

MINUTES OF
PALM BEACH COUNTY
BOARD OF ADJUSTMENT MEETING
AUGUST 19, 1999
HELD AT:
100 AUSTRALIAN AVENUE
WEST PALM BEACH, FLORIDA 33406
TIME:
9:00 - 9:48 O'CLOCK A.M.

APPEARANCES BY BOARD MEMBERS:

CHELLE KONYK, CHAIR
GLENN WICHINSKY
RAYMOND PUZZITIELLO
STEVEN RUBIN
NANCY CARDONE

APPEARANCES BY STAFF:

MR. JON MacGILLIS
MS. JOYCE CAI
MR. DAVID CUFFE
MS. BEEBE, COUNTY ATTORNEY

I N D E X

- BofA 99000061 Kilday & Assoc., agent for Herbert F. Kahlert as Co-Trustee, to allow an increase in the number of required off-street parking spaces permitted in a MUPD. LOC: SW corner of Boynton Beach Boulevard and Enterprise Center Boulevard. Shoppes of New Albany MUPD at Boynton Beach Enterprise Center, in the MUPD zoning district. (Pet. 98-073) PG. 7
- BofA 99000062 John P. and Lisa A. Stauffer, to allow a proposed addition to an existing SFD to encroach into the required rear setback. LOC: 6480 Spartina Cir. approximately .17 miles east and 400' south of intersection of Loxahatchee River Road. and County Line Rd., within the Loxahatchee Pointe subdivision, in the RS zoning district. PG. 12
- BofA 99000063 Robert A. Bentz, agent for Herbert F. Kahlert, as Co-Trustee, to allow an increase in the required number of off street parking spaces for an MUPD. LOC: SW intersection of Woolbright and Jog Rd., in the AR zoning district within the Woolbright & Jog MUPD. (Pet. 99-035) PG. 16
- BofA 99000064 H.P. Tompkins, Jr., agent for Strata Development, Inc., to allow for a reduction in the required front setback for 34 proposed SFD units. LOC: Vacant parcel, located on N. Side of Coconut Lane and approximately 665' E. of the intersection of Military Trail and Coconut Lane, in the RS zoning district. (Pet. 98-030) PG. 20
- BofA 99000065 Louis A. Gaeta, Jr., agent for Nicholas S. Smith, to allow a reduction in the required right-of-way buffer along Northlake Blvd. and reduce the East property line landscape

buffer and to eliminate the required landscape along the South property line. LOC: 4074 Northlake Boulevard, SW corner of I-95 and Northlake Blvd., within the unrecorded Kramer subdivision, in the CG-SE zoning district. (Pet. 81-193) PG. 24

BofA 9900066

Lance Courtemanche, agent for Mark Parker, to allow a proposed SFD to encroach into the required front setback. LOC: Vacant lot 1A on Woodside Trail, within the Woodside Estates, approximately 1 mile E of Loxahatchee River Rd. and .17 miles N of Center St., in the RS zoning district. PG. 29

CHAIR PERSON KONYK: We're going to call the meeting to order.
I'd like to call to order the August 19, 1999, Board of Adjustment meeting and start with the roll call and declaration of quorum.

MS. MOODY: Mr. Bob Basehart?

MR. BASEHART: (No response.)

MS. MOODY: Mr. Joseph Jacobs?

MR. JACOBS: (No response.)

MS. MOODY: Ms. Nancy Cardone?

MS. CARDONE: (No response.)

MS. MOODY: Mr. Raymond Puzzitiello?

MR. PUZZITIELLO: Here.

MS. MOODY: Mr. Glenn Wichinsky?

MR. WICHINSKY: Here.

MS. MOODY: Mr. Stanley Misroch?

MR. MISROCH: Here.

MS. MOODY: Mr. Steven Rubin?

MR. RUBIN: Here.

MS. MOODY: And Ms. Chelle Konyk?

CHAIR PERSON KONYK: Here.

I have before me proof of publication in the Palm Beach Post in the issues of August 1, 1999.

The next item on the agenda is remarks of the Chairman.

For those of you who are not familiar with how the Board conducts its business, the agenda is divided into two parts, the consent agenda and the regular agenda. Items on the consent agenda are items that have been recommended for approval by staff either with or without conditions. The applicant agrees with the conditions. There's no opposition from the public, and the Board members have read the staff report and do not feel that the item warrants a full hearing. If your item remains on the consent agenda, you'll be free to leave after the Board votes on the consent agenda.

If there is opposition from the public or the applicant does not agree with the conditions or a board member feels the item warrants a full hearing, your item will be reordered to the regular agenda. Items on the regular agenda are items that have either been recommended for denial by staff, the applicant does not agree with the conditions, there is opposition from the public or a Board member feels the item warrants a full hearing. Your item will be introduced by the staff. The applicant will have an opportunity to give their presentation. After that, we'll hear from the staff. At this point the public portion of the hearing will begin. After the public has an opportunity to speak, the public portion will then be closed.

At this point the Board members will have an opportunity to ask questions of either the staff or the applicant and then vote on the item.

Next item on the agenda is the approval of the minutes. Everybody received a copy of the minutes of the last meeting. Does somebody have a motion for approval? Or does somebody have any corrections or additions?

MR. WICHINSKY: Move for approval.

CHAIR PERSON KONYK: Motion by Mr. Wichinsky.

MR. RUBIN: Second.

CHAIR PERSON KONYK: Second by Mr. Rubin.

All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: Motion carries unanimously.

Next item is remarks of the zoning director.

MR. MacGILLIS: No.

CHAIR PERSON KONYK: Are there any changes to the agenda?

MR. MacGILLIS: No.

CHAIR PERSON KONYK: I'd like the record to reflect that Ms. Cardone has arrived at the meeting.

And we'll begin with the postponements.

BofA 99-00009, request for a sixty-day postponement. Dora Mancuso.

Is the applicant present?

MR. MacGILLIS: Actually, that will be a thirty-day postponement. This item will be able to move forward September 16. We've contacted the applicant because it's been postponed for numerous months, but the applicant will move forward with it. So that will be time certain for the September 16, 1999, hearing.

We need to vote on that because it's the third postponement.

MS. KONYK: Okay.

Does anybody have any discussion on this item, or is anybody prepared to make a motion for the approval or denial of the thirty-day postponement?

MR. WICHINSKY: Is staff recommending approval?

MR. MacGILLIS: (Nods head.)

MR. PUZZITIELLO: Motion to approve the thirty-day postponement to September 16th of BofA 99-00009.

CHAIR PERSON KONYK: Motion by Mr. Puzzitiello.

MR WICHINSKY: Second.

CHAIR PERSON KONYK: Second by Mr. Wichinsky.

Any discussion?

MR. RUBIN: Are there any members of the public who are here on that item?

CHAIR PERSON KONYK: Are there any members of the public that are here on this item?

(No response.)

CHAIR PERSON KONYK: No?

We have a motion and a second.

All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: Opposed?

(No response.)

CHAIR PERSON KONYK: Motion carries unanimously.

BofA 99-00009 will be postponed to time certain September 16, 1999.

Item Board of Adjustment BofAAA – what's that again?

MR. MacGILLIS: Board of Adjustment appeal -- appeal of the zoning director's interpretation --

CHAIR PERSON KONYK: Oh, okay. Appeal of administrative -- they've requested a thirty-day postponement to September 16th. Appeal of the zoning directors interpretation to suspend building permit B97020061 for a new relocated billboard.

Is the applicant present?

MR. MacGILLIS: He's provided -- Greg Kino's the attorney representing the applicant. He submitted a letter two weeks ago which the zoning director accepted. It's been ongoing negotiation with County Attorney's Office on this billboard.

CHAIR PERSON KONYK: So this is by right then?

MR. MacGILLIS: No. You're going to have to vote on it.

CHAIR PERSON KONYK: We're going to have to vote on it?

MR. MacGILLIS: This has been about the fourth postponement on this item.

CHAIR PERSON KONYK: Does the staff recommend or support this postponement?

MR. MacGILLIS: We -- yes. The zoning director supports --

CHAIR PERSON KONYK: The zoning director. Okay.

MR MacGILLIS: -- the postponement.

CHAIR PERSON KONYK: Is anybody prepared to make a motion to support the thirty-day postponement?

MR. MISROCH: So moved.

CHAIR PERSON KONYK: Motion by Mr. Misroch.

MR. PUZZITIELLO: Second.

CHAIR PERSON KONYK: Second by Mr. Puzzitiello.

All those in favor?
(Panel indicates aye.)

CHAIR PERSON KONYK: Motion carries unanimously. BAAA 9900019 will be postponed to time certain September 16, 1999.

BofA 99-00059 requests a thirty-day postponement. Herford Associates, Limited Partnership, to allow a reduction in the required side corner setback for an addition to an existing structure, et cetera.

Is the applicant present?
(No response.)

CHAIR PERSON KONYK: Is this by right or by --

MR. MacGILLIS: Yes.

CHAIR PERSON KONYK: Okay.

MR. MacGILLIS: This is the first request.

CHAIR PERSON KONYK: Okay. So this is the first request, and we don't need to vote on that. That's approved.

MS. KRABER: Well, wish I could. For the record, Karen Kraber for Gee & Jensen. Actually, we would like to request that the Board please give us a sixty-day postponement. We're being required to dedicate some right-of-way, and the grocery store in the shopping center is pleased to do that, but the out parcel is not being cooperative. So we need to work out the details with the county engineer's offices as to how we can do the dedication on our own.

CHAIR PERSON KONYK: So the request, then, is for time certain October 21, 1999, BofA 99-00059.

Is that also by right then?

MR. MacGILLIS: Yes.

CHAIR PERSON KONYK: Okay. So your item will be postponed to October 21, 1999.

Request ninety-day postponement to November 18, 1999, BofA 99-00060, Land Boathouse LC/Wilbur and Eva Lane, to allow for the elimination of the required fifteen-foot landscape right-of-way buffer along Beach Road.

MR. MacGILLIS: We received a letter five days prior to the hearing from the applicant, Rose Kinney. I can't say the firm she's with. She's the applicant for the Land Boathouse petitioner. This item, apparently, once we took the application in, we discovered that the actual boathouse parcel appeared to have been separated from the multi-family parcel. Therefore, there's -- the applicants had to go back in and tie this parcel back to the multi-family parcel. Therefore, it's going to take at least ninety days through legal paperwork to correct it.

Staff is supporting the November 18, 1999 --

CHAIR PERSON KONYK: Is it by right?

Mr. MacGILLIS: Yes.

CHAIR PERSON KONYK: Okay. So we don't need to vote on that. So BofA 99-00060 will be postponed to November 18, 1999.

On the consent agenda, BofA 99-00061, Kilday and Associates, agent for Herbert

Kahlert as co-trustee, to allow an increase in the number of required off-street parking spaces permitted in an MUPD.

Is the applicant present?

MR. SCHMIDT: For the record, John Schmidt with Kilday and Associates. We agree to the recommended conditions.

CHAIR PERSON KONYK: You agree with the five conditions that staff has recommended?

MR. SCHMIDT: Yes.

CHAIR PERSON KONYK: Okay. Is there any member of the public to speak on this item.

(No response.)

CHAIR PERSON KONYK: Any opposition from a Board member?

