR. SEAMAN: This is by right.  
18 CHAIRPERSON KONYK: Okay. 30-day postponement.  
19 Okay. That wraps up the postponed items.  
20 MR. SEAMAN: We have one more.  
21 CHAIRPERSON KONYK: We have one more. Okay.  
22 MR. SEAMAN: BA2005-05 is asking for an  
23 additional 30-day postponement.  
24 CHAIRPERSON KONYK: Shafer, is that the name?  
25 MR. SEAMAN: Yes.  
26 CHAIRPERSON KONYK: Okay. Is this by right?  
27 No, right? They didn't request it in time?  
28 MR. SEAMAN: This is by right. There are  
29 survey issues.  
30 CHAIRPERSON KONYK: Did they request it in time  
31 though?  
32 MR. SEAMAN: Yes.  
33 CHAIRPERSON KONYK: Okay. Is this applicant  
34 present?  
35 (No response)  
36 CHAIRPERSON KONYK: Anybody here to speak  
37 against this item?  
38 (No response)  
39 CHAIRPERSON KONYK: Okay. By right it stays on  
40 -- moved to postponed. Right? 30 days?  
41 MR. SEAMAN: Yeah, 30 days.  
42 CHAIRPERSON KONYK: Okay. Postponed. Okay.  
43 MR. SEAMAN: And we also have one that's been  
44 withdrawn because the project was redesigned to meet the  
45 regulations so they don't need to get the variances, and  
46 that is 2004-0651, so that's been withdrawn.  
47 CHAIRPERSON KONYK: Where is that one, Alan?  
48 MR. SEAMAN: It's on the regular agenda.  
49 CHAIRPERSON KONYK: Oh, it's on the regular  
50 agenda?  
51 VICE CHAIRMAN BASEHART: It's the one that's a  
52 companion petition with the subdivision variance?  
53 MR. SEAMAN: Correct, so the subdivision  
54 variance now will move to the consent agenda.  
55 CHAIRPERSON KONYK: Okay. BA2004-00651 is  
56 withdrawn.  
57 MR. SEAMAN: Correct.  
58 CHAIRPERSON KONYK: Now SD-123 moves to  
59 consent.  
60 MR. SEAMAN: Correct.  
61 CHAIRPERSON KONYK: Okay. Let me start with  
62 that one on the consent just so I don't miss it. All

1 right? Do you mind?

2 MR. SEAMAN: No, that's fine.

3 CHAIRPERSON KONYK: Okay. So we're done with  
4 the postponed items. Anybody that was here only for a  
5 postponed item you're free to leave now because your item  
6 has been postponed.

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13 CHAIRPERSON KONYK: Okay. The first item on  
14 consent is SD-123, Lawrence Kelleher, requesting  
15 variances from the requirements that all streets used for  
16 access to residential subdivision lots. Is the applicant  
17 present? There are lots of people.

18 MS. COTTRELL: Yes. My name is Anna Cottrell,  
19 and I'm the agent for this application. I understand  
20 that there is somebody that wants to speak on this one.

21 CHAIRPERSON KONYK: Okay. Somebody wants to  
22 speak against this item?

23 MR. TASSELL: Yes, on behalf of the neighbors.

24 CHAIRPERSON KONYK: Well, then it stays on the  
25 regular agenda.

26 VICE CHAIRMAN BASEHART: Okay. Will this be  
27 moved to first then the regular agenda?

28 CHAIRPERSON KONYK: No, it's going to stay  
29 right where it was.

30 VICE CHAIRMAN BASEHART: Okay.

31 CHAIRPERSON KONYK: Stay right where it was. I  
32 mean it's going back and forth but it can just stay right  
33 where it was.

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40 CHAIRPERSON KONYK: Okay. The first item on  
41 consent now is BA2004-00343, Melanie Borkowski, agent,  
42 for Palm Beach County, to allow a reduction of the  
43 required number of parking spaces and right-of-way  
44 buffer. Your name for the record.

45 MS. BORKOWSKI: Melanie Borkowski with Palm  
46 Beach County FD&O.

47 CHAIRPERSON KONYK: Anybody here to speak  
48 against this item?

49 (No response)

50 CHAIRPERSON KONYK: Any letters?

51 MR. SEAMAN: One against, and they state  
52 increased congestion and potential hazards but they don't  
53 specify.

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

56 MS. BORKOWSKI: Yes, we do.

57 CHAIRPERSON KONYK: Any Board member feel this  
58 item warrants a full hearing?

59 (No response)

60 CHAIRPERSON KONYK: Seeing none, this item will  
61 remain on consent.

62 MS. BORKOWSKI: Thank you.

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BOARD OF ADJUSTMENT CONDITIONS

1. By February 17, 2006, the applicant shall obtain a building permit for the proposed structures and pool in order to vest the variance approved pursuant to BA2004-00343. (DATE:MONITORING-BLDG PERMIT)

2. Prior to receiving the Certificate of Occupance, all the landscaping required by Art.7.F.7, R-O-W Buffer, must be installed within the reduced buffer area along Lake Worth Road. (Date: MONITOR:LANDSCAPE)

CHAIRPERSON KONYK: BA2004-00994, Marda Zimring, agent, for Sunshine Wireless, to eliminate the required frontage on an arterial or collector roadway. Your name for the record?

MS. ZIMRING: Marda Zimring, representing the petitioner.

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

(No response)

CHAIRPERSON KONYK: Any letters?

MR. SEAMAN: There are none.

CHAIRPERSON KONYK: Any Board member feel this warrants a full hearing?

(No response)

CHAIRPERSON KONYK: Staff has recommended conditions, but it doesn't tell me how many.

MR. SEAMAN: One.

CHAIRPERSON KONYK: Oh, okay. Right up there. Got you. Do you understand and agree with that condition?

MS. ZIMRING: Yes.

CHAIRPERSON KONYK: Okay. This item will remain on consent.

BOARD OF ADJUSTMENT CONDITIONS

1. By February 17, 2006, the applicant shall obtain a building permit for the proposed development in order to vest the variance approved pursuant to BA2004-994. (DATE:MONITORING-BUILDING)

CHAIRPERSON KONYK: The next item on consent is BA2005-00004, Land Design South.

MR. TERRY: Brian Terry, Land Design South.

