

**PALM BEACH COUNTY  
ADMINISTRATIVE VARIANCE MEETING  
THURSDAY, June 17, 2010 at 9:00 a.m.**

**MINUTES OF THE MEETING**

The Staff Public Meeting held on the 1<sup>st</sup> Floor of Vista Center, 2300 N. Jog Road, West Palm Beach, FL 33411.

**ATTENDEES**

**County Staff Present:**

Mr. Alan Seaman, Principal Site Planner

Mr. Aaron Taylor, Site Planner I

Ms. Lauren Benjamin, Site Planner I

Ms. Joanne Koerner, Engineering Planner

Ms. Juanita James, Zoning Technician/Secretary

**Proof of Publication:** Mr. Seaman asked if there was confirmation of the 300 ft notices. Ms. James stated yes, the manifest was mailed on May 26, 2010. The Cronin variance manifest was mailed out on June 24, 2009 and we have the list of all applicants that received the notices.

**Changes to Agenda:** Mr. Seaman inquired if there were any changes to the agenda, Aaron and Lauren stated there was none.

**Disclosures**

The Palm Beach County Administrative Variance Type 1-B Staff Public Meeting began at 9:00 am. Mr. Seaman opened the meeting by giving a brief summary and introduction of the Type 1-B variances under the Administrative Variance Staff Public Meetings.

Mr. Seaman explained the following: "For those of you that are not familiar with how staff conducts our business, the Agenda is divided in three parts, Postponement/Withdrawals, Consent and Regular Agenda. Items on the Consent Agenda are items that have been approved by staff, the applicant agrees with the conditions and there is no opposition from the public. If there is opposition from the public, or the applicant does not agree with the conditions, an item can be re-ordered to the Regular Agenda. If an item is on the Consent Agenda and remains on the Consent Agenda, the variance is approved and the applicant is free to leave. The next part of the Agenda is the Regular Agenda, that consists of items that have been removed from Consent, or items that have opposition from the public, or the applicant does not agree with the conditions imposed by Staff. We begin with Staff's presentation, Findings of Fact, and

recommendation, followed by the owner's presentation. We will then open the public portion of the meeting and hear from the public.

Mr. Seaman stated, "If any information or documents is presented to staff at the meeting from the public or the applicant provides additional information that may affect staff's decision, a thirty day (30) postponement may be requested to allow staff the time to review the new information".

### **POSTPONEMENT ITEM(S):**

#### **AVB 2010-1090**

**Legal Ad:** Juan and Cherish Onega, owners, to allow a proposed addition to a single family dwelling to encroach into the required rear setback. LOC: 1932 E. Canal St approx. 1/3 of a mile east of Tabit Road Canal St S. in the AR Zoning District. (Control 2010-172).

**Staff:** Mr. Taylor read the Legal Ad. Mr. Seaman stated that there is a 30 day postponement which will take us to July 15, 2010. The reason for the postponement is Land Development comments with the survey.

**Public Correspondence:** None

#### **AVB 2009-2426**

**LEGAL AD:** Rose Kenney, agent, for Michael and Michelle Cronin, owners, to allow a chain link fence, columns with lights at the main driveway, gate at main driveway, columns with lights located at the 20' Access Right-of-Way, and gate located at the 20' Access R-O-W to exceed the required height limit. LOC: 5745 Pennock Point Road on the corner of Loxahatchee River Road and Pennock Point Road in the RS zoning district. (Control 2009-427).

**STAFF:** Mr. Seaman read the Legal Ad and Lauren proceeded to do the overview of the project. The owner, Michael Cronin, was present and was asked if he understood and agreed with the Development Order and one (1) Condition of approval, which he replied the he did. Ms. Benjamin proceeded with the property history. The subject property is located at 5745 Pennock Point Road on the corner of Loxahatchee River Road and Pennock Point Road in the RS Zoning District. The property owner is requesting a variance to allow a chain link fence (Detail A attached), columns with lights at the main driveway (Detail B), gate at main driveway (Detail C), columns with lights located at the 20' Access Right-of-Way (Detail D), and gate located at the 20' Access R-O-W (Detail E) to exceed the required height limit. Due to the un-level grade of the subject property there is currently a drainage issue staff required a drainage report (**Exhibit III**) to determine the measure to correct outstanding drainage issues. Staff has imposed conditions relevant to the drainage issue (outlined on the last page of the report) states in the justification statement the columns with lights at the main driveway (Detail B), were erected by a previous contractor and the owner was unaware the columns were not built in accordance with the approved building plans (**Exhibit IV**). **Columns with lights - Main Driveway** - The approved plans do not identify the 24-inch

