

MINUTES OF
BOARD OF ADJUSTMENT MEETING

FEBRUARY 18, 1999

9:00 A.M. TO 11:48 A.M.

100 AUSTRALIAN AVENUE
WEST PALM BEACH, FLORIDA

BOARD MEMBERS PRESENT:

CHELLE KONYK, CHAIR
GLENN WICHINSKY
JOSEPH JACOBS
RAYMOND PUZZITIELLO
ROBERT BASEHART
STEVEN RUBIN

STAFF PRESENT:

JON MacGILLIS
DAVID CUFFE
LAURA BEEBE, ATTORNEY
MARY MOODY

CHAIR PERSON KONYK: I'd like to call the Board of -- February 18th, 1999, Board of Adjustment meeting.

First, I'd like to start a little pre-emption here.

I'd like to introduce that we have a new member of the board. It's Mr. Jacobs. He's been appointed by Commissioner McCarty to replace Mr. Cohen.

Can we start with the roll call and the declaration of quorum.

Welcome.

MR. JACOBS: Thank you.

MARY MOODY: Mr. Bob Basehart?

MR. BASEHART: Here.

MARY MOODY: Mr. Stanley Misroch?

(No response.)

MARY MOODY: Mr. Gilbert Moore?

(No. response.)

MARY MOODY: Mr. Raymond Puzzitiello?

MR. PUZZITIELLO: Here.

MARY MOODY: Mr. Steve Rubin?

MR. RUBIN: Here.

MARY MOODY: Mr. Glenn Wichinsky?

MR. WICHINSKY: Here.

MARY MOODY: Mr. Joseph Jacobs?

MR. JACOBS: Here.

MARY MOODY: And Ms. Chelle Konyk?

CHAIR PERSON KONYK: Here.

MARY MOODY: We have a quorum.

CHAIR PERSON KONYK: The next item on the agenda is the election of the chairman and the vice chairman.

MR. BASEHART: Why don't we put that to the end of the meeting.

CHAIR PERSON KONYK: Okay. I'd like to re-order that to the end of the meeting.

Next item on the agenda -- is that okay with everybody? Do I need a motion to do that?

MR. BASEHART: No.

CHAIR PERSON KONYK: Okay.

Proof of publication. I have before me proof of publication in the Palm Beach Post.

Next item on the agenda is remarks of the chairman.

For those of you who are not familiar with how this board conducts its business, the agenda is divided into two parts, the consent and the regular.

Items that are 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 no board member feels that the item warrants a full hearing.

If your item remains on the consent agenda, after the board votes on it, you're free to leave.

Items that are pulled from the consent agenda will be re-ordered to the regular agenda.

Items that are on the regular agenda are items that have either been recommended for denial by staff, or the applicant does not agree with the conditions that staff has recommended or there's opposition from the public. The items on the regular agenda will be introduced by the staff. The applicant will give their presentation. Then the staff will give their presentation. At this point we'll hear from the public.

The public is asked to limit their comments to items that are -- that affect the variance itself, not things

that are not of the -- have to do with the variance. After the public portion of the hearing is closed, the board will have an opportunity to ask questions of the applicant and the staff. And then we'll vote on the item.

Mr. Wichinsky would like to make a comment right now, and I told him that I would let him do it right after I made my comments. So...

MR. WICHINSKY: I'd like to direct this to the board and to staff. I received a phone call in between meetings from Mr. Cohen who is no longer on the board. And he served on the board, I think, for four or five years as appointed by Commissioner McCarty. The reason that he's not on the Board any longer is because of health reasons.

I wanted to ask staff if they may want to consider re-introducing or re-enacting a -- really a custom we had in the past where the county commission would issue a certificate of appreciation to board members who served.

And if we could have those done and given to us the opportunity to present that to Harold, if he'd like to come before us at the next meeting or when the commission could address it, I think it would be a proper thing to do.

CHAIR PERSON KONYK: Okay. Thanks.

Next item on the agenda is approval of the minutes.

Does anybody have any corrections or additions to the minutes?

MR. BASEHART: Believe it or not, I read the minutes and I found no problems with them. I'd like to make a motion, for those of us who have read them, that the minutes from last month's meeting be approved as printed.