CHAIRPERSON KONYK: This is for an owner to allow an existing and proposed SFD to encroach into the required front setback. Anybody here to speak against this item?

(No response)

1           CHAIRPERSON KONYK: Any letters?  
2           MR. SEAMAN: There are two, and they were for  
3 clarification.  
4           CHAIRPERSON KONYK: Any Board member feel this  
5 item warrants a full hearing?  
6           (No response)  
7           CHAIRPERSON KONYK: The staff has recommended  
8 one condition. Do you understand and agree with that  
9 condition?  
10          MR. TERRY: We do.  
11          CHAIRPERSON KONYK: Okay. This item will  
12 remain on consent.

13  
14                               BOARD OF ADJUSTMENT CONDITIONS  
15

16 This variance is only for POD D: lots 4, 6, 8, 9, 11, 13,  
17 15, 17, 19, 21, 22, 24, 26, 28, 31, 32, 34-36; POD J:  
18 lots 1, 2, 4-8, 10, 11, 14-16, 19, 24, 26, 27, 31-37, 40,  
19 44, 46-48, 50-52, 55-58, POD K: lots 2, 4, 8, 11-13, 21,  
20 22, 24, 27, 29, 33, 36. Any other improvements shall  
21 meet the ULDC requirements (On-Going-Monitoring:Zoning).  
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28           CHAIRPERSON KONYK: The next item on consent is  
29 Kilday & Associates, BA2005-00006, agent, for Boynton  
30 Beach Associates, Robert Dubois, William Dubois, and  
31 Catherine Voutsas, owners, to allow a reduction of an  
32 AGR-PUD landscape buffer. Hi. Your name for the record?  
33

34           MS. CONOVER: Shayne Conover with Kilday &  
35 Associates.

36           CHAIRPERSON KONYK: Any member of the public  
37 here to speak against this item?

38           (No response)

39           CHAIRPERSON KONYK: Any letters?

40           MR. SEAMAN: There are three, and they're for  
41 disapproval. Basically they are concerned about  
42 setbacks.

43           CHAIRPERSON KONYK: Are they relevant to the  
44 variance?

45           MR. SEAMAN: No.

46           CHAIRPERSON KONYK: Okay. Any Board member  
47 feel this warrants a full hearing?

48           (No response)

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

51           MR. SEAMAN: We do need to make one correction  
52 to the development order.

53           CHAIRPERSON KONYK: Okay.

54           MR. SEAMAN: Rather than it reading the  
55 variance shall elapse on February 17, 2006, we want to  
56 change it to variance shall elapse on February 17, 2008.  
57 That's three years from now.

58           MS. CONOVER: 2008, not 2009?

59           MR. SEAMAN: No, it's only three years, not  
60 four. Our math was bad the other day.

61           CHAIRPERSON KONYK: Do you agree with that?

62           MS. CONOVER: Yes, I do.

CHAIRPERSON KONYK: Okay. Then this item will

1 remain on consent.

2 MS. CONOVER: Thank you.

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BOARD OF ADJUSTMENT CONDITIONS

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6 1. By February 17, 2006, or prior to DRO certification,  
7 the applicant shall amend the site plan to reflect the  
8 variance approval pursuant to BA2005-0006.

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10 2. All plant material required by the ULDC within the  
11 50 feet perimeter landscape buffer shall be installed  
12 within the approved condensed 15 feet perimeter landscape  
13 buffer.

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20 CHAIRPERSON KONYK: Paul Slattery is the next,  
21 BA2005-00009, agent, for Heart Investments, to allow a  
22 reduction in the right-of-way buffer. Name for the  
23 record?

24 MR. ROBERSON: Good morning. Cliff Roberson  
25 with Slattery & Associates Architects.

26 CHAIRPERSON KONYK: Any member of the public  
27 here to speak against this item?

28 (No response)

29 CHAIRPERSON KONYK: Any letters?

30 MR. SEAMAN: There's one. They say they oppose  
31 but can't attend the meeting.

32 CHAIRPERSON KONYK: Okay. Any Board member  
33 feel this item warrants a full hearing?

34 (No response)

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

37 MR. ROBERSON: We do.

38 CHAIRPERSON KONYK: Okay. This item will  
39 remain on consent.

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BOARD OF ADJUSTMENT CONDITIONS

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43 1. Prior to final Certificate of Occupancy, all plant  
44 material required by the ULDC shall be installed within  
45 the 5ft right-of-way buffer along Military Trl and within  
46 the 7.5ft right-of-way buffer along Via Delray.

47

48 2. By February 17, 2006, or prior to DRO certification,  
49 the applicant shall amend the Site Plan to indicate the  
50 variance pursuant to BA2005-009.

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57 CHAIRPERSON KONYK: The next item is Greenberg  
58 & Traurig, BA2005-00010, agent, for Arrigo Enterprises,  
59 to allow a reduction of interior landscaping. Name?

60 MS. SER: Good morning. Lillian Ser with  
61 Greenberg & Traurig on behalf of Arrigo Enterprises.

62 CHAIRPERSON KONYK: Okay. Any member of the

1 public here to speak against this item?

2 (No response)

3 CHAIRPERSON KONYK: Any letters?

4 MR. SEAMAN: There are none.

5 CHAIRPERSON KONYK: Any Board member feel this  
6 item warrants a full hearing?

7 (No response)

8 CHAIRPERSON KONYK: Okay. Staff has  
9 recommended this for approval with two conditions. Do  
10 you understand and agree with those?

11 MS. SER: Yes, we do.

12 CHAIRPERSON KONYK: This item will remain on  
13 consent. Thank you.

14 MS. SER: Thank you.

15  
16 BOARD OF ADJUSTMENT CONDITIONS

17  
18 1. The subject variances are contingent on the Board of  
19 County Commissioners (BCC) deleting their condition H3.  
20 If the BCC does not approve the deletion of that  
21 condition, the zoning variances will be null and void.

22  
23 2. By February 17, 2006 or prior to DRO certification,  
24 the applicant shall amend the site plan to reflect the  
25 variance approval.

26  
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28  
29  
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31  
32 CHAIRPERSON KONYK: Anna Cottrell & Associates,  
33 BA2005-00011, agent for S.T.J. Properties, to allow a  
34 reduction in the number of off-street parking spaces.  
35 Hi. Name for the record?