lights above the 6 ft column. Staff suggests pursuing other options such as reduce the height of the column or relocate the location of the lights to the front side of the column. This would require no variance. Therefore staff does not support the applicant's variance request to allow the existing columns with lights to exceed the allowable height in the front setback. **Gate – Main Driveway** - The gate located at the main driveway was erected by a previous contractor and the owner was unaware the contractor did not apply for building permits prior to installation of the gate. Staff suggests pursuing other options such as reducing the height of the gate. Therefore staff does not support the applicant's variance request to allow the existing gate to exceed the allowable height in the front setback. **Columns with lights - 20' Access Right-of-Way** - Mr. Cronin states in the justification statement the columns with lights located at the 20' Access R-O-W, were erected by a previous resident a few houses down from the owner of the subject property who had ownership interest in the private R-O-W. Mr. Cronin was unaware the previous resident did not apply for building permits. Staff suggests pursuing other options such as reducing the height of the column. This would require no variance. Therefore staff does not support the applicant's variance request to allow the existing columns with lights to exceed the allowable height in the front setback. **Gate - 20' Access R-O-W** - The gate located at the 20' Access R-O-W, was erected by a previous resident a few houses down from the subject property who had ownership interest in the private R-O-W. The Mr. Cronin was unaware the previous resident did not apply building permits. Staff suggests pursuing other options such as reducing the height of the gate. Therefore staff does not support the applicant's variance request to allow the existing gate to exceed the allowable height in the front setback. **Chain-link fence – Front Yard** - There are unique circumstances specific to the applicant's lot that justify granting the applicant's variance request to allow the chain link fence to exceed 4 ft in the front yard. The subject property is an irregular shaped corner lot. There is an existing fence which ranges in height from 4 ft 5 inches to 5 ft 6 inches due to the unlevel grade of the lot. Mr. Cronin planted confederate jasmine; which has grown to the height of the fence and will mitigate any visual impact the existing chain link fence may have on the surrounding properties. Any removal or reduction in size of the fence would destroy the maturity of the existing landscaping. The existing height of the chain-link fence with interlaced confederate jasmine screens headlights from cars turning onto Pennock Point Rd. Therefore staff supports the applicant's variance request to allow the existing chain-link fence to exceed the allowable height in the front yard. Therefore, in accordance with the seven criteria, staff recommends denial in part for the columns with lights - Main Driveway, Gate - Main Driveway, Columns with lights - Access Easement, and gate - Access Easement and approval in part for the chain link fence with conditions.

**Public Correspondence:** There was 1 letter in opposition of the variance with regards to aesthetics. There were 2 emails in opposition with regards to the drainage issues.

**Public:** Nellie King and Carl Shafer – Ms. King stated that there is a chronology to this issue that goes beyond the subject matter in staff report before you. This had to do with a flooding issue which Mrs. Koerner is well aware of; everyone impacted by the water has made their thoughts known to the County. What happened is a result of concerns of whether we had a property that was habitable or able to be resided in is that the County came out and made compliance or sited Mr. Cronin because of his recent building project. The emails that were referenced as far as who oppose the variance,