(No response.)

CHAIR PERSON KONYK: Any letters?

MR. MacGILLIS: No letters.

CHAIR PERSON KONYK: Seeing none, this item will remain on the consent.

STAFF RECOMMENDATIONS

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

ANALYSIS OF ARTICLE 5, SECTION 5.7.E VARIANCE STANDARDS

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

YES. This 6.28 acre MUPD parcel is located at the southwest corner of Boynton Beach Boulevard and Enterprise Center Boulevard. The subject parcel is a portion of an overall 61.04 acre tract of land that has a land use designation rezoning to MUPD, by the Board of County Commission (BCC) on March 29, 1999, Petition 98-073(1). The current controlling site plan for this development is Exhibit 4 for PDD98-073(1), which was certified by the Development (DRC) on May 12, 1999. The site is approved for 19,200 square feet of retail.

The proposed site plan indicates three freestanding retail structures:

Retail Building #1	5,850 square feet
Retail Building #2	12,390 square feet
Retail Building #3	960 square feet

The site has 869 feet of frontage along Boynton Beach Boulevard and a depth of 289. 75 feet along the proposed Enterprise Center Blvd. Access to the site will be off Enterprise Center Blvd. A 27 foot LWDD canal later 24 (1.49 acres) runs parallel to the north property line. There is also a cul-de-sac along the south central portion of the site that provides access to the other parcels within this development.

The ULDC requires parking to be calculated on the gross square footage and to be limited to the minimum number of spaces. This will encourage the developer to pave less and to provide more landscaping on the site to make it more pedestrian friendly. However, the limited size of this development, six acres and the fact 1.49 acres is taken by the LWDD canal easement there

granting of a variance to provide 48 spaces will not circumvent the intent of this code provision. There will be adequate open space and parking on this site to satisfy the general intent of the code and limit the number of paved parking spaces.

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

NO. This is not a self created variance. The applicant is requesting to provide 48 more parking spaces than permitted by code. Typically a developer requests a variance to provide less parking than permitted by code. However, in this particular situation the applicant is proposing more parking than permitted by code. The applicant's client has tenants that have reviewed the site plan and are not comfortable with the 96 parking spaces being provided on site. Several tenants that are looking to locate their business to this site are permitted uses (restaurants), in a MUPD. They are concerned that if there is not adequate parking, customers will either not return to the business or drive by because of the lack of parking or on-site parking conflicts between the two businesses. If the variance is granted the general intent of the MUPD parking provision will be satisfied. Limiting the parking to the minimum required is to ensure a site is not maximized with parking. It is to encourage more open space and landscaping rather than paving for underutilized parking spaces. However, MUPD range in size from a minimum of three acres to hundreds of acres (Wellington Mall), and when interesting the general intent of this code provision the size and proposed uses for the project must be taken into consideration. The smaller the MUPD lot size, the less to be paved it is needed to achieve the minimum square footage for the structures and to meet other on-site requirements. In this particular case, the applicant has potential tenants who have a clear understanding of how many parking spaces they need in order for their business to function and prosper. The request to provide 48 additional off-street parking spaces is reasonable and justified as being unique to this site and uses.

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

NO. The MUPD parking provisions are general and cannot address each specific project that is proposed. The general intent of the parking provisions is to encourage only parking that will be utilized based on the established standards. These standards based on the specific uses and square footage. In this particular situation the code requires 1 space for every 200 square feet of gross floor area. The assumption is made that all retail uses will generate the same parking demands. However, in this particular situation the applicant's client has potential tenants that are sit down restaurants that typically generate more parking than general retail uses. The applicant is requesting the Board approve 48 more parking spaces than permitted for this MUPD. The extra parking spaces are shown on the proposed site plan as being located along the south and west side of building #2. The total amount of paving created by the additional parking is 9,600 square feet (200 square feet by 48 spaces). However, there are adequate buffers (25 feet along south property line) and open space (to the west of proposed parking spaces) that will mitigate the additional spaces.

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

YES. The general intent of the ULDC parking provisions, Article 7.2, is to ensure adequate parking is provided for the proposed uses. However, since this project is zoned MUPD, there are

more restrictive parking provisions. A MUPD has to be a minimum of 3 acres, while there is no maximum size on the development. The MUPD general provisions is to encourage a pedestrian friendly environment for shopping. By limiting parking to the minimum number it is anticipated the developer will be encouraged to provide for more pedestrian amenities (walkways, plaza, landscaping, open spaces, etc). If there was no limit on the parking, as was the case until the adoption of the ULDC MUPD provisions in 1992, a developer could pave as much of the site as possible, provided adequate on-site drainage and landscaping requirements were satisfied. Therefore, in this particular situation this site is 6 acres of which 1.49 acres is a LWDD easement. The LWDD easement which is 75 feet wide and 869 feet long along with the required 25 foot perimeter landscape buffers and on-site landscaping this site will meet the general intent of the code to limit parking to that necessary for the proposed uses.

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

YES. The applicant is requesting to provide 48 off street parking spaces more than permitted by the MUPD parking provisions. This will ensure that the future tenants in the three freestanding retail buildings will have adequate parking for their future customers. The 48 spaces will be located in close proximity to building #2 which is 12,390 square feet. On a MUPD site of this size and layout the parking is typically located in front of the structures and is shared by customers of the various uses. The applicant states their client has potential tenants who are interested in establishing a restaurant on the site, however, are well aware of how important sufficient parking is to their business. Therefore, after careful review of the site plan the future tenants are not convinced that the required 96 off street parking spaces for the 19,200 square feet of retail is not adequate. They are convinced that there will be future parking conflicts during peak user times.

Therefore, the granting of this parking variance to provide 48 spaces more than permitted by code is a reasonable request when considered in the context of the general intent of the code, the site constraints and proposed use of the site.

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

YES. This is a unique project in that it is part of a large scale multiple use (LSMU) which is 61.04 acres. This 6 acre tract, which is known as New Albany MUPD, is only one parcel within this project. It is limited in terms of size and square footage. The general intent of the MUPD parking will be met, if this variance is approved. The site will not have any additional spaces that will not be utilized on a regular daily basis. This is not a 50 acre or more MUPD such as the Boynton Mall, Town Center Mall, Gardens Mall or Wellington Mall, which are all MUPDs. The MUPD parking provision limiting parking to the minimum necessary can be appreciated on projects greater than 10 acres. Since it allows for more open space, plazas and landscaping that would otherwise be paved. On large MUPD sites one could have several acres of parking that is not utilized on a regular basis, however, a tenant might have corporate standards requiring parking to be shown on the site plan and constructed. With the provision the County can limit the amount of pavement on a site and encourage more user friendly uses for that land area.

In this particular situation, only 9,600 square feet of additional paving will result if the 48 space variance is approved. Considering the 1.49 acres of the LWDD and the 25 foot landscape buffers around the perimeter of the site the general intent of the code will be met.

7. THE GRANT OF THE VARIANCE WILL BE INJURIOUS TO THE AREA INVOLVED OR

OTHERWISE DETRIMENTAL TO THE PUBLIC WELFARE:

NO. This site will support several retail tenants. The applicant's client is concerned that the 96 parking spaces required by PBC zoning code is not adequate to meet the future tenant and customers needs. The tenant has a very clear understanding of how their business functions and one of the most important criteria they consider when looking at a site to locate their business is the available parking. If there is not adequate parking and they are proposing a use such as a restaurant, they will carefully consider whether or not to locate on a site where parking conflicts could result once the use is established.

The additional 48 parking spaces proposed will be located along building #2 and be utilized by the proposed restaurant use. The extra parking will not significantly reduce the overall open space on this site. The additional paved surface area will be 9,600 square feet. This 6 acre site is compact and developed to support uses that have parking located in close proximity to the entrance to the building. All required landscaping will be installed on-site which will reduce the impact of the extra parking spaces. Staff is recommending a condition of approval that the applicant install an additional 2,000 square feet of landscaping around the foundation of the buildings. This would be 20% of the paved area (9,600 X .20), which would improve the appearance of the site while adding extra shade for the pedestrians using the retail business.

ENGINEERING COMMENTS

No comments (ENG)

ZONING CONDITIONS

1. The property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the site plan presented to the Board, simultaneously with the building permit application. (BLDG PERMIT:BLDG)
2. By November 19, 1999, the applicant shall ensure the BA conditions are shown on the certified site plan. (DATE:MONITORING-ZONING-DRC)
3. This parking variance shall be limited to 48 additional spaces. The final site plan shall be revised to show a total 144 off street parking spaces for this site. (DRC)
4. By August 19, 2000, the applicant shall obtain a final inspection on the parking for this site to vest this parking variance. (DATE:MONITORING-BLDG: CO)
5. By March 19, 2000, or the prior to DRC certification of the site plan, whichever occurs first, the applicant shall receive approval of the landscape plan that reflects the additional 2,000 square feet of landscaping will be installed around the foundation of building #2 (12,390 square foot building) shown on Exhibit 9, in the BA99-61 file. (DATE: MONITORING-ZONING/DRC)

CHAIR PERSON KONYK: BofA 99-00062, John P. and Lisa A. Stauffer, to allow a proposed addition to an existing Single-family development to encroach into the required rear setback.

Is the applicant present?

MS. STAUFFER: Yes. Lisa Stauffer.

CHAIR PERSON KONYK: The staff has recommended three conditions. Do you understand and agree with those?

MS. STAUFFER: Yes. But I believe the third condition was being stricken because it's not our property.

MS. CAI: Yes. The third condition, as staff has discussed with the applicant, and I agree.

CHAIR PERSON KONYK: Condition number three is being deleted. So the staff has recommended two conditions, and you understand and agree with those conditions?

MS. STAUFFER: Yes.

CHAIR PERSON KONYK: Is there any member of the public to speak on this item?

(No response.)

CHAIR PERSON KONYK: Any letters?

MR. MacGILLIS: There were two -- one letter and one phone call. They only identified themselves, first name is Elbert, have no objection. Ben Rose wrote a letter and a phone call and had no objection.

CHAIR PERSON KONYK: Is there any Board member that feels this item warrants a full hearing?

(No response.)

CHAIR PERSON KONYK: Seeing none, this item will remain on the consent.

STAFF RECOMMENDATIONS

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

ANALYSIS OF ARTICLE 5, SECTION 5.7.E VARIANCE STANDARDS

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

YES. The subject property is located at 6480 spartina Cir., approximately .17 miles east of 400' south of intersection of Loxahatchee River Road and County Line Road, within the Loxahatchee Pointe Subdivision, in the RS Zoning District. The future land use designation is Low Residential 2 (LR2). The surrounding areas are zoned as single family residential district (RS).

The subject property is a conforming lot with an irregular configuration. It has two rear property lines, one abuts to the side of the adjacent property and another to an existing canal. The rear yard is bounded by 2 rear property lines and 2 side property lines of all with different angles. Such irregular lot shape restricts the property owner with alternative design options for placing a proposed addition in the rear yard. The existing swimming pool and screen enclosure occupy the most north part of the developable rear yard, which further limit the options to locate the proposed addition.

As previously stated, the proposed addition abuts to the SE rear property line and is

required a minimum of 15 foot setback while the structure on the other side of the sharing property line is required a minimum of 7.5 feet. This existing special condition and circumstance is considered unique to this property and is not applicable to other parcels of land in the same district.