36 MS. COTTRELL: Good morning. I'm Anna  
37 Cottrell.

38 CHAIRPERSON KONYK: Any member of the public  
39 here to speak against this item?

40 (No response)

41 CHAIRPERSON KONYK: Any letters?

42 MR. SEAMAN: There are none.

43 CHAIRPERSON KONYK: Any Board member feel this  
44 item warrants a full hearing?

45 (No response)

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

48 MS. COTTRELL: Yes.

49 CHAIRPERSON KONYK: Okay. This item will  
50 remain on consent.

51  
52 BOARD OF ADJUSTMENT CONDITIONS

53  
54 1. By February 17, 2006, the property owner shall  
55 provide the Building Division with a copy of the Board of  
56 Adjustment Result Letter and a copy of the Site Plan,  
57 Exhibit 9, presented to the Board of Adjustment at the  
58 February 17, 2005, hearing. These Exhibits can be found  
59 in the BA2005-011 BA file in the Zoning Division. (BLDG  
60 PERMIT-ZONING)

61  
62 2. The parking variance is granted from a required 72

1 spaces to a proposed 24 spaces for a 48 space  
2 reduction for this specific warehouse distribution  
3 center. Any change in use shall require BA Staff  
4 review and approval to ensure compliance with the  
5 Board's approval. (ONGOING)  
6  
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11

12 CHAIRPERSON KONYK: SD-124, Fairmont Place  
13 Homeowners Association, requesting variance from the  
14 requirement that the slope of lake maintenance easements  
15 be no steeper than 8 to 1. Name for the record?

16 MR. REMBAUM: Jeff Rembaum with Becker &  
17 Poliakoff here on behalf of Fairmont Place Homeowners  
18 Association.

19 CHAIRPERSON KONYK: Any member of the public  
20 here to speak against this item?

21 (No response)

22 CHAIRPERSON KONYK: Any letters?

23 MR. SEAMAN: Seven for approval, two in  
24 opposition, no reasons given.

25 CHAIRPERSON KONYK: Any Board member feel this  
26 item warrants a full hearing?

27 (No response)

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

30 MR. REMBAUM: I do, and just for clarification  
31 that is staff is recommending that the variance be  
32 granted over the entire lake maintenance easement tract,  
33 is that correct?

34 MR. CUFFE: The variance covers the entire  
35 perimeter of the lake, correct.

36 MR. REMBAUM: Thanks.

37 CHAIRPERSON KONYK: Okay. Your item will  
38 remain on consent.

39 MR. REMBAUM: Thank you.  
40

#### 41 BOARD OF ADJUSTMENT CONDITIONS

42  
43 1. A Hold Harmless and Indemnity Agreement acceptable  
44 to the County Attorney must be submitted by the Fairmont  
45 Place Homeowners Association, Inc. (the Applicant)  
46 releasing the County from any and all liability that may  
47 arise due to the nonconforming Lake Maintenance Easement  
48 cross slopes.  
49

50 2. The Applicant must add Palm Beach County as an  
51 additional insured on the Homeowners Association  
52 insurance policy.  
53

54 3. The above stated Conditions shall be fully complied  
55 with and completed not later than ninety (90) calendar  
56 days subsequent to the date of the variance approval by  
57 the Board of Adjustment in order to vest the variance.  
58

59 CHAIRPERSON KONYK: Everybody that -- oh, yes?

60 UNKNOWN SPEAKER: The 00005, Harold and  
61 Kathleen Shafer.

62 CHAIRPERSON KONYK: Right.

1           UNKNOWN SPEAKER: Is there a reason we jumped  
2 over that?

3           MR. SEAMAN: They postponed it.

4           CHAIRPERSON KONYK: They postponed it. We said  
5 that at the beginning. It was postponed, and we asked if  
6 there was anyone from the public to speak on that item,  
7 and you didn't say anything.

8           UNKNOWN SPEAKER: It was on the consent. I  
9 didn't hear that.

10          CHAIRPERSON KONYK: Oh, I'm sorry. It was  
11 postponed for 30 days. Sorry. I'm sorry. You could  
12 have left earlier.

13          UNKNOWN SPEAKER: Someone will send me a  
14 notice?

15          CHAIRPERSON KONYK: No, it will be at the next  
16 meeting, which is what day?

17          MR. SEAMAN: The 17<sup>th</sup> of March.

18          CHAIRPERSON KONYK: The 17<sup>th</sup> of March, time  
19 certain. But you know what, if you want to just double  
20 check, call here and make sure it's still on because they  
21 could still get another postponement. All right.  
22 Anybody here that was here for the consent, your letters  
23 will be mailed, correct, Annette? Okay. Just so you  
24 know normally often we get -- I shouldn't say normally.  
25 I should say often we get the letters after the meeting.  
26 Today they'll be mailed, okay?

27          We have several items on consent. I'll just go  
28 back over those. We have BA2004-00343, BA2004-00994,  
29 BA2005-00004, BA2005-00006, BA2005-00009, BA2005-00010,  
30 and BA2005-00011, and BA -- no, sorry, SD-124 are on the  
31 consent agenda. Is someone prepared to make a motion for  
32 approval?

33          VICE CHAIRMAN BASEHART: Madam Chair, I make a  
34 motion that all those items you just read be approved on  
35 consent, and I would like the record to reflect that the  
36 staff report for each item become the record become the  
37 record of the hearing.

38          CHAIRPERSON KONYK: We have a motion by Mr.  
39 Basehart. Do we have a second?

40          MR. JACOBS: Second.

41          CHAIRPERSON KONYK: Second by Mr. Jacobs. All  
42 those in favor?

43          BOARD MEMBERS: Aye.

44          CHAIRPERSON KONYK: Opposed?

45          (No response)

46          CHAIRPERSON KONYK: Motion carries unanimously.  
47 Anybody on consent can leave now except Land Design.  
48 Land Design, we need to see you.

49  
50  
51  
52  
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54

55          CHAIRPERSON KONYK: Regular items. The first  
56 item on the regular agenda is BA2004-00637, Daniel and  
57 Cynthia Loveland, owners, to allow a proposed SFD to  
58 encroach into the required front setback. Staff will  
59 introduce the item by reading the legal ad.