you probably referring to the communications I made with the County. I don't oppose Mr. Cronin's request for variances, what I opposed is the fact that there were miscommunications from the County all along about the drainage. It was kind of like the water issue was being tied up with this variance issue having to do with the improvements on the front of the properties, I don't think that is right. I think that as property owners that if we can't get into our house because there's water or if I have to take my shoes off, and I am an Attorney, and I have to take my pants off to get in the front of my house, that's apples this other issue is oranges. Because the County though said to Mr. Cronin, and we were at numerous meetings where he was basically told that he needed to fix the drainage before the variance issue would be addressed. That's why we got into this mixed up discussion; from Mrs. Koerner who came in the room earlier we had very heated discussions even today. I've known Mr. Aniano who is Mr. Cronin's step father for a number of years and we are not getting along right now only because of the mixed messages from the County. This is what I wish to state as far as the gates, the columns, the lights, we don't oppose the variance on these issues, what we oppose is how the County has gone about getting to today. How I would suggest this be resolved; let me first address what is important to us; if you look at the history of these properties, I am sure there are maps in your packets, that is a 20 foot roadway that all of the property owners need to get to their homes and also for use and enjoyment of the river. The properties stack one by one down the roadway. The columns in particular have been there for years. We told the County this without really getting any feedback. I found a survey from 1995 which I have certified copies to present to you, that show the columns there. When I talked to Rose Kenney about this wondering how this could happen because at first the County suggested that there was no permit for the pavers in the driveway and then they found the permit; I asked why would Mr. DiMaria would put pavers in and seek a permit but not for these other improvements. I believe there was a permit; I think the permit was from years ago. My parents who are two of the property owners in there have been there since the late 50's, the columns if improved upon were initially there in the 70's cause I remember them. I don't think that the columns in aspect of the 20 foot R-O-W should be included in any of this. I don't think Mr. Cronin should be sighted for that at all. I think it is an issue that either the columns are so old that they didn't need a permit or if the permit was requested it could've been from any one of those five property owners. I found paper work that we all five financially contributed to the pavers and some of those other things. It might have been Mr. Pirelli who initially owned Mr. Cronin's property, it could've been a Dr. Carr who initially owned the property on the river then it was purchased by Al DiMaria that now the Bickowitz own the property. What I am suggesting to you is that we might have gone down a path; pardon the pun, for no good reason. I will show you the survey that actually shows the columns there. So I don't think from that aspect that Mr. Cronin should be sighted for that variance, in effect I would also suggest that as property owners, and this easement is deeded to us, that we actually have responsibility and probably could legally apply for the variance ourselves. I think these are easy fixes but my thing is that I don't know that we even have to make the fix if this was already predated or grandfathered in. When I did the research on this you don't need a permit

to do stucco repair, so that can be another option to what has happened here. These surveys might have even predated 1995. Mrs. Kenny indicated that there was a time period when documents were lost perhaps through conversion. Knowing the reputation of the number of parties who lived on this road that they wouldn't have applied for a permit on one aspect of the project but not the other. Moving to the staff recommendations I respectfully disagree with what was itemized in this report as far as whether the improvements, the gates and columns in particular, across that 20 foot R-O-W are necessary. I have another document to share with you which came from a neighbor that is active in the neighborhood on politics who synopsized the crime that was happening on our street and this comes from Art Samuels from November 12, 2009. One of the reasons why those gates are absolutely necessary to this area is the crime that has occurred. You've seen the types of homes that are on that street, we've been there since the late 50's early 60's and we have seen grave changes since we've been there. There was a burglary on November 9, and November 10 also described as theft/larceny there were three other burglaries in October, this gentleman happens to be a jewelry store owner so he had particular concerns about that, he had contact with the Sheriff's departments office to step up the patrols on that roadway. The gates are absolutely necessary for that reason. More importantly from a public safety standpoint those gates are necessary to keep the general public from toddling down to the river because they treat it like a park. I have observed two people launch their boats on the boat ramp that we've had to chase off and call the police. Children come down there on their bicycles; it's absolutely what they call "attractive nuisance". If you have a child in the summertime who isn't supervised they are going to end up on that dock and may fall into the river. Along with boats and children and people having picnics, even worse there are people drinking carousing and carrying on, it is just not a safe area. If you were to drive along that entire roadway most of the properties are gated and there's a reason. I don't think the County wants the responsibility of hearing this after the fact if somebody comes down there because we're at work and it is really not our job, especially when we've tried to keep out the public, to manage this on a daily basis. I also wish to reiterate that I think that this has come to the point with our neighbors that we did not want it to come to but in order to address an issue I told you that I believe is completely separate. The County went out and said "I don't know about that but I can tell you what I do see" and that probably shouldn't have happened either because I think that was disingenuous from whoever went out there to inspect the property and the core issue got diverted and now it's become a mess. So I am requesting that the variances in total for the reasons stated be granted in opposition of what the staff requested. Mr. Seaman asked if she was suggesting that the variances be approved. Yes we do not oppose the variances those are not an issue, what bothered us was the drainage. The drainage issue as a side note are still untenable, we ask the County to take the drainage seriously because our property has changed. The staffs recommendations should be reconsidered and the variances for the gate, columns, and chain-link fence should be approved.