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

NO. Prior to the purchase by the applicant, the subject lot was plotted to have five sides abutting to three adjacent lots, which is uncommon in the same subdivision. The irregular lot shape restricts the applicant with design options to make a full use of the property. Therefore, the special circumstances and conditions are not the result of actions of the applicant.

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

NO. Granting the variance shall not confer special privileges upon the property that other parcels in the same zoning district that would be denied.

To construct an addition for a growing family is permitted in the zoning district in which the subject lot is situated. Allowing the property owners to construct an addition is in keeping with the residential character of the surrounding neighborhood. As indicated earlier, due to the unique lot configuration, the property owners are restricted to alternative site locations for constructing a needed addition. Due to the fact that an existing swimming pool and a screen enclosure occupy the most north part of the developable rear yard, which further limit the options to locate the proposed addition. To locate the proposed addition to the south part of the rear yard near the SE rear property line is the only practical choice to the applicant.

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

YES. A literal interpretation of the provisions of the ULDC will deprive the applicants of rights commonly enjoyed by other parcels of land in the same district. The intent of the setback is to ensure a minimum separation, privacy and compatibilities of uses. The requested rear setback encroachment of 7.5 feet would affect the adjacent property to the south (lot 24). The most affected area by this encroachment is the northeast corner area of mature trees and lawn. In addition, there is an existing 4 foot high chain link fence and hedge along the subject SE rear property line and therefore, certain visual and aural impacts associated with the proposed addition would be screened and mitigated. As previously indicated, there is a sufficient separation between the proposed addition and the adjacent property. Also, as indicated in the justification with this application, the proposed addition will be one room, one story and a direct extension of the existing roof line. Therefore, the proposed addition will be compatible with the residential uses and maintain the characteristics of the neighborhood.

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

YES. As previously indicated, the unique lot configuration creates an irregular shape in the rear yard that creates a hardship when locating the required addition to the single family residence. As previously stated, the applicant does not have alternative design options that would

further reduce the variance request or eliminate the variance. To construct the proposed addition in the southwest yard is the only practical choice for the applicant.

Across the affected rear property to the south (lot 24) is the existing landscaping and lawn as well as a residence and a screened pool approximately 70 feet away from the proposed structure. In addition, the existing 4 foot high chain link fence and hedge will mitigate the impacts associated with this variance. The separation between the proposed addition and the affected residence is approximately 28 feet. This would further minimize any negative impacts from the proposed addition. Furthermore, the property owners from this affected property (lot 24) and the adjacent property to the west (lot 27) submitted letters in support of this variance (see attached letters).

Therefore, the approval of this variance is the minimum variance that will allow a reasonable use of the parcel of land and structure.

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

YES. the variance request complies with the general intents of the ULDC which are to ensure a minimum separation between the proposed addition and the adjacent property. As previously indicated, the variance will not have negative impacts on the adjoining property to the south. The proposed addition will be in harmony with the residential character of the neighborhood and will not detract from the area. The existing 4 foot high chain link fence and hedge along the SE rear property line will mitigate the impacts from the proposed addition. In addition, the affected residence setback 70 feet from the proposed structure and separated by 28 feet, therefore, the requested setback encroachment will not affect the adjacent property value or the residential characteristics.

The intent of the Comprehensive Plan is to encourage residential development to improve and maintain the living standards for people to better enjoy their community. The addition to the existing single family residence for a growing family is not an uncommon request. The requested variance will allow the property owners to promote their quality and enjoyment of life while the adjacent property values will be maintained and not be adversely affected, if the variance is granted.

Therefore, granting the requested variance will be consistent with the objectives of the ULDC and the Comprehensive Plan.

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

NO. As previously indicated, there will be a sufficient separation (28') between the proposed addition and the affected residence. There are also 2 letters filed with this application indicating support of this variance from the owners of the affected property to the south and an adjacent property to the west. Both letters state that neither their property value nor view will be adversely affected by the proposed addition on the subject property. In addition, the existing 4 foot high chain link fence and hedge along the affected SE rear property line on the subject property as well as the mature trees on the adjacent property will mitigate the impacts associated with this variance.

Therefore, granting this variance will not be injurious or otherwise detrimental to the public welfare. Instead, the request is compatible with the surrounding uses of the area and approving of the variance will contribute to the promotion of the applicant's quality of life.

ENGINEERING COMMENTS

No comment regarding the requested setback variance. As an advisory note, the lot owner should be aware that the 6 ft. drainage easement within the southeast portion of the lot was not abandoned by the replat of the abutting property as indicated on the submitted survey.

ZONING CONDITION(S)

1. By March 19, 2000, the property owner shall provide the building division with a copy of the Board of Adjustment Result letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application. (DATE:BLDG PERMIT-Bldg)
2. By May 19, 2000, the applicant shall obtain a building permit for the proposed addition with an approximate 550 square feet. (DATE-MONITORING-Bldg Permit)
3. The existing fence/hedge along the subject SE property line shall be maintained in good repair at all times. The hedge shall be maintained at 6 feet to provide buffering to lot 24 to the south. (Ongoing)

CHAIR PERSON KONYK: BofA 99-00063, Robert Bentz, agent for Herbert Kahlert, as Co-Trustee, to allow an increase in the required number of off street parking spaces for an MUPD.

You can't make up your mind who you want to use here?
Staff has recommended five conditions. Do you understand and agree with those conditions?

MR. BENTZ: Good morning. For the record, Bob Bentz. Yes we do agree with those conditions for approval.

CHAIR PERSON KONYK: Is there any member of the public to speak on this item?

(No response.)

CHAIR PERSON KONYK: Any letters?

MR. MacGILLIS: There's letters of opposition, one from Louis Fratel at 10847 Filmoore Drive, no reason. Second letter was from Linda Bell-Thompson at 10781 Filmoore Drive opposed, no reason. Those are the only two letters and phone calls we received.

CHAIR PERSON KONYK: Any Board member feel this item warrants a full hearing?

(No response.)

CHAIR PERSON KONYK: Seeing none, this item will remain on the consent.

STAFF RECOMMENDATIONS

APPROVAL WITH CONDITIONS, based upon the following application of the standards enumerated in Article 5, Section 5.7.E. of the Palm Beach County Unified Land Development Code (ULDC),

which a petitioner must meet before the Board of Adjustment may authorize a variance.

ANALYSIS OF ARTICLE 5, SECTION 5.7.E VARIANCE STANDARDS

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

YES. This vacant 3.85 acre parcel is currently being rezoned from AR to MUPD. The site will support a bank and funeral home. The applicant has applied to the Board of County Commission for a rezoning and requested use (funeral home). The MUPD parking requirements limits parking to the minimum required for the on-site uses. The applicant's client is concerned that the permitted 81 parking spaces will not be adequate to meet the needs of both uses. The proposal is to provide 18 additional spaces than permitted by code. The additional 18 spaces will be utilized for the funeral home users. The MUPD parking provisions were established to recognize that unless controlled by code limitations, more parking than required would be provided. By limiting the parking to the minimum number the additional land area remaining can be used for additional open space and landscaping. The minimum acreage for an MUPD is 3 acres, this site is 3.85 acres. There is limited area for parking, landscaping, buffer, queuing, etc. and therefore, the literal interpretation of this code provision has limited affect on this property in terms of providing more open space. If the MUPD was 10 acres or more, there would be more opportunity to provide more open space and landscaping.

Therefore, the uniqueness to this property is the fact it is only 3.85 acres and will support uses that required adequate parking on site to avoid vehicles parking in the right-of-way. The proposed bank and funeral home are both uses that generate peak parking demands at various times during the day. Both uses also utilize queuing for the customers which must not interfere with the parking spaces. Therefore, the applicant's client is concerned that the 63 spaces the code requires for this use is not adequate to ensure sufficient parking for the user of this facility. Which will result in conflicts with the customers using the bank. In order to avoid this situation the applicant is proposing to construct an additional 18 parking spaces.

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

YES. Typically an applicant requests a variance to provide less parking than the code requires. However, in this particular situation the applicant is requesting to provide 18 spaces more than permitted by the MUPD parking provisions. The applicant's client is proposing to construct a proposed funeral home in this MUPD. The MUPD limits parking to the minimum required by code. The applicant's client is concerned that based on past experience the 63 parking spaces permitted by code for this use is not sufficient to meet the users needs. It is important that there be 81 spaces for the funeral home in order to avoid conflicts with the users of the bank. This property is hereby rezoned to a MUPD because it is over 3 acres and support multiple uses. The site has a net acreage of 2.68 acres after the dedication of right-of-way and LWDD easements. However, the MUPD threshold of 3 acres is based on gross acreage. This is important that if this was not a MUPD there would be no cap on the permitted parking spaces.

Therefore, there are unique circumstances and conditions that are not the result of the applicant. the applicant's client is proposing a use in an MUPD that requires BCC approval. The applicant is in the process to obtain the BCC approval. However, in an MUPD the parking cannot exceed the minimum amount required. This is to encourage only land to be paved for parking that will be utilized on a daily basis while the remaining land is to be landscaped. However, in this case we

have a specific use that generates more parking than the standard 1 space for each 4 seats. The applicant's client has recognized this in advance and wants to ensure that adequate parking is provided on site.

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

NO. The granting of the variance to allow 18 more parking spaces than permitted in the MUPD zoning district will not grant a special privilege on the applicant. The literal intent of this MUPD parking provision is to encourage only the minimum parking to be paved on site which will result in more open space and landscaping. This is a 3.85 acre MUPD which is considerably smaller than the typical MUPD. The code provision anticipates large commercial developments (50,000 sq/ft) with hundreds of parking spaces. Historically, larger commercial developments would provide far in excess of the minimum number of parking spaces. By limiting the number of spaces in an MUPD to the minimum prevents over paving a site.

This is a Unique MUPD in that it is only 3.85 gross acres (.85 acres above the minimum acreage to qualify for an MUPD) with a net acreage of 2.68 after the right-of-way and LWDD dedication and easement. If this was not a MUPD there would be no limitation on the number of parking spaces provided. The MUPD limits parking to preserve more open space for landscaping, buffering and public open spaces. The proposed funeral home according to the applicant requires 18 spaces more than the code requires. The parking of 1 space per 4 seats is not consistent with the user demand.

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

YES. The applicant is requesting to construct 18 spaces more than permitted by code. The applicant's client is proposing to construct a funeral home that will have 250 seats. The parking is based on a ratio of 1 space per 4 seats for a total of 63 spaces. The applicant is requesting a variance to provide 18 more spaces for a total of 81 spaces for the site. The additional 18 spaces will ensure there is adequate parking for the bank and funeral home and there is no conflict between queuing and access aisles.

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

YES. the applicant is requesting the minimum parking variance that will allow for 18 additional spaces than permitted by code. The additional spaces will be utilized by the funeral home use. The parking ratio of the ULDC for funeral homes is 1 space per 4 seats. The applicant's client states that this is not realistic that many people arrive in separate vehicles which will result in insufficient parking on site. The funeral home requires a parking lot that functions efficiently to accommodate the queuing for the funeral processions. Also, this site supports a bank that has parking adjacent to the building as well as queuing. The site layout is such that each use will have its parking in close proximity to the building with efficient ingress and egress to and from the site.