60          MR. GAMEZ: BA2004-00637, Daniel S. and Cynthia  
61 Loveland, owners, to allow a proposed single family  
62 dwelling to encroach into the required front setback.

1 Location is 11303 Avery Road, approximately .18 mile  
2 south of PGA Boulevard, and approximately .18 mile east  
3 of Prosperity Farms Road, within the Pirates Cove  
4 subdivision in the RS Zoning District.

5 CHAIRPERSON KONYK: Is the applicant present?  
6 Your name for the record?

7 MR. LOVELAND: Daniel S. Loveland, property  
8 owner.

9 CHAIRPERSON KONYK: Okay. You can go ahead and  
10 tell us why you feel that you should have this variance.

11 MR. LOVELAND: Well, I think -- I talked to the  
12 staff and they recommended several options that I don't  
13 consider to be a viable option. Can I pass this out?

14 CHAIRPERSON KONYK: Can we have a motion to  
15 accept the handout into the record?

16 VICE CHAIRMAN BASEHART: So moved.

17 CHAIRPERSON KONYK: Motion by Mr. Basehart.

18 MR. PUZZITIELLO: Second.

19 CHAIRPERSON KONYK: Second by Mr. Puzzitiello.  
20 All those in favor? Opposed? Motion carries  
21 unanimously.

22 MR. LOVELAND: As you can see, I've highlighted  
23 some of these areas. The red area would be the area that  
24 would not be buildable because of current setback  
25 limitations. I'm bounded on two sides by water. I also  
26 have a requirement for a 50-foot setback from each water  
27 direction for my septic tank and drain field, which  
28 pretty much limits the amount of property that is  
29 actually buildable on this lot.

30 The staff has recommended either turning the  
31 garage or setting it back further. The turning of the  
32 garage to me is just unacceptable because I think it  
33 places the garage too close to the sea wall. I've given  
34 you a little yellow sticker there, which is about the  
35 size of the garage that you can play around with that  
36 you'll see that trying to fit that on there either closes  
37 off part of the front of the house or it brings the  
38 building so close to the sea wall that I consider it an  
39 unacceptable construction because of the possibility of  
40 the sea well collapsing.

41 The other recommendation was to set the garage  
42 back, which limits my access into the back yard. There's  
43 been several variances granted on the same street. One,  
44 my neighbor almost directly across the street, was  
45 granted a 11-1/2 foot easement to enlarge his garage that  
46 much closer to the street, and as you can see I'm  
47 proposing just somewhat about 4 feet, which is less than  
48 half of what has already been approved on the street.

49 CHAIRPERSON KONYK: Okay. Anything else?  
50 We'll let staff go, and then you'll have your rebuttal.

51 MR. LOVELAND: Okay.

52 MR. GAMEZ: Staff is recommending two  
53 alternative options, and it's posted on the display  
54 board. Therefore, the variance is not necessary.

55 CHAIRPERSON KONYK: Short but sweet. Okay.  
56 Any Board member have anything they want to add?

57 MR. PUZZITIELLO: Your issue with pushing --  
58 staff is asking you if you can push the garage back. Why  
59 are you saying that's unacceptable?

60 MR. LOVELAND: Because of the design of the  
61 house it cuts off a doorway coming into the pool area on  
62 the house.

1           VICE CHAIRMAN BASEHART: Did you say something  
2 also about it being too close to the sea wall for safety?  
3           MR. LOVELAND: Well, I consider -- I think the  
4 staff has recommended pushing the garage perhaps out to  
5 the limits which is only 7-1/2 feet, and 7-1/2 feet from  
6 the sea wall for a building is just not acceptable to me.  
7 If you've ever lived on the water you know what happens  
8 with these sea walls. They leak and the dirt starts to  
9 leak out from underneath.

10          MR. PUZZITIELLO: What has your architecture  
11 structural engineer said about that?  
12          MR. LOVELAND: Pardon me?  
13          MR. PUZZITIELLO: What has your architecture  
14 structural engineer said about that?  
15          MR. LOVELAND: They haven't commented on it.  
16 I'm just going from -- I've lived there for 15 years and  
17 I see what happens to sea walls, and to set a foundation  
18 7-1/2 feet from a sea wall is just not -- I just don't  
19 consider it acceptable.

20          MR. JACOBS: Why couldn't you have less of a  
21 lower veranda?  
22          MR. LOVELAND: Well, the veranda runs the  
23 length of the house.

24          CHAIRPERSON KONYK: I think if you had less of  
25 a lower veranda your garage would be in your house.  
26          VICE CHAIRMAN BASEHART: Well, the problem is  
27 if you look at the sketch that was handed us there's a  
28 door here so if the garage were slid this way it would  
29 close off a doorway.

30          MR. PUZZITIELLO: Right. Where does that door  
31 go to in your house?  
32          MR. LOVELAND: It goes into a family room.  
33          MR. SEAMAN: Can I ask a question?  
34          CHAIRPERSON KONYK: Maybe. Sure.  
35          MR. SEAMAN: Is there a pool existing there  
36 now?  
37          MR. LOVELAND: The house was destroyed in the  
38 hurricane so this is all going to be new. It's a  
39 proposed new residence and so forth. I've tried to limit  
40 the amount of building. I've had to go to two stories  
41 mostly because of the limitations of the septic tank and  
42 drain field and so forth. So I'm not sure, Alan, did I  
43 answer your question?  
44          MR. SEAMAN: There is no pool there...  
45          CHAIRPERSON KONYK: So this is a result of the  
46 hurricane damage that you have to do all this rebuilding?  
47          MR. LOVELAND: Yes.  
48          CHAIRPERSON KONYK: And it's 3.9 feet is your  
49 variance that you're requesting?  
50          MR. LOVELAND: Yes.  
51          CHAIRPERSON KONYK: Okay. And you're worried  
52 about the sea wall?  
53          MR. LOVELAND: I'm very concerned about the sea  
54 wall. As far as trying to get too close to it, I am  
55 having the sea wall rebuilt but in looking around the  
56 neighborhood and so forth there's no one that's building  
57 7-1/2 feet from the sea wall that I've seen. I'm in  
58 construction. I do this all the time. And I just -- I  
59 feel like 7-1/2 feet setback from the sea wall is not  
60 adequate and would just prefer not to have...  
61          CHAIRPERSON KONYK: So what will it be now,  
62 almost an 11-foot setback?