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

MR. WICHINSKY: Second.

CHAIR PERSON KONYK: Second by Mr. Wichinsky.

All those in favor?

(Panel says aye.)

CHAIR PERSON KONYK: Motion carries unanimously.

Next item is the remarks of the zoning director.

MR. MacGILLIS: Maybe at this time, we can have the county attorney swear in the new board member.

CHAIR PERSON KONYK: Okay.

MS. BEEBE: Raise your right hand.

I.

MR. JACOBS: I.

MS. BEEBE: State your name.

MR. JACOBS: Joseph J. Jacobs.

MS. BEEBE: Do solemnly swear to uphold the rules and regulations of the Board of Adjustment.

MR. JACOBS: Do solemnly swear to uphold the rules and regulations of the Board of Adjustment.

MS. BEEBE: And all other applicable federal, state and local laws, rules and regulations.

MR. JACOBS: And all other applicable federal, state and local laws, rules and regulations.

CHAIR PERSON KONYK: Okay. Do you have any remarks?

MR. MacGILLIS: No.

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

MR. MacGILLIS: Yes. We have one request for a withdrawal by the agent. That's the SD -- sub division 93. The applicant, Pat Lantini (phonetic) has submitted a letter to the engineering division and the zoning division

requesting this item be withdrawn. Apparently, they must have worked out the variance request.

CHAIR PERSON KONYK: Okay. So item SD-93 will be withdrawn.

MR. MacGILLIS: Right.

CHAIR PERSON KONYK: That's the only change?

MR. MacGILLIS: Yes.

CHAIR PERSON KONYK: Okay. The first item on the agenda is BofA 9900009, Dora Mancuso, requesting a thirty-day postponement.

Is this by right?

MR. MacGILLIS: Yes.

For the Board's information, the reason this is being postponed is the applicant has asked me for a variance to allow windows in a zero lot line home. These provisions are found under a section of the code that you can't grant variances from. But staff is in the process of bringing something to the board next month that would allow variances from zero lot line homes. Therefore, this item will be on next month's agenda.

CHAIR PERSON KONYK: Okay.

MR. MacGILLIS: So it's by right. You don't need to vote on it.

CHAIR PERSON KONYK: So the first item is going to have a thirty-day postponement to March 18th, 1999.

CHAIR PERSON KONYK: The next item is BofA 9900015.

MR. MacGILLIS: Actually, you don't need to take a motion. This one shouldn't have been on the agenda because it's not been advertised yet. So just ignore this item.

CHAIR PERSON KONYK: Okay. Ignore. So instead of postponed, it's under ignore?

MR. MacGILLIS: Right.

CHAIR PERSON KONYK: Next item on the consent -- first item on the consent is BofA 9900002, Brian J. Collins, to allow an existing accessory detached garage to remain in the required side interior setback.

Is the applicant present?

MR. COLLINS: (Raises hand.)

CHAIR PERSON KONYK: Could you stand and state your name for the record.

MR. COLLINS: My name is Bryan Collins.

CHAIR PERSON KONYK: Mr. Collins, the staff has recommended conditions, five. Do you understand and agree with those conditions?

MR. COLLINS: Yes.

CHAIR PERSON KONYK: Jon, is there any opposition from the public or any letters?

MR. MacGILLIS: There was just one letter from a neighbor who supported the variance request and stated the shed was there for many years and is not disruptive to the neighborhood.

CHAIR PERSON KONYK: Is there anybody here from the public to speak on this item?

(No response.)

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.

MR. COLLINS: I have one question. The letter, I have to pick it up, or will I have to --

CHAIR PERSON KONYK: After it's voted on? Just wait until we get to the vote.

STAFF RECOMMENDATIONS

APPROVAL, 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 corner lot is located within the Palm Beach Farms Company's Plat No. 3, an unrecorded subdivision. The subdivision is located south of Southern Boulevard and west of Jog Road in the RS-Residential Zoning District. The lot is conforming with respect to size and property dimensions. The single-family residence complies with the required setbacks. The shed which is located in the southwest corner of the lot was constructed by the previous owner without a building permit. The applicant recently purchased the property and is attempting to obtain a permit but must first obtain a setback variance.