Therefore, the granting of this variance to allow the applicant to provide 18 spaces more than permitted by the MUPD parking regulations is a reasonable request. The extra parking will be used by the funeral home use and avoid possible on site parking conflicts between the two uses.

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

YES. This property has a CL/3 land use designation and is currently being rezoned to MUPD zoning district. The applicant has an application currently in the zoning process to the BCC for the rezoning and condition use A for the funeral home. The BCC will determine if the use is compatible with the surrounding land uses and may recommend conditions of approval to mitigate any negative impacts this development will have on the surrounding properties.

The general intent of the MUPD parking provision will be complied with if the variance is granted. The general intent is to encourage large MUPD to limit parking to the minimum necessary for the uses and to design more open space and landscaping on site. This is a relatively small PUD which is only .85 acres over the minimum acreage to qualify for an MUPD. There will be no significant difference on this site with or without the additional 18 parking spaces. The only advantage of the variance to the application is to ensure the parking for the funeral home will be sufficient to meet the users needs. This will avoid on site vehicular conflicts and lack of parking for the two uses.

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

NO. As stated in number 6, the additional 18 parking spaces will not impact the site in a negative manner. The spaces will be incorporated in the site design to ensure all minimum landscape code requirements are satisfied. All required landscape buffers and internal parking lot landscaping will be installed as required by code.

The granting of the variance of 18 additional parking spaces will not be injurious to the surrounding area. In fact the applicant is proposing the additional spaces to ensure the proposed funeral home will have adequate parking to avoid vehicles parking in undesignated spaces or in the rights-of-way.

ENGINEERING COMMENT

No comment. (ENG)

ZONING CONDITIONS

1. The property owner shall provide the building division with a copy of the Board of Adjustment Result letter and a copy of the site plan presented to the Board, simultaneously with the building permit application. (BLDG PERMIT:BLDG)
2. By November 19, 1999, the applicant shall ensure the BA conditions are shown on the certified site plan. (DATE:MONITORING-ZONING-DRC)
3. This parking variance shall be limited to 18 additional spaces. The final site plan shall be revised to show a total 81 off street parking spaces for this site (DRC)
4. By August 19, 2000, the applicant shall obtain a final inspection on the parking for this site to vest this parking variance. (DATE:MONITORING-BLDG: CO)
5. By March 19, 2000, or prior to DRC certification of the site plan, whichever occurs first, the applicant shall receive approval of the landscape plan that reflects the additional 720 square feet of landscaping will be installed around the proposed funeral home shown on Exhibit 9, in the BA99-063 File (DATE: MONITORING-ZONING/DRC)

CHAIR PERSON KONYK: BofA 99-00064, H.P. Thomkins, Jr. agent for the Strata Development, Inc., to allow for a reduction in the required front setback for 34 proposed SFD units.

Is the applicant present?

MR. TOMPKINS: Yes.

CHAIR PERSON KONYK: Your name for the record?

MR. TOMPKINS: Chris Tompkins, agent for the applicant.

CHAIR PERSON KONYK: Staff has recommended six conditions. Do you understand and agree with those six conditions?

MR. TOMPKINS: Yes, we do.

CHAIR PERSON KONYK: Is there any member of the public to speak on this item?

(No response.)

CHAIR PERSON KONYK: Is there letters?

MR. MacGILLIS: Just three phone calls, all recommending approval; Greg English, Michael Freeman and Mark Comby.

CHAIR PERSON KONYK: Any members of the Board feel this item warrants a full hearing?

(No response.)

CHAIR PERSON KONYK: Seeing none, this item will remain on the consent.

STAFF RECOMMENDATIONS

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

ANALYSIS OF ARTICLE 5, SECTION 5.7.E VARIANCE STANDARDS

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

YES. Special conditions and circumstances exist that are peculiar to the parcel of land, building or structure, that are not applicable to other parcels of land, structures or buildings in the same district.

The subject site is a 11.7-acre vacant parcel located on the North side of Coconut Lane and approximately 665 feet East of intersection of Military Tr. and Coconut Lane, in the RS Zoning District. the overall development site has a future land use designation of Commercial with an underlying alternative designation of 5 units per acre (C/5). The minimum density permitted is 3 units per acre. The maximum number of units permitted on the subject site is 34 units.

This parcel is 415' wide and 1,215' deep. The configuration makes this a unique parcel in which each of the 34 lots fronts on the 50 foot wide ROW. As stated by the applicant in the justification, the trip generation rate is well within the design range to be able to utilize the 40 foot street section, however, because this development is not a Planned Unit Development (PUD), a 50 foot wide ROW is required for this residential subdivision with RS zoning designation. The applicant also states that the 50 foot street section itself provides additional green space in the front of the units. This development is also an infill residential project which provides a transition between the commercial to the west and the residential to the south and east.

Staff is recommending a condition of approval that the additional front yard created by this variance support street trees.

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

NO. Special circumstances and conditions are not the result of actions of the applicant.

As indicated above, the code requirement for the zoning district (RS) designated to the subject parcel, a 50 foot wide ROW is required for the proposed 34 single family dwelling units. However, as stated by the applicant, a 40 foot wide ROW is actually sufficient because the trip generation rate is well within the design range to be able to utilize the 40 foot street section. The additional open area in the front of the units is not usable recreation space or area that could support street trees. The majority of recreational activities take place in the rear yards. Therefore, if this variance is granted, the rear yards become 2.5' deeper thus allowing for additional recreational (such as pool) and/or open space in the back yards. In addition, the applicant has agreed to a condition to provide one street tree in the ROW for each of the 34 lots.

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

NO. Granting the variance will not confer upon the applicant special privilege(s) denied by the comprehensive plan and this code to other parcels of land, buildings or structures, in the same district.

This residential project is an infill development. This 11.52-acre parcel has been rezoned from commercial to residential. The 34 residential subdivision will provide a transition between the commercial parcel to the west and residential parcels to the south and east.

By shifting the proposed residences 2.5' closer to the front will create a 2.5' deeper rear yards which will provide more recreational amenities or open space commonly enjoyed by the people in the same zoning district. Therefore, to ensure each lot is provided additional open space as justified by the applicant in this application, staff is recommending a condition of approval that any principal structures on the 34 lots cannot extend beyond 17.5' from the rear property lines.

In addition, the 50 foot wide ROW, which each unit abuts to, will provide adequate separation between adjacent units and mitigate the impacts associated with this variance.

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

YES. A literal interpretation of the provisions of the ULDC will deprive the applicants of rights commonly enjoyed by other parcels of land in the same district. The intent of the setback is to ensure a minimum separation, privacy and compatibilities of uses. As stated previously, each lot abuts on the 50 foot wide ROW. The separation between the adjacent residences on both sides of the ROW is at least 95' including 22.5' front setback from both front property lines. In addition, 4 building models will be constructed on the 34 lots and will ensure the compatibilities of dwelling units since this application is for a blanket variance which applies to each individual lot.

Therefore, granting the requested variance will satisfy the general intent of the code.

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

YES. according to the approved site plan, the 34 lots are site planned on both sides of the 50' ROW which runs through the middle of the development. As stated by the applicant, the required 50 foot wide ROW is wider than actually needed to serve for the 34 single family dwelling units. However, the ULDC requires straight zoned residential subdivisions to provide for a 50' ROW. The applicant is requesting a 2.5' reduction in the required front setback in order to provide additional open space in the rear yard. As mentioned previously, the separation between adjacent structures is at least 95', which will provide sufficient space for privacy and protection from noise and shadow. Therefore, the approval of variance is the minimum variance that will allow a reasonable use of the parcel of land, building or structure.

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

YES. the variance request complies with the general intent of the ULDC front setback requirement which is to ensure a minimum setback along the street for each unit on both sides of the 50' ROW. The applicant is proposing 4 building models designed for the subject site which will be compatible and in harmony with the residential character of the development.

The intent of the Comprehensive Plan is to encourage residential development to maintain and improve the quality of living standards. The additional 2.5 foot deep rear yards created by shifting the units into the front setback will enable the future residents to have more area to accommodate outdoor recreational uses (pool, screen enclosure, patio, etc.)

Therefore, granting of this variance will be consistent with the purposes, goals, objectives and policies of the Comprehensive Plan and ULDC.

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

YES. The request, if granted, would ensure all units are constructed at 22.5' from the edge of the 50' ROW. This will ensure consistency from the street for the front setback for all units. Staff is recommending a condition of approval that the applicant install street trees along the 50' ROW to improve the overall streetscape and appearance of the units from the street. The request is compatible with the surrounding uses of the neighborhood and approving of this variance will contribute to the promotion of each unit's quality of life.

ZONING COMMENT

The applicant is proposing to locate a temporary off-premise real estate sign on the adjacent

property. This temporary sign will be used to identify the 34 units on this site. Prior to issuance of the 34th SFD building permit the applicant shall remove this temporary real estate sign.

ENGINEERING COMMENTS

No comment.

ZONING CONDITIONS

1. By March 19, 2000, the property owner shall provide the Building Division with a copy of the Board of Adjustment Result letter and a copy of the site plan presented to the Board, simultaneously with the building permit application. (DATE:BLDG PERMIT-Bldg)
2. The applicant shall install one native 14 foot tall shade tree in front of each unit (34 trees) within the 50' ROW, as shown on the Exhibit No. 20, in the BA file (BA99-064). The required minimum trees required by the landscape code for each lot shall not be used to satisfy this condition. (MONITORING:LANDSCAPE)
3. The required rear setback for all 34 lots is hereby established at 17.5 feet for the principal structures. (BLDG PERMIT-ONGOING)
4. By October 19, 1999, the applicant shall amend the certified site plan to reflect the following:
 - a. The correct Maximum-allowed Lot Coverage of 40%, any reference to 44% shall be deleted,
 - b. include a revised 50' right-of-way cross section, to be consistent with Exhibit No. 20, in the BA file (BA99-064)
 - c. revise the minimum required rear setback for all the principal structures on 34 lots from 15.0 feet to 17.5 feet as required by BA condition #3 for the approval of the variance (BA99-064)
 - d. Indicate the approved front setback variance (BA99-064) and the required conditions of approval. (DATE: DRC-zoning)
5. Prior to amending the certified site plan, the applicant shall submit a copy of the building permit application. (PR99-17401) for the temporary off-premise real estate sign to the DRC staff for inclusion in the DRC file. (DRC-ZONING)
6. The temporary off-premise real estate sign shall be removed prior to the issuance of the 34th SFD building permit for Hunter's Court Subdivision. (Subdivision #0734-000/BLDG PERMIT-ZONING)

CHAIR PERSON KONYK: BofA 99-00065, Louis Gaeta, Jr., agent for Nicholas

Smith, to allow a reduction in the required right-of-way buffer along Northlake Boulevard and reduce the east property line landscape buffer and to eliminate the required landscape along the south property line.

Is the applicant present?

MR. HERRING: Yes, ma'am.

CHAIR PERSON KONYK: Your name for the record?

MR. HERRING: My name is Donaldson Herring. Mr. Gaeta is right here.

CHAIR PERSON KONYK: Okay. The staff has recommended six conditions.