1           MR. LOVELAND: It will be 12 feet from the sea  
2 wall.

3           CHAIRPERSON KONYK: Oh, that's right, 7-1/2  
4 feet. Okay.

5           MR. LOVELAND: The tie backs for the sea wall  
6 extend anywhere from 10 to 12 feet back and they  
7 recommend those not be under the foundation of a house,  
8 so that's where I kind of kept it in that 12-foot range.

9           MR. PUZZITIELLO: Is this house going to be on  
10 pilings or no?

11          MR. LOVELAND: No.

12          MR. SEAMAN: Can I make another -- I just want  
13 to make a point that everything there is brand new. The  
14 home design is new. The garage is new. And it could be  
15 designed so that you wouldn't need variances at all. I  
16 just want to get that point across to the Board that  
17 you're choosing to do this by the way you laid out your  
18 home, and that's a self-imposed variance. That's why  
19 staff is unable to...

20          CHAIRPERSON KONYK: But he also told us that  
21 the reason he's laying it out this way is because of the  
22 sea wall, and he doesn't want to slide it back into the  
23 sea wall.

24          MR. SEAMAN: You can reconfigure the home.

25          CHAIRPERSON KONYK: Then he loses the door.  
26 Okay. Come on. Three feet. All right. Whatever. I  
27 can't make a motion so...

28          MR. SEAMAN: And we don't have any technical  
29 information that proves that 11 feet is -- 12 feet is any  
30 worse than 7-1/2 feet. That's just my point.

31          CHAIRPERSON KONYK: If this were to be approved  
32 would you add conditions?

33          MR. SEAMAN: Yes, we have conditions.

34          CHAIRPERSON KONYK: What would they be?

35          MR. SEAMAN: Just the typical ones about being  
36 sure you submit your letter to the building department  
37 downstairs and get a building permit within a year. I'm  
38 wondering why we can't get some -- my suggestion to staff  
39 is get us some statistics from engineering that says it's  
40 unsafe to be where you want to put it and that would  
41 convince staff, okay, that's an unusual...

42          CHAIRPERSON KONYK: We could do the same. We  
43 could get statistics to say that it's safe too. We  
44 didn't do that either.

45          MR. SEAMAN: Right.

46          CHAIRPERSON KONYK: Okay.

47          VICE CHAIRMAN BASEHART: I don't know if I'm  
48 going to get a second or not, Madam Chair, but I'm going  
49 to make a motion that we approve, what's the number of  
50 the variance?

51          CHAIRPERSON KONYK: BA2004-00637.

52          VICE CHAIRMAN BASEHART: My conclusion after  
53 having reviewed everything that's been presented to us  
54 that there is a hardship imposed here, and this is a  
55 redevelopment situation, you know, and I understand that  
56 a smaller house could be made or modifications to the  
57 house potentially to satisfy the setback, but it's an  
58 extremely awkward lot, kind of like an inverted State of  
59 Oklahoma or something because it's at the end of a cul-  
60 de-sac.

61                 And the cul-de-sac bow substantially reduces  
62 the one side of the lot. It is at the end of the street,

1 which means that this minor encroachment isn't going to  
2 create any hardship or negative impact on surrounding  
3 properties because it's at the very end of the street,  
4 and all we're really talking about here is a three-foot  
5 triangle. It's not like the whole side of the garage  
6 were encroaching into the setback, and I feel because of  
7 all the factors that have been discussed, including the  
8 sea wall issue which bothers me as well, I think that  
9 this minor encroachment is justified and so my motion is  
10 for approval with the conditions that staff would add.

11 MR. MATHIS: Second.

12 CHAIRPERSON KONYK: We have a motion by Mr.  
13 Basehart, a second by Mr. Mathis. Any discussion?

14 MR. JACOBS: Before we vote on this, I'd like  
15 to ask the applicant a question. This is a replacement  
16 house?

17 MR. LOVELAND: Yes, sir.

18 MR. JACOBS: How many square feet is it?

19 MR. LOVELAND: Right now I'm at about I think  
20 about 3,500 feet, which if you all have any knowledge of  
21 waterfront property, that's probably quite small.

22 MR. JACOBS: How big was the house it replaces?

23 MR. LOVELAND: The house that is being replaced  
24 was just under 3,000.

25 MR. JACOBS: So essentially the house you're  
26 proposing to put up is somewhat larger than the house  
27 that was destroyed?

28 CHAIRPERSON KONYK: Not much. Minimal.

29 MR. LOVELAND: But it's also two story. Some  
30 of the newer setbacks would not allow the house that I  
31 had -- the house that was there now is 45 years old, and  
32 some of the setbacks that are required now particularly  
33 with the septic tank and drain field setbacks, which  
34 apparently were not in existence when this house was  
35 built, would not allow the existing house to be built  
36 again.

37 CHAIRPERSON KONYK: So it's actually taking  
38 less of a footprint of the lot than the other house was?

39 MR. LOVELAND: It's actually taking less of a  
40 foot print of the property.

41 VICE CHAIRMAN BASEHART: It appears that  
42 possibly the old house encroached into the setbacks as  
43 well, actually much more than the proposed...

44 MR. LOVELAND: The footprint of the house did  
45 not encroach into the setbacks other than the drain field  
46 would be probably encroaching into the 50-foot setbacks.  
47 Apparently the health department did not have that  
48 requirement when the drain field was installed 45 years  
49 ago.

50 CHAIRPERSON KONYK: Okay. We have a motion by  
51 Mr. Basehart. You got another question?

52 MR. PUZZITIELLO: Somebody said that -- I  
53 thought I heard we gave other variances to on the street?

54 MR. SEAMAN: It's on a case by case basis.

55 MR. LOVELAND: It was my neighbor just across  
56 the street was granted 11-1/2 feet for a garage, and  
57 about three doors down on the same side of the street was  
58 just recently granted a variance, and I haven't been able  
59 to research that. I don't know how much of a variance he  
60 was granted.