The shed has existed in this location for several years and is buffered by mature Banyan trees and native shrubs on the lot to the west. The majority of the shed is screened from the street by the recently installed fix

foot wood fence and the fact it is located in the corner of the lot. The shed encroaches two feet into the required five feet side interior setback.

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

NO. The previous owner constructed the shed in the setbacks without a valid building permit. It was not until the final closing on the property in July of this year did the applicant discover there was an outstanding violation on the property. The applicant was informed that the shed was correctly constructed and would pass the permit and inspection requirements. After the closing, the owner learned the shed was in the setbacks and a variance would be required prior to applying for a building permit. The applicant is correcting this and other violations on the property that the previous owner was cited for several years ago. The applicant has been working closely with the Code Enforcement staff to resolve the violations.

Therefore, the applicant inherited the violations, however, is working in good faith to correct them and bring the property into compliance with county regulations. The encroachment is minor and is mitigated by the existing vegetation.

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 two foot setback encroachment is minor and is presently mitigated by the existing mature banyan tree and native shrubs on the lot to the west. The structure is well constructed and has recently had improvements made to the exterior by the applicant, such as painting. The shed cannot be easily moved since it is on a footer and would require it to be torn down, if the variance is denied. Only the top portion of the shed is visible from the street since the existing six foot wood privacy screens the majority of the structure.

Granting the variance will ensure the applicant obtains the necessary permits and inspections to legalize the structure. This will ensure it is brought into compliance with the building code and safe to 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 setback variance, if denied, would require the shed to be demolished. The shed cannot be moved since it is on a footer. The shed is used to store vehicles the owner works on as a hobby. The shed is a typical structure on many lots within the subdivision for the owners to store vehicles and materials. The minor two foot setback encroachment is mitigated by the existing vegetation and six foot wood fence along the street. The shed has existed for many years and therefore allowing it to remain will not deprive the applicant of needed storage

space.

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

YES. The requested variance is minimal and is mitigated by existing vegetation. The shed, as previously stated, is needed by the applicant to store vehicles. Keeping the vehicles and material inside is necessary for the applicants enjoyment of this property. The owner is making a commitment to the neighborhood by improving a lot that has been in foreclosure for several years and in violation with Palm Beach County Code Enforcement Division.

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

YES. The intent of the ULDC, side interior setback is to ensure a minimum separation between property lines and structures. Accessory structures less than ten feet in height must be setback five feet from the side interior property line. The previous owner constructed the shed without obtaining a building permit, three feet into the setback. The applicant is now faced with triple permit fees and Code Enforcement violations for the illegal construction of the shed without permits in the setback. The general intent of the code is satisfied by the buffering provided by the mature banyan tree and the native shrubs on the lot to the west.

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

NO. The shed is located along the southwest corner of the lot. The property most affected by the minor encroachment would be the lot 22 to the west. However, there is mature native shrubs (sea grapes and wax myrtle) that buffer the majority of the shed. The applicant has submitted a petition that was circulated to the surrounding residents stating a variance application was being considered to allow the shed to remain in the setbacks. The petition was signed by seven neighbors, who are in support of the approval of the request. The applicant is correcting many long outstanding violations that existed on this property until they purchased it in July 1998.

Therefore, the granting of the setback variance will allow the applicant to obtain necessary permits and inspections to ensure the shed is structurally safe.

ENGINEERING COMMENT(S)

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 for the shed. (BLDG PERMIT:BLDG)

2. The property owner shall provide the Building Division with a copy of the existing elevations of the shed, Exhibit 18 presented to the Board, simultaneously with the building permit application for the shed. (BLDG PERMIT:BLDG)
3. By March 18, 1999, the applicant shall apply to the Building Division for a building permit for the shed.
(DATE:MONITORING-Bldg Permit)
4. By April 18, 1999, the applicant shall obtain a building permit for the shed. (DATE:MONITORING-Bldg Permit)
5. There shall be no additions to the shed. (ONGOING)

CHAIR PERSON KONYK: Next item on the consent is BofA 9900003 Oriole Homes, to allow a reduced side corner setback for a proposed single-family dwelling.

Is the applicant present?

MS. HURLBERT: Yes.

CHAIR PERSON KONYK: Your name, for the record?