Do you understand and agree with those conditions?

MR. HERRING: Yes, ma'am, we do. We do agree. We did make one clarification earlier this morning with Jon. Variance number two we are requesting a fifteen-foot variance and both variance number one and variance number two should be the same. And we just would like to go ahead and clarify that for the record.

MR. MacGILLIS: That's correct. On page seventy-seven, in the box up top, second variance request should read the landscape buffer along I-95 southbound on-ramp should read 20' wide buffer proposed five feet, variance of 15'. Staff supports that variance.

CHAIR PERSON KONYK: Okay. So with the corrected variance, do you agree with the six conditions?

MR. HERRING: (Nods head.)

CHAIR PERSON KONYK: Is there any member for the public to speak on this item?

(No response.)

CHAIR PERSON KONYK: Any letters?

MR. MacGILLIS: There were no letters.

CHAIR PERSON KONYK: Any member of the Board feel this item warrants a full hearing?

(No response.)

CHAIR PERSON KONYK: Seeing none, your item will remain on the consent.

MR. HERRING: Thank you.

STAFF RECOMMENDATIONS

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

ANALYSIS OF ARTICLE 5, SECTION 5.7.E VARIANCE STANDARDS

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

YES. This 1.06 acre site was rezoned from RM zoning to CG in 1977. The Board of County Commission (BCC) approved a special exception in 1977 for a new/used car dealership. Bev Smith car dealership has operated from this site for many years, however, due to the limited size of the lot expansion could not be accommodated so the business moved several years ago. The use has been abandoned and not used for any business.

There are unique circumstances and features to this property that require special consideration when applying the literal intent of the right-of-way buffer requirements. This 1.09 acre commercial parcel is located along Northlake Blvd., adjacent to the I-95 southbound on-ramp. The property has right-of-way on three property lines. To the north is Northlake Blvd., to the east is the I-95

southbound on-ramp and to the west is Sunset Drive a 30 foot right-of-way. The northeast portion of the site has been dedicated for right-of-way to accommodate the southbound on-ramp. The property has approximately 245 feet of depth and 120 feet of width, measured at the mid point of both property lines. There is currently no use on the property. The site had originally supported Bev Smith vehicle sales since 1977 when a Special exception (77-170) was approved on this site for new/used vehicles. The applicant is proposing to redevelop the site by demolishing the existing 25 by 50 modular building located in the center of the property and construct a 10,015 square foot one-story retail building. The applicant is attempting to utilize existing infrastructure (underground utilities) in order to limit the redevelop costs associated with this proposed use. The applicant is proposing to maintain the original right-of-way buffer width of 5 to 5.6 feet so that the underground utilities will not have to be relocated out of the buffer area, if it has to be increased to accommodate 20 foot wide landscape buffer.

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

NO. This is not a self created variance. The applicant is proposing to redevelop a commercial property that currently has an approval for a new/used car dealership with repair. The site has supported Bev Smith car dealership since the late 70s. However, the use was abandoned several years ago in part due to the limited land area for expansion of the use. The current owner is proposing to demolish the abandoned 1,200 square foot modular office building and construct a permitted retail one story 10,015 square foot building. The applicant will be required by the zoning division to officially abandon the existing special exception (77-170), prior to constructing the new permitted use on this property. The applicant is proposing to comply with all county regulations with the exception of the rights-of-way buffer width requirement. The granting of this variance will allow this redevelopment project to move forward. With the BA conditions recommended by staff, the general intent of the landscape code can be satisfied, if this variance is approved.

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

NO. The granting of the two variances to reduce the right-of-way buffers will not grant a special privilege on the applicant. The variances are the minimum necessary to ensure the redevelopment of this abandoned site/use to move forward through the development review process. The applicant would like to take advantage of the existing layout of the 5 foot right-of-way buffers and the fact the utilities are located immediately adjacent to the buffers. In order to minimize the costs down by not having to relocate existing utility lines and ensure there is minimal land area to accommodate the new 10,015 square foot retail building. The applicant is requesting not to provide the additional 5 feet of land area needed to accommodate the current ULDC right-of-way buffer width. This site is unique in that the DOT has planted landscaping along the right-of-way adjacent to this property. This landscaping in addition to what the applicant is proposing to install in the 5 foot buffer and along the foundation of the proposed building will meet the general intent of the right-of-way buffer width requirement. There will be adequate landscaping along the streets to ensure continuity along Northlake Boulevard while providing a visual buffer between the right-of-way and use.

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

YES. The applicant is proposing to redevelop a site that is currently has an abandoned use on it. When the Bev Smith car dealership moved off this site several years ago, it has attracted other interested users for the site for a vehicular related uses. In 1981 an application to convert the use on the site to a Tire Kingdom (81-193A), however, the request was denied by the BCC. The applicant is now proposing a less intense use, a 10,015 square foot retail building. This use will be more compatible with the residential lots located to the south, off Sunset Drive. It will also ensure that the vehicular use approval obtained in 1977 will have to be administratively abandoned by the BCC before the new use is permitted by the Building Division.

The literal enforcement of the 20 foot right-of-way buffer will reduce the amount of land available to accommodate the proposed building, parking, loading, vehicular circulation and require the existing utility lines be relocated out of the 20 foot wide buffer. Considering the fact there is considerable landscaping in the swale along the right-of-way and the fact the applicant is proposing to install all the required trees that are required in the 20 foot buffer elsewhere on site, the intent of the code will be met.

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

YES. The granting of the reduced right-of-way buffer will ensure this project can move forward through the zoning and building review and permitting process. As stated in #4 above, the available land area for development of a retail building on this site is critical in order to make this redevelopment possible. The site is only 1.06 acres and has limitation in the fact it has right-of-ways along the three property lines which affect the application of property development regulations (setbacks, access points, etc.). The applicant has expressed concerns that in order to provide the 20 foot buffer the existing utility lines that run parallel to the existing 5 foot landscape buffer would have to be relocated. On a project of this scale that adds to the costs of the redevelopment and could result in the success or failure of the project. the applicant is proposing to install all the required trees and hedges on-site that are required in the 20 foot buffer. The only code deviation is to reduce the buffer width and not the quantity of plant material.

The granting of the variance will allow a reasonable use of this property that currently supports an abandoned car dealership use.

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

YES. This property has CH/8 land use designation and CG zoning classification. This property is located along the Northlake Blvd., which is a major commercial corridor in PBC. The site currently supports a special Exception that was approved in 1977 for a new/used vehicle sales. This use no longer resides on this site since Bev Smith dealership moved to a new location. The site currently supports an abandoned modular office building, which the applicant proposes to demolish. The proposed retail use is consistent with the land use and zoning district.

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

NO. Granting of the variance will not be injurious to the surrounding area. The granting of the variance will allow the applicant to move forward with the proposed improvements to this site. The improvements will bring this property into compliance with current zoning regulations and be more compatible with the residential development to the south. It will also ensure the current Special Exception on this site for new/used vehicles will be abandoned. the landscaping located

between the rights-of-way of pavement and the property lines has been planted by the state. It provides a visual buffer from the right-of-way to the use. therefore, with the proposed landscaping the applicant will install on the site will meet the general intent of the code in terms of providing adequate buffering between the street and use.

ENGINEERING COMMENT

No comment (ENG)

ZONING CONDITIONS

1. The property owner shall provide the building division with a copy of the Board of Adjustment Result letter and a copy of the site plan, Exhibit 9, presented to the Board, simultaneously with the building permit application. (BLDG PERMIT: BLDG)
2. by June 19, 2000, the applicant shall obtain a final landscape inspection for the landscaping in order to vest the landscape right-of-way buffers along Northlake Blvd. and I-95 southbound on-ramp (east property line). (DATE:MONITORING-CO-LANDSCAPE)
3. By May 19, 2000, the applicant shall submit a landscape plan for the entire site to the Board of Adjustment staff. The plan shall outline where the required trees that would have been required in the reduced right-of-way buffers along the north and east property line have been relocated to on-site. there shall be no reduction in the number of trees and shrubs for this site as a result of the variance approval. (DATE:MONITORING-ZONING/BA)
4. Prior to applying for a building permit the applicant shall administratively abandon the special exception, 77-170, R-77-14414, for a new/used vehicles. (BLDG. PERMIT-ZONING)
5. By May 19, 2000, the applicant shall apply for a building permit for the 10,015 sq. ft. retail building. (DATE: MONITORING-BLDG PERMIT)
6. By August 1, 2000, the applicant shall obtain the building permit for the 10,015 sq. ft. retail building. (DATE-MONITORING-BLDG PERMIT-Zoning)

CHAIR PERSON KONYK: BofA 99-00066, Lance Courtemanche, agent for Mark Parker, to allow a proposed single family dwelling to encroach into the required front setback.

Is the applicant present?

MR. COURTEMANCHE: I am. For the record, Lance Courtemanche.

CHAIR PERSON KONYK: The staff has recommended three conditions. Do you understand and agree with those three?

MR. COURTEMANCHE: Yes, we do.

CHAIR PERSON KONYK: Is there any member of the public to speak on this item?

(No response.)

CHAIR PERSON KONYK: Any letters?

MR. MacGILLIS: Yeah. There was several -- I spoke to several people. There was a letter staff provided you on your desk that the applicant requested this morning from Mr. Haro

CHAIR PERSON KONYK: Haro?

MR. MacGILLIS: Haro, right. He requested that. He's opposing this. And a Mr. Richard Hawkins, who I believe said he was going to be here this morning. I don't think he's here. He's, I believe, the property owner to south. So I think it might have to be pulled for a hearing, this item.

CHAIR PERSON KONYK: Well, when I asked if anybody wanted to speak on this item, there was no one that raised their hand, I don't think.

MR. MacGILLIS: If you --

MR. HAWKINS: I don't have any comments to make this morning.

CHAIR PERSON KONYK: Okay. Can you address these concerns that this gentleman has written, or can they address those concerns?

MR. MacGILLIS: I addressed them to him on the telephone. He didn't seem to like the answer I gave him. But I explained to him the proposed house, when it comes in and goes through the building permit review, he's going to have to establish a finished floor elevation for that house. The drainage for the property will have to be dealt with on its own lot.

He's concerned this residence, where it's being located, is going to affect the drainage of his property.

Your property is lower and water is going -- this water has to stay on its own property. That's a requirement of the building permit review in Engineering.

With his question regarding the subdivision road and drainage system. Apparently, there was some private agreement entered into with the previous owner on maintaining the grove. He wants to know whether or not the current property owner has to adhere to that private agreement which he attached to the back. And I can't answer that. But there is some private agreement. So it's not -- nothing to do with the variance. All we're talking is the setback on this property. It has nothing to do with the street that's outside his property.

CHAIR PERSON KONYK: Okay. So, in other words, if this property were to affect the drainage of the other residences, there will be recourse for that homeowner anyway because their required to have their drainage not affect the other people. And --

MR. MacGILLIS: Typically, what happens with these old subdivisions, you get one property could be draining onto this property because it happens to have a lower elevation because it's not developed yet. And when they went in and developed this property, they established the finished floor elevation; and the water stays on their own property. And that's where they're saying, well, now all of a sudden I have a drainage problem. Well, the only reason you have a drainage problem is because the water is no longer flowing off the other property because its elevation is raised the same as yours.