61 MR. PUZZITIELLO: Off the front setback?

62 MR. LOVELAND: Yes, sir.

1           MR. SEAMAN: I believe that had to do with a  
2 boat issue, as I recall.

3           MR. LOVELAND: The neighbor just across the  
4 street, when I talked to him he applied for a variance to  
5 enlarge his garage so that he could put his boat in it.

6           CHAIRPERSON KONYK: Okay. We have a motion and  
7 a second. All those in favor?

8           BOARD MEMBERS: Aye.

9           CHAIRPERSON KONYK: Opposed?

10          (No response)

11          MR. SEAMAN: Read the conditions, Oscar.

12          MR. GAMEZ: We have two conditions. The first  
13 one by February 17, 2006, the applicant shall obtain a  
14 building permit for the proposed garage in order to vest  
15 the variance approved pursuant to BA2004-00637. The  
16 second one, prior to issuance of a building permit the  
17 applicant shall submit to the building division a copy of  
18 the Board of Adjustment Result Letter and a copy of the  
19 approved survey.

20          MR. PUZZITIELLO: The only problem, you said  
21 proposed garage. You meant proposed house permit?

22          MR. SEAMAN: It's one issue.

23          MR. PUZZITIELLO: But it's all on the permit.

24          MR. LOVELAND: It'll all be one permit.

25          CHAIRPERSON KONYK: Okay. All those in favor?

26          BOARD MEMBERS: Aye.

27          CHAIRPERSON KONYK: Opposed?

28          (No response)

29          CHAIRPERSON KONYK: Motion carries unanimously.

30          MR. LOVELAND: Thank you very much.

31  
32  
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36  
37          CHAIRPERSON KONYK: The next item on the  
38 regular agenda is SD-123, Lawrence J. Kelleher,  
39 requesting variances from the requirements. We'll hear  
40 from the staff for the legal ad, then we'll hear from the  
41 applicant, then we'll hear from the public. Where is the  
42 public? We'll wait for him. All right. It's SD-123.  
43 If the staff would like to read the legal ad.

44          MR. CUFFE: This is a petition of Lawrence J.  
45 Kelleher, requesting variances from the requirements that  
46 all streets used for access to residential subdivision  
47 lots be designed and constructed to local street  
48 standards as established by the subdivision regulations.  
49 Requirements are set forth in the Unified Land  
50 Development Code, Article 11.E.2.A, Table 11.E.2.A.-2-  
51 Chart of Minor Streets. Location: South side of Country  
52 Oaks Lane, approximately 0.2 mile east of Prosperity  
53 Farms Road, in the RS Zoning District.

54          CHAIRPERSON KONYK: Applicant, your name for  
55 the record again?

56          MS. COTTRELL: Good morning. I'm Anna  
57 Cottrell. I'm the agent for this application. The  
58 owner, Larry Kelleher, is also here, and Larry Smith is  
59 here. He's the attorney for Mr. Kelleher. I have a  
60 Power Point presentation that...

61          CHAIRPERSON KONYK: I can't hear you. I'm  
62 sorry.

1           MS. COTTRELL: I have a Power Point, and that  
2 moment of panic a few minutes ago without opening the  
3 file, and thank goodness we have young people that know  
4 how to work computers. I think though that the gentleman  
5 who stood up who represents the neighbor has a specific  
6 concern. I don't know if you want me to go through this  
7 whole Power Point presentation very quickly.

8           CHAIRPERSON KONYK: Do you want to hear his  
9 concern first and see if it's directly to do with the  
10 variance first or...

11          MS. COTTRELL: That's fine with me as long as  
12 we're allowed if we need to...

13          CHAIRPERSON KONYK: We'll see how it goes.  
14 How's that? We'll play it by ear.

15          MR. TASSELL: Good morning. My name is David  
16 Tassell. I represent the neighbor to the north of this  
17 property. And not to confuse you but their name is also  
18 Kelleher. No relation.

19          CHAIRPERSON KONYK: It's not a family feud,  
20 right?

21          MR. TASSELL: No, no.

22          CHAIRPERSON KONYK: Okay. Good.

23          MR. TASSELL: No relation, no family feud. The  
24 issue that they are concerned about is that currently as  
25 the lots are situated there's one lot along the  
26 intercoastal waterway which is the width of about 150  
27 feet along the intercoastal waterway, and the second lot  
28 is set back to the west of the intercoastal waterway.  
29 And Mr. Kelleher, the applicant, is seeking to divide the  
30 lots so that he's got two 75-foot lots each along the  
31 intercoastal waterway.

32          My clients are concerned that now there's going  
33 to be -- the likely location of the house on the northern  
34 lot is going to be basically right up against the 7.5  
35 setback line adjacent to their property and also 7.5 feet  
36 off of the intercoastal right-of-way line, and they also  
37 believe it's going to be a two-story house constructed on  
38 the property since it's only a 75-foot lot, and in order  
39 to build a house large enough to justify that location  
40 it's going to be a two-story house. So right now they  
41 don't think that ultimately the house would be built in  
42 effect right on top of them whereas if this is approved  
43 so that the plat waiver can be obtained that's what  
44 they're going to end up with, and that's the concern.

45          If we can work out something with the applicant  
46 so that the house on the northern lot is not -- they're  
47 not as concerned that it's part of the setback line, just  
48 that it's not so far forward. If we can work something  
49 out in that effect they would not have an objection to  
50 this but we have not been able to do that as of yet, and  
51 that's what I'm here...

52          CHAIRPERSON KONYK: Have you guys talked?

53          MR. TASSELL: We've talked a while ago. We  
54 talked a little bit today. There may be some -- again my  
55 clients would like to work something out to allow Mr.  
56 Kelleher to do that but that hasn't been done yet.

57          CHAIRPERSON KONYK: Okay.

58          MR. PUZZITIELLO: I got a question.

59          MR. TASSELL: Sure.

60          MR. PUZZITIELLO: You're talking about lot A on  
61 the survey?

62          MR. TASSELL: Lot A, is that the northern lot?

1           MR. PUZZITIELLO: Yeah.

2           MR. TASSELL: Yes.

3           MR. PUZZITIELLO: There's a 10-foot setback on  
4 that northern side plus there's a roadway easement, it  
5 looks like, before it gets to your client's lot, is that  
6 correct?