**Anthony Aniano** 5695 Pennock Point Rd. which is the property that abuts this easement (adjacent – right side) that is being discussed today – I am Mr. Cronin’s step father but I am also here because Art Samuels who couldn’t make it, the fellow who wrote this letter who is our political liaison in the area. I bought the property 10 years ago and everything that Ms. King said I agree with 100%. We did have vandalism issues down the road many times when my wife and I came home there were kids on our dock which scares us because of liability issues. There’s propensity for a make-out area down a dark road. When Al DiMaria put the gates up we were all very pleased as neighbors because it is a very dark area that kids could get hurt in. I want to talk about the lights on the columns in the easement because that is what the County has problems with. There are no lights on Pennock Point Road. If you go there even today and you take pictures of the road you will see burn-out marks on the road. Every Friday and Saturday night a bunch of kids tear up my lawn and tear up the street. Twice I have replaced the lights in front of my home, and I’ve had the sod replaced. We were told 10 years ago the County was thinking about putting some lights in the area. I don’t know if that is still on the books or if it will ever be done or not. So what happened was Art Samuels, myself, Al DiMarino we all put these small lights 24 or 18 inch lights on top of the columns to light the area up at night for security because we all have little mini cameras that keep a recorded visual of Pennock Point road. So all of us used our money because there are no County lights on the road. The reason that we put the lights on top of the columns is because we need to light up the street. Please do not take us having the lights on the columns away from us because then we go back to what it was before. I strongly suggest that you leave that gate in place. As for the size of the gate, it is one of the smaller gates on Pennock Point. There is only one patrol that goes from Lake Worth to North County and it takes no less than an hour response time for the police to get there. I request that these variances be approved because the neighborhood has no objections to them.

Mr. Seaman asked if there were any one else from the Public who would like to speak on this item, there were none. He stated that he would like to make some comments to address some of your concerns and then if any other staff has anything to say they can speak up too.

Mr. Seaman started by saying that the County doesn’t discount in any way your concerns about the competence of the drainage issue that you have and certainly I understand your concern and your frustration over that situation this particular venue is specifically addressing a variance issue of columns, gates and a fence which your issue once again that isn’t discounted is not part of this petition. That being said I’m sure that there are other areas for you to continue to pursue that concern that you have regarding drainage. For Mrs. King’s issue about wanting to support the columns being there and again the safety issue in no way do we discount the safety of the public and their homes and we’re not suggesting that the columns and gates be removed we are simply saying that they should meet what the Unified Land Development Code requires to be a maximum of 6 feet which is either a 6 foot high column or column and light are not to