CHAIR PERSON KONYK: Right. So, in other words, that wouldn't be a -- wouldn't affect this variance?

MR. MacGILLIS: No. I explained that to him, but he still wanted to have his concerns read into the record.

CHAIR PERSON KONYK: You want the what read into the record?

MR. MacGILLIS: He just said he wanted to make sure that the Board got a copy of his letter.

CHAIR PERSON KONYK: Okay. So we've all received and acknowledged that we received a copy of the letter. I don't see any reason to pull this from the consent agenda.

MR. MacGILLIS: The other concerns were general in nature. They were just concerned with how we apply the setbacks. They didn't quite understand that we take the setback from the edge of the easement and why this easement was on the property. So, once I explained that, in general, most of the people seemed to be -- they understood it. They didn't say whether

the opposed it or supported it.

CHAIR PERSON KONYK: Okay.

MR. CUFFE: Excuse me. The only other issue on this is the -- right now the conditions that are indicated are the three zoning conditions. The Engineering comments indicated that it was suggested that there be either a condition or that the property owner be aware at the time of building permitting on this that the way this easement is configured, it flares so that along the west property line -- on the west property line. The easement's 41.66 feet wide. Okay? The variance that's being requested now, this modified variance from the previous one, would actually have the garage encroaching several feet into that flare of the easement. And when the original variance that allowed this subdivision -- that allowed the subdivision of the property to be done on the easement to begin with was conditioned on the existing driveway through there not being moved any further -- expand any further to the south than it already was. the flare was put in there to accommodate the width of the existing driveway or the widening of the existing driveway.

So we just want to make sure that, number one, if the variance itself is granted, which would allow at that point the encroachment of the easement, the easement is going to have to be modified. The only way to modify that easement is for the owner to come back -- the owner of the lot to come back and modify the plate waiver that established that lot to make that a straight thirty-foot easement through property instead of a flared easement.

CHAIR PERSON KONYK: Well, I think that sounds like a substantial enough of a concern then that it should either be a condition or it should be addressed right now.

MR. CUFFE: We would have -- we wouldn't have any problem as far as the variance itself goes if the two indicated engineering comments were added as conditions --

CHAIR PERSON KONYK: Okay.

MR. CUFFE: -- to the variance.

CHAIR PERSON KONYK: Do you have a problem with that, applicant?

MR. COURTEMANCHE: That's actually what we're looking to do, so --

CHAIR PERSON KONYK: Okay. Could you then read those into the record for me as conditions instead of having us rely on someone's interpretation later on, add it as a fourth and a fifth condition.

MR. CUFFE: Do you want me to read that in?

CHAIR PERSON KONYK: Yeah. I would like you to do that.

MR. CUFFE: Okay.

CHAIR PERSON KONYK: Name them four and five.

MR. CUFFE: Condition number four would then be that the driveway serving the abutting lot to the west not be moved or expanded any further south than the existing south edge of the travel-way. And condition number five would be the existing affidavit of waiver reported in OR book 8342 page two-thirty-eight, be amended as needed to reflect the proposed revisions of the ingress, egress easement configuration necessary to avoid encroachment by the building.

CHAIR PERSON KONYK: And you understand and agree with conditions four and five that have been added?

MR. COURTEMANCHE: Yes.

Can I ask you a question?

CHAIR PERSON KONYK: Sure.

MR. COURTEMANCHE: We've got -- we may want to talk briefly on the driveway being -- condition being located twelve feet from the property line for several different reasons.

There was an existing house on the site when the original plat waiver was proposed and a dirt driveway. The plat waiver allowed for the lots to be subdivided based on the fact that we keep a dirt driveway.

CHAIR PERSON KONYK: Let me just interrupt you. If you're going to want to pursue this any differently than the condition that was read, then we'll need to pull the item for a full hearing. We can pull it for a full hearing, and then you have the option of --

MR. COURTEMANCHE: We'll do that.

CHAIR PERSON KONYK: you want to pull it? Okay.

So item BofA 99-00066 will be pulled for a full hearing.

We almost set a record.

Items on the consent are BofA 99-00061, BofA 99-00062, BofA 99-00063, BofA 99-00064, and BofA 99-00065.

Does someone have a motion to approve the consent agenda?

MR. PUZZITIELLO: I will make a motion to approve the consent agenda with the aforementioned case numbers along with staff recommendations as part of the record.

CHAIR PERSON KONYK: We have a motion by Mr. Puzzitiello.

Do we have a second?

MS. CARDONE: Second.

CHAIR PERSON KONYK: Second by Ms. Cardone.

Any discussion?

MR. RUBIN: I just really have a question of staff on BofA 99-61 and BofA 99-63. It appears the justification in each of those cases for the parking is the amended use by the owner or the tenants of those parcels. In BofA 99-61 seems to be premised on the fact that there's going to be a restaurant. And BofA 99-63 appears to be premised on the fact that there's going to be a funeral home and bank.

What happens down the road if those properties, for example BofA 99-61, is no longer a restaurant? Is the property owner still entitled to that variance even though the use justification is not longer there and, likewise, for the funeral home and the bank?

MR. MacGILLIS: I think that was part of the justification. I think the greater reason for the approval was so that -- MUPD, typically -- they range anywhere from minimum three acres and up through something like the mall outfits that were proposed out in Wellington. The intent of that code provision was drafted so you didn't have these large expanse of parking lots. Right now the citizen task force is looking at code revisions that MUPDs less than ten acres, you would have a reduction on the parking by up to 20% of what's required.

What we're looking at on these smaller sites is that you're really not going to get that expansive parking. Even though we mentioned the uses in here, I think it's more based on the fact because of the small size of these parcels, the relationship between the open space and the -- and if we do put more parking spaces in, you're still going to meet the general intent of that because you're not going to have hundreds of extra parking spaces that are causing runoff problems and so on and so forth.

But in this case, we mentioned the uses you couldn't -- one -- because of the stacking and stuff with the funeral home and the other use. It just happened to be a restaurant.

MR. RUBIN: Okay.

CHAIR PERSON KONYK: Okay. Any other discussion?

(No response.)

CHAIR PERSON KONYK: Seeing none, we have a motion and a second.

All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: All those opposed?

(No response.)

CHAIR PERSON KONYK: Motion carries unanimously.

If your item was on the consent agenda, you're free to leave.

The first item on the regular agenda is BofA 99-00066, Lance Courtemanche, agent for Mark Parker, to allow a proposed single family dwelling to encroach into the required front setback. We'll have the staff introduce the item.

MR. MacGILLIS: This is item BofA 99-66, for a request to allow a proposed single family dwelling to encroach into the required front setback. Location: Vacant lot 1A on Woodside Trial --

(There was an interruption by the court reporter.)

MR. MacGILLIS: This is BofA 99-66, a petition to allow a proposed single family dwelling to encroach into the required front setback. The location is a vacant lot 1A on Woodside Trail, within the Woodside Estates, approximately 1 mile east of Loxahatchee River Road and .17 miles north of Center Street in the RS zoning district.

For the Board's information, this petition was before you back in April 16, 1998, when the Board approved a front setback variance for the proposed house from the required 66.46 foot front setback and 41.46 feet. Justification for the variance at that time was the unique location of this lot which abuts onto Loxahatchee River, and it's a lot that dead-ends in a cul-de-sac. When this was one time one parcel, and it was subdivided into two parcels, lot 1 and 1A.

The lot 1 required to have legal access provided to it. therefore the lot 1A which was the subject of this variance had to have a thirty-foot easement brought across the front of this property to give access to lot 1. In doing so, the setbacks, the zoning requires them to be taken from the easement or the base building line which affects the twenty-five-foot setback on top of the thirty-foot -- affects significantly the proposed house on this lot because there's two trees that the applicant proposes to save, one being the oak tree, which he proposed to save in the motor court in the front yard, and the second one being a large hundred-year-old Banyan Tree in the back of the lot.

Once the variance was originally granted, it was assumed the survey that was presented to staff was going to accommodate the house and not affect the root system of this tree. Approximately two months ago, the applicant came to us after having the architectural drawings prepared and determined that the actual rear of the house was actually going to be abutting the trunk of the tree. Requested staff of what he could do to resolve this problem short of having to cut down the tree. Staff recommended he go to a reputable tree service and determine the affects of putting the house that close to the tree; and on page ninety-five, he's hired Zimmerman Tree Service to provide him with a letter stating that the house should be moved up further in order to not impact the root system and affect the actual -- whether the tree would survive or not.

In doing so, the applicant is back before the Board requesting a variance now from the required 66.46 for 30.66 for a variance of 35.8 feet. Staff's findings are found on page ninety-six. Staff clearly feels that the applicant has met the intent of the seven criteria and the granting of the variance will ensure that the hundred-year-old Banyan tree, which is an asset to the property as well as the community will be preserved. Therefore staff is recommending approval with conditions that we just went over previously, the three zoning conditions and the two engineering conditions.

CHAIR PERSON KONYK: We need to swear in anybody that's going to speak on this item. So if you're going to speak, could you raise your right hand; and our court reporter will swear you in.

(Thereupon, the audience members were sworn.)

CHAIR PERSON KONYK: Okay. Would you like to make your presentation?

MR. COURTEMANCHE: Certainly.

I guess, just to recap. For the record, Lance Courtemanche, representative of Mr. Parker. And I'm the architect that was doing the plans for him the first time we came before the Board and I'm a personal friend of Mr. Parker also.

Since the initial survey that we got in the first time that we came in front of you, we had a footprint of a building located on the site where the survey initially told us the tree was located. The survey told us there ten foot radius. Mr. Parker has completed the plans, same footprint. The building is identical, same footprint as we came to you the first time. It hasn't changed. And had the house staked out because -- for permit presently. Had the house staked out and realized that the house was actually abutting the tree. And, actually, he's had three arborists out on the site and all of them agreed that where the house is presently shown for the first approval or variance that we got, that we would ultimately have to cut a third of the tree out; and, most likely, the tree would die.

So we approached Mr. MacGillis and he told us what we needed to do in order to attempt to get this passed. And that's why we're here in front of you. That's our main goal is to --

and what that does is it -- in setting the house back another ten feet, which was recommended by Mr. Zimmerman, we encroached the southwest corner of his garage into the flare that was imposed by the plat waiver in 1994.

We had no problem with the engineering condition that we go back and we amend the plat waiver to take the access easement of thirty feet and all the way across the site. And the reason that we -- the reason that we asked for that and have no problem with the recommendation that we visit the plat waiver is that there was an existing house on the site when the initial thing -- I think Mr. Wichinsky was involved with that initial one, and there's a transcript with the initial plat waiver --

MR. WICHINSKY: By the way, when was your last hearing before the Board? I'm just trying to place it in time?

MR. MacGILLIS: Was April 16, 1998.

MR. COURTEMANCHE: There was an existing house, and it had some historical value to the lot -- to the area because it was a very old house. And there was a dirt road that went up to the house. Through the transcript, there's much discussion about where the roadway was located and where the house was located. And through that was recommended that the driveway not move any closer to the south property line. So that's what created the flare on the thirty-foot access easement.