7           MR. TASSELL: I believe that...

8           CHAIRPERSON KONYK: Okay. I think maybe you  
9 ought to do your presentation, and then we'll come back  
10 to this because this isn't going the way I expected it  
11 to.

12           MS. COTTRELL: And it probably does need a  
13 little bit more explanation just because it is an odd  
14 condition here on this. An aerial of the site and my  
15 client's house is this one right here. Country Oaks Lane  
16 is a 16-foot right-of-way that is right now in the  
17 process of being paved by Palm Beach County but up until  
18 now has been a dirt road with little maintenance on it.  
19 There were drainage issues at the western end of  
20 Prosperity Farms Road, which are now going to be  
21 resolved, in part because my client and the neighbor have  
22 provided drainage easements to the county.

23           The property that Mr. Tassell is representing  
24 is just north. Both of those lots are basically at the  
25 very dead end of Country Oaks Lane. Juanita, if you can  
26 go ahead and advance a couple of slides. This just shows  
27 the lot pattern in the area. A lot of the lots in this  
28 area east of Prosperity Farms are irregular. They're on  
29 easement roads because they were unrecorded subdivisions  
30 that were created prior to 1973 as is the case with this  
31 particular lot.

32           You can see there's a wide variation. The  
33 newer Palm Harbor Drive is kind of representative of the  
34 newer subdivisions that do meet subdivision codes, but a  
35 great deal of variation in the lot pattern especially on  
36 the intercoastal. This is the plan that you approved two  
37 years ago. There was a proposal to take the easternmost  
38 of Mr. Kelleher's lot, which is a little over an acre,  
39 and subdivide it with the use of an internal roadway.  
40 You approved several subdivision variances to reduce the  
41 width of Country Oaks Lane and the paving width, as well  
42 as the width of the internal roadway that was supposed to  
43 serve as the street, and that would have become the  
44 street frontage.

45           What we determined after the approval of the  
46 subdivision variance is because of other subdivision  
47 requirements, particularly required improvements, that  
48 this could not be constructed realistically. The  
49 drainage for the internal road was such that between the  
50 water management tract and the roadway, the internal  
51 road, it would have taken up about approximately almost a  
52 third of the lot area. So after this approval Mr.  
53 Kelleher bought the lot that was right next door and now  
54 what he's proposing to do is subdivide it in a different  
55 way.

56           But subdivision is not the proper word. It's  
57 because we're taking two lots and simply reconfiguring  
58 them. The western lot now will -- it's essentially added  
59 to what will be a south lot here. This is what we call  
60 Lot B. And then Lot A is a big smaller. This is going  
61 to be about three-quarters of an acre, and the L-shaped  
62 lot is going to be a little over an acre. It's about

1 50,000 square feet total. Again, the neighbor's  
2 property, the neighbor that is represented here, lives  
3 right here.

4 This is a survey of the existing just to show  
5 you there is a big house on there right now, and there's  
6 a smaller house on a smaller lot. Both of those will be  
7 demolished and new structures constructed. What happened  
8 since we filed this initially was that the county  
9 completed the planning for the drainage which essentially  
10 takes the drainage from Country Oaks Lane to the  
11 intercoastal and determines that the property that Mr.  
12 Kelleher had given the county, it's a 23-foot wide strip  
13 right here, was not needed. The county didn't need to  
14 hold it in title. All they needed was a drainage  
15 easement, and so they gave Mr. Kelleher this property  
16 back.

17 It's now been incorporated in the lots and in  
18 fact it was the property -- that process of re-conveyance  
19 to Mr. Kelleher that allowed us to drop all the zoning  
20 variances on here. The only thing that we're asking this  
21 morning is for approval of the same two subdivision  
22 variances you granted before to reduce the width of  
23 Country Oaks Lane to what's existing because it can't be  
24 widened, it's 16 feet, and to reduce the pavement width  
25 to what's existing because obviously that can't exceed  
26 the right-of-way. It's only 16 feet.

27 The access then is going to be on Country Oaks  
28 Lane. The easement across here for access for this  
29 neighbor property so they're not land locked constitutes  
30 the street frontage. That's what we understand from our  
31 meetings with Mr. Seaman and Mr. Aubourg over the last  
32 week. This will now be the frontage for this north lot.  
33 It's still a bit smaller. This is about 30,000 square  
34 feet. This one is about 50,000 square feet or a little  
35 bit over.

36 We are not asking for any setback reductions.  
37 You can see though that this irregular line, this piece  
38 of property, this little notch, belongs to the neighbor  
39 here, and it is not -- this line here is not parallel  
40 with the interior lot line. We understand that the  
41 street front setback is to be applied here, that there  
42 are front setbacks to be applied here. The rear setback  
43 on each of these lines but that interior lot lines  
44 setbacks will apply everywhere else. That's exactly the  
45 condition that's existing today. That's exactly the  
46 condition that will be existing if you approve this  
47 today.

48 The only thing this does is really take this  
49 reconfiguration and what's now an interior lot line that  
50 goes in this direction, and move it so that now Mr.  
51 Kelleher can have the advantage of two waterfront lots,  
52 each of which is going to meet the county's zoning code  
53 requirements in every aspect, lot size, dimension,  
54 everything but this access issue, and that's why we're  
55 here today.

56 CHAIRPERSON KONYK: Thank you.

57 MR. PUZZITIELLO: So the setback has nothing to  
58 do with this variance?

59 MR. SEAMAN: Correct.

60 MR. PUZZITIELLO: So we can't address that.

61 MR. SEAMAN: They meet the setbacks.

62 MS. COTTRELL: We meet the setbacks. We

1 understand, Mr. Kelleher is fully aware that this is an  
2 irregular lot but there is a building footprint which he  
3 can build. It's not as wide as he would like. But with  
4 this understanding we've withdrawn all the zoning  
5 variances and we're only asking for subdivision.

6 MR. PUZZITIELLO: And the blue line you have on  
7 there is what the actual setbacks are today?

8 MR. SEAMAN: Yeah, you can see the buildable...

9 MR. PUZZITIELLO: Setback lines on the plans.

10 MR. SEAMAN: On their proposal. The red is the  
11 lot to the south. The blue is the lot to the north.

12 MS. COTTRELL: We understand. This is what we  
13 sat down with yesterday. That is the building envelope.  
14 We're in agreement that that's the building envelope but  
15 that's the building today. That's exactly what it is  
16 today. I don't know if I need to repeat that for the  
17 record, but today whether it's two lots or one it's  
18 exactly the same. We're not asking for any deviation or  
19 relief from the setback requirements.