exceed 6 feet. So we are not suggesting that you remove them and leave yourselves open to perhaps vandalism or other situations that are not acceptable to you all and I'm also looking at the survey that you gave us from 1995 that shows the column and I had one of our Planners go get our code book of 1995 which was the effective code at that time and the height of columns even when this was put in was always 6 feet. So, if they were installed without permits it would be illegally installed if they were installed with permits, once again it wasn't installed meeting the current Code and we would have to once it is brought to our attention suggest that he get a variance or it also be reduced to the Code height of the time. The actual seven criteria that the staff looked at in order to determine our justification for supporting or denying the 5 variances are the criteria that we need to address whether we're correct or wrong or there is sufficient information to change those criteria to a point where staff might reconsider their approval or denial in part of the 5 variances. I was hoping that we could find that the columns were allowed at a higher height back in 1995 but I don't see that here to help you. So I am not at this predictive point seeing information that will necessarily change staffs opinion. I believe Mr. Aniano also expressed the security issues and once again I need to be sure you understand that we are not asking for you to remove the gates we're simply asking you to reduce the gate height and the column height to meet our Code. That is my portion of responding to your concerns and I'm going to look at any other staff if they want to add anything to this. Staff has nothing to add. Once again we don't discount the drainage issue it's not part of this Agenda we are only looking at the seven criteria and whether they support or not support the 5 variances. Normally we would say that you had your participation and discussion but we have nothing else on the Agenda after you so if you want to come back up and express some more concerns feel free to do that.

Ms. King – What I would indicate about that survey is what I told you regarding those columns the 1995 survey is the oldest that I happened to have in my file, which was the survey utilized when we bought the house. That doesn't mean that the columns went in in 1995. So maybe what we need to do is look for the oldest survey we can find for those properties and I'll bet they will still be on there. I remember seeing them there in the 1970's so that document is just the oldest document that I had on hand I don't think the panel should discount the age of the columns just based on the date of the document we have here.

Mr. Seaman – If you would like to take a short postponement I am willing to go and get the Code of 1970 and look at that also, I don't think that we've ever allowed the columns to be higher than 6 feet and I've been here for about 15 years.

Ms. King – but in 1970 did you need a permit to put in structure?

Mr. Seaman – a structure, yes. I am willing to go and look at the 1970 Code if you would like me to do that for you because I know this is an important issue, if you want to specify the year that you think you have a survey otherwise I don't have anything...inaudible.

Ms. King – that was an interesting property historically because the lots were Government owned lots, it was very confusing even how they were numbered on there, and what I'm suggesting is just what we seen over the years that at some point I would think you would be grandfathered in.

Mr. Seaman – we seem to be carrying on a debate and I didn't want us to have to do that. You are only grandfathered in if you are considered nonconforming which means that you constructed something at a time when the Code allowed it to be a certain height and then the Code changes subsequent years later and you do not meet that height you are considered nonconforming, and then yes you are grandfathered in. That is what I was trying to establish for you but I don't see the Code giving us that relief for you and I know that we've never had columns allowed more than 6 feet so I'm not seeing any information that's starting to make me want to change the seven criteria.

Ms. King – I understand what you're saying, I could see if this was an issue where the columns were very tall but we're no that far from actually the height requirement so the reason that we are opposing any reduction in the height of the columns and the gate is the cost, those are custom welded gates, and to just say we are going to take those down and find somebody to lop off a section of them just doesn't seem reasonable. The cost is going to be the big issue with coming into Code compliance. Whereas again, I agree with what Mr. Aniano said that if you go down that road it's kind of in conformance with the neighborhood.

Mr. Seaman – that maybe something that needs to be looked into also. However, we are addressing the columns on Mr. Cronin's property...

Ms. King – I'm just saying the staff in their report use language like what was particular to that area, what I'm indicating is that it is particular to that area and in conformance with what is going on in that area for whatever reason.

Mr. Seaman – and probably some of that we need to look into...were they permitted correctly, did they get permits...that maybe something that would need to be looked into in the future but once again they are not the subject of this particular variance. I don't know maybe they were permitted and maybe they weren't but that's something that we would look into at a later date.

Ms. King – If there's additional documentation to submit, is your decision final or is there a...I know Rose Kenney did a lot of work to try to find out what was in these files and then it got to the point where we wondered why one property owner would pull a permit and another didn't that perhaps the documents did get during that time period, if we were talking 80's area. Because I know there was a problem with the County records. Can the County 100% state that those permits weren't destroyed. If there was a permit that the County didn't actually have responsibility for loss of the document.



Mr. Seaman – we try to keep the documents here but also I the property owner sometimes supplies the document to prove something that we can't.