Our ultimate goal here is to save the tree. Without being able to encroach on that flare, which the house no longer exists over there. The lot is owned by a different owner, which is proposing a much larger residence over there. We would have to cut the tree down in order to put Mr. Parker's house on the lot. We can't encroach on that flare. So we didn't have any problems with Mr. Cuffe's comment on revisiting the plat waiver and redoing the access easement to thirty-foot to straight across.

The one issue that -- the reason that we recommended pulling it was that it imposes a setback of the roadway that goes lot 1, which is owned by the doctor now and presently has an architect on staff that's designing his house, was proposed to be located a minimum of twelve feet to the north from the property line. And there's bushes and stuff along the property line being installed for a buffer.

What we would like to ask is that the roadway -- it's very limiting. It's going to be up against Mr. Parker's house now, and it's limiting toward his neighbor to locate his driveway as he comes to the site because it's pushed twelve feet off of the buffer. Mr. Parker and the gentleman to the west, which is lot 1, proposed to put a fence across the south property line to appease any vehicular traffic which is one residence a couple of few cars a day so that Mr. Hawkins is not -- you know, there's no hardship imposed on Mr. Hawkins. And Mr. Parker -- you know, there's no ill will between anybody here, and we really don't -- that's not our goal here is creating that. It's just -- at the same time our -- we have a lot of time to think about this, obviously.

But when it was initially imposed in the plat waiver, Mr. Debsky owned the property; and he was very adamant about not encroaching upon his property that hadn't been there before. While I understand his concern, I think it imposes a great hardship on the piece of property that, you know, is for future sales in being that that property's driveway is roughly five feet from the property that we're talking about today. And it runs, basically, three-quarters of the length of the piece of property. So Mr. Parker's front yard, as is -- we call that the front yard. We call that the back yard because the water, we'd like to say, is the front yard. And the front setback, he has to watch that traffic go back and forth in front of his house every day within five feet of the property line.

So all we're saying is, in fairness to the property owners and both of them, we'd like to request that we can move the driveway a little bit farther away from Mr. Parker's house because he's not going to be using the driveway. It's going to be the gentleman to the west, and construct the fence between the south of the property and Mr. Parker's property. We don't feel that it's going to have any impact on the residence next to -- the other residence to the south because of the fencing in and the landscape buffer that Mr. Parker proposes to put within the roadway buffer.

Now, we're not looking to push it up against the property line. We're looking to move it over. And I think the way that we've got it shown on the plan that's in front of you today is nine feet off the property line.

CHAIR PERSON KONYK: Is that the same plan that's in our packet? The plan that's in our packet is requesting the driveway be located where he wanted it to be located, and you were recommending approval?

MR. MacGILLIS: We're recommending approval with the comment in engineering that --

CHAIR PERSON KONYK: That's a contradiction then, the comment from engineering.

MR. MacGILLIS: I didn't notice -- to be quite honest with you, I didn't notice that part of the house was encroaching into that easement until it was brought up by engineering this morning. I assumed the house was in the original location as the original variance was approved which would have been back behind that red line -- that diagonal line to show. Therefore, staff -- the zoning staff would recommend a condition now that no part of that house would be located in that easement; or, I believe, the engineering comments, in his discussion, it's not really relevant here because it's not something that you can do today other than --

CHAIR PERSON KONYK: Right.

MR. MacGILLIS: -- if you decide to deny the variance. If you approve it, I think the conditions that are recommended by engineering, that he go back; or we can put a further condition on that no portion of the house encroach that easement.

CHAIR PERSON KONYK: And then he wanted to change that and let the house encroach on the easement, what's his --

MR. MacGILLIS: He'd have to go back through engineering. He'd have to change that easement, straighten it out --

CHAIR PERSON KONYK: That wouldn't be a variance, though.

MR. MacGILLIS: No. That would be a waiver -- Dave could answer that.

MR. CUFFE: The modification of the easement as far as the flare goes, the problem -- that problem can be taken care of in a modification of the plat waiver and the certified survey that established that easement.

CHAIR PERSON KONYK: Can we make it subject to them obtaining that?

MR. CUFFE: Pardon?

CHAIR PERSON KONYK: Can we make the variance subject to them obtaining that?

MR. CUFFE: That was one of the -- that was one of the --

CHAIR PERSON KONYK: Well, now, you said they didn't want it to encroach; but we can make it subject to them applying for a waiver? Is that one of the conditions?

MR. CUFFE: Right.

What we're saying is that that would remove the -- if that flare were removed and it were made a straight thirty-foot easement, that would resolve the issue of the flare, and there would be no encroachment as such.

The other issue, though, of moving the driveway -- the existing drive across there, that was a condition -- it's a little more complicated than -- that becomes more complicated because that, in fact, was a condition of the subdivision variance that allows these properties to be divided on a driveway -- on a thirty-foot ingress/egress easement rather than a standard local street to begin with.

CHAIR PERSON KONYK: Uh-huh.

MR. CUFFE: The basis for this subdivision itself, the subdivision would not even been allowed to have occurred with that access without the subdivision variance, which was SD50.

CHAIR PERSON KONYK: Uh-huh.

MR. CUFFE: And one of the conditions of approval of that variance was that the existing driveway be moved no further south.

MR. COURTEMANCHE: And we understand that. I mean, we definitely understand that. I mean, I have copies of the transcript where that all occurs. It is simply, there's no color or anything that requires that; and it was simply appease somebody who was very vocal about --

CHAIR PERSON KONYK: Okay. But this wouldn't be the avenue to correct that anyway.

MR. CUFFE: If the code were followed, this subdivision would not have taken place to begin with.

MR. COURTEMANCHE: And, again, we understand that also. But, I mean, we're providing thirty feet against one house.

CHAIR PERSON KONYK: Before we discuss this, you know --

MR. MacGILLIS: I'd recommend that -- the procedure that we typically follow if somebody wants to amend something is he bring back an amendment to that condition of that original --

CHAIR PERSON KONYK: Who would amend that condition?

MR. MacGILLIS: He would request that engineering that --

CHAIR PERSON KONYK: It has nothing to do with a variance, though.

MR. MacGILLIS: The original subdivision variance was -- that was a condition put on the original SD50 that granted the subdivision.

CHAIR PERSON KONYK: So he'd have to request another variance?

MR. MacGILLIS: He'd request a reconsideration of condition number two on SD50 to come back --

CHAIR PERSON KONYK: And the possibility is that you're not going to get that. So do you understand that? We can't do that today --

MR. COURTEMANCHE: Right.

CHAIR PERSON KONYK: -- for starters.

MR. COURTEMANCHE: But we need to know that we can -- for starters, to save the tree, we have to move the house back ten feet. We have no problem with the condition of straightening the access easement. I believe Mr. Cuffe is in agreement we can probably get that accomplished.

We're trying to take it one step further because it's in the best interest of Mr. Parker's --

CHAIR PERSON KONYK: But we can't do that. We can only give you the variance as we stated originally --

MR. COURTEMANCHE: Well, then I --

CHAIR PERSON KONYK: And then it's up to you to attempt to accomplish moving the driveway.

MR. COURTEMANCHE: Okay. As I said, our main goal here is to make sure that we can save the tree and we can move the house back -- the driveway location, I guess, we'll have to address with engineering.

MR. PUZZITIELLO: Where is that existing driveway location --

MR. COURTEMANCHE: There is no existing driveway.

CHAIR PERSON KONYK: Where's the proposed driveway going to be?

MR. COURTEMANCHE: The proposed driveway runs right here.

MR. PUZZITIELLO: That's going to have to be under a different request because the subdivision variance not a --

CHAIR PERSON KONYK: Right.

MR. MacGILLIS: The way the variance is granted now --

CHAIR PERSON KONYK: You can't do that today.

MR. MacGILLIS: -- he only gets the variance that's granted for that portion of the building with the engineering condition. If he went to the building division, he wouldn't be able to do it. He'd have to go back in there and modify that floor plan to pull that part of the garage -- that

part of the house back there where it wouldn't affect the root system of the tree. That's really what he wants to do. Otherwise, he has to go back, submit an application to the building -- the engineering department and modify SD50. That would come back before you. He'd have to justify why that condition could be modified and still meet the intent of the original subdivision. If he got that approved, he then go back to engineering and submit an application to modify the waiver --

CHAIR PERSON KONYK: If weren't allowed to move that driveway where you want to put it, where would you put the driveway?

MR. COURTEMANCHE: Well, by SD50 and, actually, by the '94 plat waiver, we'd have to move it three more feet towards -- from what is here, we'd have to move it three more feet towards Mr. Parker's house.

CHAIR PERSON KONYK: So then you understand that the only thing that we can do is proceed with the variance that's before us, and you'll have to reapply to place that driveway, and you may not get it where you want to put it?

MR. COURTEMANCHE: Yes. I understand that. I understand that. We're just looking mainly --

CHAIR PERSON KONYK: Okay. Well, mainly right now all we can do is grant the variance or consider the variance that's before us with the conditions as amended. And, if you agree with those conditions, we'll hear from the public first; and then we'll go ahead and vote on the item. Then, at a later date, we probably should put the condition in that he needs to -- if he wants to locate the driveway where he's suggesting that he has to bring that back through again.

MR. MacGILLIS: That goes without saying.

CHAIR PERSON KONYK: Okay. All right. So it's totally understood that we're not approving the driveway -- the location of the driveway. I just don't want there to be any question about that later on because I know that's why you pulled it from the consent agenda was because of the location of the driveway. And I don't want there to be any question later on.

MR. COURTEMANCHE: No. We're fully aware of that. We just didn't know that that couldn't be accomplished.

CHAIR PERSON KONYK: Okay. So --

MR. PUZZITIELLO: Quick question for Dave. Removing the flare, does that have to come back to this Board; or can he do that administratively?

MR. CUFFE: That can be done administratively based on the fact that the flare was there to accommodate what was originally a circular driveway to serve the original house. Since that -- since lot 1 is going to be reconstructed anyway, there's nothing that would prevent a straight drive access. But this is what they chose to do when they subdivided the property.

MR. PUZZITIELLO: So the only time they have to come back to us is if they want to move the driveway?

MR. CUFFE: If they want to move the driveway, which would be consistent with the original condition of approval of the variance. Not the plat waiver itself, but the variance on which the plat waiver was based.

MR. COURTEMANCHE: Not to create any more headaches than you-all already have, I'm sure, we had nothing to do with the initial plat waiver. That was -- Mr. Evans subdivided the property to sell.

CHAIR PERSON KONYK: But you bought it with those conditions?

MR. COURTEMANCHE: Correct.

CHAIR PERSON KONYK: Okay. We'll hear from the public now.

MR. HAWKINS: I don't have any comments now.

CHAIR PERSON KONYK: Okay.

MR. HAWKINS: I just -- I'm just trying to observe what's going on.

CHAIR PERSON KONYK: Okay. So you didn't chose to speak? You don't chose to speak?

MR. HAWKINS: (Nods head.)

CHAIR PERSON KONYK: Okay.

Can you -- just so that there's no confusion -- restate -- I'll restate it. It's BofA 99-00066, Lance Courtemanche, agent for Mark Parker, to allow a proposed single family development to encroach into the required front setback. And there would be five conditions with condition number four and five having been added today at the hearing by Mr. Cuffe.