20 MR. PUZZITIELLO: So that's not -- and it's not  
21 part of this request?

22 MS. COTTRELL: It is not.

23 CHAIRPERSON KONYK: Okay. Thank you. Staff,  
24 do you have anything to add?

25 MR. CUFFE: Staff is recommending approval  
26 based on the standards as indicated in the staff report  
27 with one condition, and actually the condition that's in  
28 the staff report I need to update. Should I read the...

29 CHAIRPERSON KONYK: Sure, go ahead.

30 MR. CUFFE: The engineering department is  
31 recommending approval of the requested variance subject  
32 to the following condition. In order to vest the  
33 variance approval, by February 17, 2007, the property  
34 shall be legally subdivided into two lots by recordation  
35 of either an affidavit of plat waiver or subdivision plat  
36 approved in accordance with applicable requirements of  
37 Article 11, ULDC.

38 CHAIRPERSON KONYK: Okay. Agent, Anna, do you  
39 understand and agree with that?

40 MS. COTTRELL: The condition is acceptable, and  
41 we understand we can go through this process with the  
42 plat waiver because we're winding up with the same number  
43 of lots as before.

44 CHAIRPERSON KONYK: Did you have anything you  
45 wanted to add?

46 MR. TASSELL: Just that kind of to repeat that  
47 by doing this you're going to create a situation that I  
48 don't think otherwise would have resulted, and had the  
49 standards been met for the granting of a variance in this  
50 case. I don't know what the hardship is that justifies  
51 this type of a variance. The property in its current --  
52 again, I haven't heard anything about hardship. I  
53 haven't heard that that...

54 CHAIRPERSON KONYK: There isn't. That isn't a  
55 requirement.

56 MR. TASSELL: Okay.

57 CHAIRPERSON KONYK: There's seven requirements.  
58 There's seven criteria that have to either be met or not  
59 be met. If all the seven criteria are met then we have  
60 our staff which gives us a recommendation for approval.  
61 If only six of the seven criteria are met then staff has  
62 no choice but to deny approval and we have no choice but

1 to deny approval of the variance. In this instance, the  
2 staff has recommended approval based on the seven  
3 conditions being met.

4 So if you were able to demonstrate for us today  
5 that one of those seven conditions which they have met  
6 has not been met to our satisfaction then we would have  
7 no choice but to deny the variance. But we really  
8 haven't seen anything that has addressed the seven  
9 criteria. Your argument addresses something that they  
10 could do anyway.

11 MR. PUZZITIELLO: They can do that today  
12 without any approval.

13 MR. TASSELL: I know they could. I just think  
14 it's unlikely anybody with that lot would locate a house  
15 where it is definitely is now potentially going to be  
16 located, but again my client is concerned more about the  
17 eastern location of the property as opposed to the  
18 northern location of the property.

19 CHAIRPERSON KONYK: Unfortunately, the only  
20 thing that we are charged with is the seven criteria. If  
21 they're met, they qualify to receive the variance. If  
22 they're not met, they don't. So if you were able to  
23 demonstrate that the seven criteria has not been met then  
24 we could, you know, probably rule favorably for your  
25 client. But since the staff has recommended approval  
26 based on the criteria being met, the applicant has  
27 demonstrated that they met the criteria, then they're  
28 entitled to the variance as a matter of law.

29 VICE CHAIRMAN BASEHART: And beyond that also  
30 we can only consider factors that are relevant to the  
31 variance, you know, and I don't think there are any here.  
32 I understand your statement that by dividing the lots  
33 east and west -- or creating a north and south lot  
34 instead of an east and west lot there's an increased  
35 likelihood that somebody might want to move their house  
36 to the east near your property. But the fact is in the  
37 present configuration that could be done. And I don't  
38 see what that issue is at all relevant to the request for  
39 the variance that we're considering today.

40 MR. TASSELL: Could staff indicate the seven  
41 criteria that have been met and why they...

42 CHAIRPERSON KONYK: It's part of the  
43 recommendation that's part of the report that's done  
44 prior to the hearing, which everybody has an opportunity  
45 to look at prior to the hearing as well so maybe if  
46 you're ever here again...

47 MR. TASSELL: Okay.

48 MR. SEAMAN: It's sent out to the agents and  
49 they're available to anybody, and they're on the  
50 Internet.

51 CHAIRPERSON KONYK: Okay. We've heard from the  
52 applicant, we've heard from the opposition, we've heard  
53 from the staff. Is anybody prepared to make a motion on  
54 this item?

55 VICE CHAIRMAN BASEHART: Madam Chair, I'd like  
56 to make a motion. I mixed up my paperwork again.

57 CHAIRPERSON KONYK: It's BA2004-000651 -- no,  
58 no. It's SD-123. SD-123.

59 VICE CHAIRMAN BASEHART: SD-123 be approved as  
60 requested with the conditions recommended by staff.  
61 After having reviewed the staff report, I concur with the  
62 analysis and conclusions reached by the staff, and I find

1 that the criteria necessary to justify the variance in  
2 this case has been met, and that's the basis for my  
3 motion.

4 CHAIRPERSON KONYK: We have a motion by Mr.  
5 Basehart. Do we have a second?

6 MR. PUZZITIELLO: Second.

7 CHAIRPERSON KONYK: Any discussion?

8 (No response)

9 CHAIRPERSON KONYK: All those in favor?

10 BOARD MEMBERS: Aye.

11 CHAIRPERSON KONYK: Opposed?

12 (No response)

13 CHAIRPERSON KONYK: Motion carries unanimously.

14

15 BOARD OF ADJUSTMENT CONDITIONS

16

17 1. In order to vest the variance approved by November  
18 18, 2006, the property shall be legally subdivided into  
19 two (2) lots by recordation of either an Affidavit of  
20 Plat Waiver or subdivision plat, approved in accordance  
21 with applicable requirements of Article 11, ULDC.

22

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28 CHAIRPERSON KONYK: The meeting is adjourned.

29 (Whereupon, the meeting was adjourned at 10:00

30 a.m.)