MS. HURLBERT: Nancy Hurlbert; Williams, Hatfield & Stoner.

MR. MacGILLIS: There's a minor change on page seventeen for the variance request. The first variance request where they're requesting twenty-five feet, that should -- the proposed should read fifteen point four for a variance of nine point six.

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

MS. HURLBERT: Yes, I do.

CHAIR PERSON KONYK: Jon, is there any letters on this.

MR. MacGILLIS: We had several calls from neighbors.

I just spoke to one this morning, Mrs. Canter (phonetic).

she was concerned about the -- this being a new model. And I clarified it for her this morning. So the other calls were just general and had no objection.

CHAIR PERSON KONYK: Anybody here from the public to speak on this item?

(No response.)

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, 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 61 acre residential subdivision was approved in 1994 by the BCC, pursuant to Zoning Petition 94-18. The site is approved for 235 dwelling units for an overall density of 3.85 du/ac. The development supports both two unit townhouses and zero lot line single family dwellings.

The site is platted and partially built out. The site supports a variety of model units. The developer anticipated all lots would support one of the available model types, however, lot 101 & 120 cannot support even the smallest model without the need for a side corner setback variance. The developer still owns both of these lots and would like to be able to sell the smallest available model on each lot. Both lots will support an attached townhouse unit. Therefore, in order to keep the uniformity and integrity of the housing design, the unit must be aligned properly. The requested setbacks will allow the units to be constructed as designed without costly modifications to the model and delays in selling the lot and constructing the units.

Therefore, the fact the lots are platted and will support the smallest available model there is limited design options to the owner in terms of modifying the lot configuration or unit layout.

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

NO. When the subdivision was site planned and platted it was the developers intent to accommodate at least one of the available models on each of the lots. All lots with the exception of lots 101 & 120 can accommodate one of the units. Both lots 101 and 120 are corner lots where the width has been reduced because of the curve in the street and the designer not taking this into account when laying out these two lots. The developer is requesting the two setback variances in order that these two lots can be sold with the smallest model constructed on them. This will allow the architecture consistency to be maintained on the street and the townhouse unit integrity to be maintained without costly modifications.

The requested variances are not the result of actions of the developer but an error on the platting of the lots not large enough to accommodate even the smallest mode. This error was not discovered until the developer tried to place the specific units on the lot when it became evident the lot was not wide enough to accommodate the typical size model.

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

NO. The applicant is requesting a one foot and 7.6 foot

side corner setback variance for lots 101 & 120. Both are corner lots that have had the width reduced due to the curve in the street. There will be adequate land area between the unit and the right-of-way to accommodate open space and landscaping to mitigate the minor setback encroachment. The developer site planned and platted the subdivision consistent with the approved site plan. It was assumed all the lots could accommodate a dwelling unit. However, these two lots cannot accommodate even the smallest unit. The granting of this minor variance will allow both these lots to support a dwelling unit that is to be attached to the unit on the adjacent lot. It is important in order to maintain the townhouse unit integrity that the units align properly. To setback the unit consistent with code would compromise how the townhouse unit is constructed.

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 has limited design option available to avoid the need for the two requested variances. The lots are platted and therefore cannot be reconfigured at this time to accommodate the additional land area necessary for the unit to meet the 25 foot side corner setback. With the proposed landscape and open space provided between the unit and the right-of-way the general intent of the code will be met.

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

YES. The 1 foot and 7.5 foot corner setback for lots 101 and 120 is a reasonable request. If the variances are granted the two lots can be sold to accommodate the smallest available unit. As stated in #4 above, with the proposed landscaping and open space between the right-of-way and unit the general intent of the code will be met.

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

YES. The general intent of the ULDC side corner setback is to ensure minimum separation between a dwelling unit and street. The applicant will be providing 17.6 feet and 24 feet for lots 120 and 101, respectively, which will allow adequate room for landscaping and open space while maintaining clear visibility for vehicles maneuvering the curve along the street in front of each of these units.

Therefore, the general intent of the code will be met, if the variance is granted.