Is there any questions or comments by the Board members?

(No response.)

CHAIR PERSON KONYK: Anybody prepared to make a motion on this item?

MR. RUBIN: Move to approve BofA 99-66 based on the staff report and the conditions stated.

MR. PUZZITIELLO: Second.

CHAIR PERSON KONYK: We have a motion by Mr. Rubin, a second by Mr. Puzzitiello.

Any discussion?

(No response.)

CHAIR PERSON KONYK: Seeing none, all those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: Opposed?

(No response.)

CHAIR PERSON KONYK: Motion carries unanimously. Your variance has been granted. But we'll see you again, I think.

Next item that we have to review is the hearing attendance chart. I would make a correction on Mr. Rubin, it says absent. It should say not required; is that correct?

MS. MOODY: Yes.

CHAIR PERSON KONYK: Because we had a quorum. So I would change Mr. Rubin's attendance to not required from absent. I was on vacation. Everybody else who was supposed to be here was here. Do we have a motion accepting my absence as an excused absence?

MS. CARDONE: So moved.

MR. WICHINSKY: Second.

CHAIR PERSON KONYK: Motion by Ms. Cardone. Second by Mr. Wichinsky.

All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: Opposed?

(No response.)

Thank you.

I don't think we have anything else. Okay. Then we'll have a motion to adjourn.

Motion by --

MR. PUZZITIELLO: So moved.

CHAIR PERSON KONYK: -- Mr. Puzzitiello.

MR. WICHINSKY: Second.

CHAIR PERSON KONYK: Second by Mr. Wichinsky.

All those in favor aye.

(Panel indicates aye.)

CHAIR PERSON KONYK: Meeting is adjourned.

(Thereupon, the proceedings were concluded at 9:48

o'clock a.m.)

STAFF RECOMMENDATIONS

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

ANALYSIS OF ARTICLE 5, SECTION 5.7.E VARIANCE STANDARDS

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

YES. This .41 acre lot abuts the Loxahatchee River and is located on the Woodside Trail, a dead end street. the lot was created in 1994 through waiver of platting, when the original tract of land was subdivided into two lots 1 and 1A. the variances for reduced access to lot 1, reduce utility easement width and to end a street without a cul-de-sac. The lot is currently vacant and support a one hundred year old banyan tree along the east property line and an oak tree within the proposed driveway. The property owner proposes to construct a 3,000 square foot plus home on the lot. The proposed front setback for the house is measured form the edge of the access tract that runs parallel to the south property line. This access easement provides access to lot 1. The house will be constructed at the edge of the easement, however, the code requires the setback to be measured 25 feet beyond the easement. The property owner states in order to comply with this 65 foot setback the large 100 year old banyan tree will be located in the footprint of the house. Also the root system will be impacted if the house is located further back on the lot. The owner is requesting a variance in order to preserve the tree which not only enhances the lot but the pedestrian pathway that runs to the river along the east property line.

This lot is not laid out in the grid fashion one would have in a typical subdivision. The street dead ends at the front portion of the lot. Therefore, the intent of the front setback to ensure uniformity from the street odes not apply in this case. Furthermore, the house will be setback twice what is required by code. However, it still does not comply with the literal interpretation of the code.

The Board of Adjustment approved a front setback in 1998, BA98-22, to allow for a front 41.46' setback variance. However, after the architectural drawings a new survey were complete the banyan tree abuts the north east corner of the house. Both the architect and Zimmerman Tree Service, recommend the applicant seek a greater front setback variance in order to shift the house 10.8 feet further into the required front setback. The proposed setback with this application is 30.66 while the previous variance approved 41.46. The requested variance would be 10.8 feet greater. This extra 10.08 will ensure the foundation of the house and site work does not interfere with the root system or large limbs of the banyan tree. The applicant and neighborhood residents have a strong desire to preserve this specimen banyan tree in their community.

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

NO. The current owner of the lot did not own the lot when it was subdivided in 1994 nor was he the applicant for the subdivision variances. The original owner Mr. Evans sold the lot to Mr. and Mrs. Henley who quit claim deeded it to Mr. and Mrs. O'Brien in March 1997. The applicant, Mr. Parker purchased the lot in April 1998. The current owner is proposing a 3,000 plus foot home for the lot which is in keeping with the size of other homes being constructed on the Loxahatchee River. The fact the 30 foot access easement was platted across the front portion of lot 1A places a burden on the owner, if he tries to preserve the 100 year old banyan tree. In order to preserve the tree the architect has placed the house at the edge of the access easement. However, the code requires it to be 25 feet beyond the easement. This would bring the house further back onto the root system of the tree. It would also require the tree to be pruned back so limbs did not hang over the roof of the house.

Therefore, the fact the required setback is measured from the edge of the access easement is not

fault or actions of the current owner. the applicant was previously approved a front setback variance in 1998, however, was unable to utilize it since it was not sufficient to accommodate preservation of the banyan tree. This request is for an increase of 10.8 feet in the front setback than was previously approved by the Board of Adjustment. The applicant would like to incorporate the tree into his site design and is going to great lengths to ensure that the tree has existed for over 100 years on this property remains for the enjoyment of his family and the overall neighborhood.

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

NO. The granting of this variance will confer no special privilege on the applicant. The intent of the front setback will be satisfied with the proposed 30.66 foot setback being proposed. Since the code requires a front setback of 25 feet in RS zoning districts. The literal interpretation of the code requires the setback to be established at the outside edge of the easement which results in a 66.46 foot setback, twice what is required by code.

The Board of Adjustment previously approved a front setback of 41.46 feet under BA98-22. The applicants request to shift the proposed house 10.8 feet further into the front setback in order to preserve the existing banyan tree will result in a front setback of 30.66. This setback will meet the general intent of the setback provision. Especially, since this lot does not abut a street as other lots do in a typical subdivision.

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

NO. The granting of this variance will confer no special privilege on the applicant. The intent of the front setback will be satisfied with the proposed 30.66 setback being proposed. Since the code requires a front setback of 25 feet in RS zoning districts. The literal interpretation of the code requires the setback to be established at the outside edge of the easement which results in a 66.46 foot setback, twice what is required by code in this zoning district.

To enforce the literal interpretation of the front setback would result in the house being reduced in size or being located on the banyan root system. The applicant was granted a front setback in 1998 and then prepared the final architectural drawings based on the variance approval. However, the original survey did not locate the specific location of the tree and root system. When a new survey was prepared and the proposed final house design was applied to the new survey it was determined the north east corner of the house would abut the tree and roots would have to be removed to accommodate the footer of the house. The applicant met with staff to determine what could be done to accommodate the tree and meet the intent of the front setback. Staff recommended the applicant obtain the variance. Both the architect and arborist recommended that it would be in the property owner's interest to seek a greater variance in order to save the tree and ensure the root system was at least ten feet from the house to ensure no future damage to the foundation.

Therefore, granting the proposed variance will allow the applicant to construct the proposed single family residence while at the same time preserving a tree that provides a natural amenity to this lot and residential neighborhood.

5. THE APPROVAL OF VARIANCE IS THE MINIMUM VARIANCE THAT WILL ALLOW A

REASONABLE USE OF THE PARCEL OF LAND, BUILDING OR STRUCTURE:

YES. The proposed variance of 35.8 feet is the minimum necessary to ensure the preservation of the mature 100 year old banyan tree. The house has been situated on the lot to provide for a 30.66 foot front setback, which is measured to the edge of the access easement. The general intent of the front setback will be satisfied if this variance is granted. The rear portion of the lot has been left open to accommodate view and possibly accessory structures (pool, cabana, etc.)

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

YES. One goal of the comprehensive plan is to encourage residential communities which provide the user with a high quality of living. The ULDC establishes setbacks for the various zoning districts to ensure the general character of the community and structures are maintained. The RS zoning district requires a 25 foot setback to the south property line. The front setback is therefore established from the edge of this easement which increase the setback to twice what other homes in this neighborhood must comply with.

The general intent of the setback will be satisfied if this variance is approved. The proposed 40.66 foot setback from the south property line will adequately comply with the setback requirement.

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

NO. the proposed 30.66 foot front setback proposed will be adequately setback from the front property line. As previously stated, this lot is at the end of a dead end street and furthermore the houses are not typically aligned along the street. Therefore, the literal interpretation of the code would place a hardship on the applicant and result in the removal of the 100 year old banyan tree. The tree has been an important landscape feature on this lot and in this community, it enhances the lot and pedestrian trail that leads to the Loxahatchee River. To enforce the literal interpretation of the code would not benefit the public at large.

ENGINEERING COMMENTS

In accordance with the plat waiver approval establishing the subject lot, as recorded in O.R.B. 8342, Pgs. 238-248, the base building line is hereby confirmed as being at the interior easement line of the ingress and egress easement (varying in width from 30 ft. to 41.46 ft.) as shown on the recorded survey for Lot 1A. Therefore, the setback variance request should be revised to reflect required and proposed setbacks from the base building line (i.e. interior easement line) as established, and not from the south property line as shown in the application.

Note that the current variance request would allow encroachment by the proposed garage into the existing ingress and egress easement serving the abutting lot. This ingress and egress easement was established in its current configuration as a condition of approval of subdivision code variance SD-50 (approved by the Board of Adjustment on March 17, 1994), allowing easement access to the lots created by the above noted plat waiver, in lieu of standard local street access. The condition was imposed in order to cover the existing physical access (i.e. driveway) to the adjacent lot to the west, and to ensure that the driveway would not be moved closer to the existing developed lot to the south. Therefore, if the variance is approved, such approval should be subject to conditions that:

- a. the driveway serving the abutting lot to the west not be moved or expanded any further

south than the existing south edge of the travelway; and

b. the existing affidavit of waiver (O.R.B. 8342 pg. 238) be amended as needed to reflect any proposed revision to the ingress and egress easement configuration necessary to avoid encroachment by the building.

ZONING CONDITIONS

1. The property owner shall provide the building division with a copy of the Board of Adjustment Result letter and a copy of the site plan, presented to the Board, simultaneously with the building permit application for the single family dwelling. (BLDG PERMIT:BLDG)
2. By August 19, 2000, the property owner shall obtain a building permit for the single family dwelling. (DATE:MONITORING-BLDG PERMIT)
3. The banyan tree located along the east property line of the property shall be protected with barricades during the construction. The tree shall be preserved by the property owner. (BLD INSP: ONGOING)

CERTIFICATE

THE STATE OF FLORIDA)
COUNTY OF PALM BEACH)

I, RACHELE LYNN CIBULA, Notary Public, State of Florida at Large,
DO HEREBY CERTIFY that the foregoing proceedings were taken before me in this cause at the time and place and in the presence of appropriate staff and Board members; that before giving their testimony, said audience members were duly sworn by me to testify the truth, the whole truth and nothing but the truth; that the foregoing and annexed pages, numbered 1 through 39, inclusive, is a true record of the testimony of said witness and of all proceedings had at the session at which testimony was given.

I FURTHER CERTIFY that I am not related to or employed by any of the parties, nor am I interested in the outcome of this proceeding.

IN WITNESS WHEREOF, I have hereunto subscribed by name and affixed my seal this 7th day of September, 1999.

RACHELE CIBULA, COURT REPORTER