Ms. King – he is deceased...

Mr. Seaman – we're not hearing anything different to change our justification/seven criteria. I hear that you believe there may be some additional documents...I do know that we've postponed this for 9 months awaiting resolution...I know we postponed it another 60 days resolution... I know we postponed it again for another 30 days pending resolution of the drainage issue on Mr. Cronin's property. I believe that staff has certainly provided a substantial amount of time to come up with information that would suggest other than what we concluded today at this meeting.

Ms. King – I agree that the files have been examined closely by the Commission as well as the property owner's. The property owner's problem is that if the original (permit) for the columns was there and the County in its conversion cannot account for it that's a whole different story.

Mr. Seaman – let me explain again. If it was permitted by an earlier Code it still didn't allow it to be exceeding 6 feet which I believe these are 9 feet...then it was done illegally

Ms. King – even if it was back in the 60's?

Mr. Seaman – well we looked for the Code. If the Code back in the 60's said that you can have columns that are 10 feet high you'd be fine because you would be vested. There is no Code that corresponds to the height in the timeframe that you might be suggesting. If this survey had supplied information and it matched the Code then we would probably consider yes that was vested and it would be taken of the staff report and Agenda but I'm not seeing anything that would change that right now. Is there anyone else in the audience who would like to speak for or against this Petition?

Mr. Aniano – what are Michael's options?

Mr. Seaman – it's his option to choose if he wants to remove them completely, or reduce the column to 6 feet and place the light it in front of it or keep the light on top and lower the column so the combined total height is 6 feet...either way the column plus light cannot exceed the 6 feet in height. The conditions are requiring him to do this within 30 days.

I think that will conclude the comment section and Lauren if you want to continue with your report...I don't think that there was anything presented to us, unless you all see otherwise, that would change our recommendation to approve in part and deny in part

the 5 variances. Anyone? Seeing none...Mr. Cronin could you please step back up to the podium? Please state your name for the record.

Mr. Cronin – Michael Cronin

Mr. Seaman – Since there is nothing for us to consider changing our opinion I need to ask you

Mr. Cronin, are you aware of the Development Order and the 4 Conditions of Approval on your petition? They are the same Conditions that we discussed in our meeting with you.

Mr. Cronin – Yes.

Mr. Seaman – Thank you. Then as permitted by Article 2 by the ULDC Staff approves of variance petition with the 4 conditions as recommended by the staff report and the seven criteria.

Staff Approved in part the four 4 foot chain-link fence to be five 5 foot and we denied in part the gate in front of Mr. Cronin's home and the gate at the private easement as well as the height of both gates flanking Mr. Cronin's driveway and flanking the private easement, those have been denied and the choices are to remove; reduce the height to not exceed common lamp of 6 feet or lamp on the façade of the column.

Mr. Cronin – the overall height for the gates themselves, is it indicated in the staff report?

Mr. Seaman – the gates are 6 feet.

Mr. Cronin – the gates cannot exceed 6 feet

Mr. Seaman – correct the gate cannot exceed 6 feet from the elevation

Mr. Cronin – like we talked the other day the gates cannot exceed six feet from ground level the gate can start 3 feet off the ground but still cannot exceed 6 feet from the elevation, It is not the overall structure of the gate it is where the height of the gate ends.

Mrs. Helfant – I just want to clarify on the record that the two variances not approved based on the seven criteria and also that the staff report is made part of the record as well.

Mr. Cronin – I understand they weren't approved but they are going to get altered

Mr. Seaman – I want to read into record that you have approval in part and denial in part. The denial in part and the approval in part, the denial in part is based on not meeting the seven criteria, the approvals are based on yes you met the seven criteria and that's what Mrs. Helfant wants to be sure is in the record and the fact that all of the information we have been discussing and the staff report with the seven criteria are part of the record.

Mr. Seaman – if you would like outside of the pervious meeting you could provide us with a sketch of what you think we are suggesting/requiring and we could confirm then before you go forward that you understand what is required. There will be a letter for you, we will email it to you.

Meeting Adjourned