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

NO. The granting of the two requested setback variances will not be injurious to the area involved. Both units

are currently owned by the developer who hopes to sell the lots and construct a unit on each. The proposed setbacks will be adequate to meet the general intent of the code which is to provide area for clear visibility for vehicles travelling on the street adjacent to the structures and to ensure uniformity in the layout of the units adjacent to the street throughout the development. If the variance is granted, the overall architectural style of the development can be maintained, since a different modified unit will not have to be constructed on these lots in order to meet the underlying setback.

ENGINEERING COMMENTS

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. Prior to the Certificate of Occupancy for the unit on lots 101 and 120 the applicant shall install one native shade tree and shrubs at the base of the unit to mitigate the side corner setback variance. (CO-Building Inspection)
3. By April 18, 1999, the applicant shall ensure the certified Site Plan reflects the side corner setback on lots 101 and 120 and the BA conditions of approval are placed on the Site Plan. (DATE:MONITORING-ZONING-BA)

CHAIR PERSON KONYK: Next item is BofA 9900004, Robert W. Simmons, Jr., and John Christian, as trustees, to allow for a reduction in the required lot width.

Is the applicant present?

MR. STARKEY: Yes. Lee Starkey.

MR. BASEHART: Just made it, didn't you?

MR. STARKEY: No. I've been here. I was here before you, sir.

MR. BASEHART: Okay.

CHAIR PERSON KONYK: Woops.

Jon, is there any letters on this item?

MR. MacGILLIS: We had a lot of telephone calls from residents. But most of them, they just needed clarification of what exactly the variance was for once that was done. I did get a call. I spoke to the agent yesterday from Ray Miller from South Florida Water Management District.

Apparently, there's surface water management permit on this site they were having concerns with because there's clearing going on on the site. But staff has

drafted a condition which the applicant stated yesterday they can accept that we'd like to read into the record that would satisfy the South Florida Water Management and allow this to move forward.

CHAIR PERSON KONYK: Do you want to read that now?

MR. MacGILLIS: Yes. Condition number four would read, prior to DRC certification of the final subdivision plan, the applicant shall provide the zoning division with a letter from the South Florida Water Management District stating the property owner is in compliance with the surface water management permitting conditions.

MR. BASEHART: But that has nothing to do with actually the variance that we're considering anyway, does it?

MR. MacGILLIS: Well, it had to do with -- there was apparently mangroves on the site and exactly where they -- there was a conservation easement that had to be filed. So rather than getting into the details of it and holding this variance up, they felt comfortable enough that if we put this in there, it would address their concerns.

MR. BASEHART: Okay.

CHAIR PERSON KONYK: Do you understand and agree with those four conditions?

MR. STARKEY: Yes.

CHAIR PERSON KONYK: Is there anybody here from the public to speak on this item?

(No response.)

CHAIR PERSON KONYK: Any member of the board want this item pulled?

(No response.)

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

MR. STARKEY: Thank you.

CHAIR PERSON KONYK: You're welcome.

STAFF RECOMMENDATIONS

APPROVAL, 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 11 acre tract of land is approved to support an 11 unit single family subdivision. The Board of County Commission approved the rezoning of the property from RS to RT in 1994. The current owner of the property recently purchased the property and is proposing to reduce the number of lots to a total of three. The three lots will all have direct access onto the Loxahatchee River which is a significant amenity to this subdivision. The overall reduction in the number of units will be more compatible with the existing character of this area. The proposed lots will meet all the property development regulations with the exception of the lot width for Lot 3. The applicant is requesting a variance that would allow the lot width for that portion of the lot that will support

the 20 foot access easement to the lot to be only 20 feet.

The majority of the lot will meet the general intent of the 100 foot lot width. Lot 3 is isolated in that it will be located in the northeast portion of the subdivision and extend into the Loxahatchee River. In order to obtain legal access to the lot the developer is proposing to extend a 20 foot wide access easement along the east property line of lot 2 to Lot 3. Although, the 20 foot easement will meet the legal access code requirement it will not satisfy the 100 foot lot width requirement. Since the ULDC requires lot width to be measured in the middle of the lot. Since this lot has an unusual configuration if the 20 foot access easement is added to the calculation of the lot width this code requirement can be met.

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

NO. This 11 acre tract of land is unique in that it extends into the Loxahatchee River. The River provides the future property owners with a unique living experience. The previous owner of this tract of land had received approval to construct an 11 unit subdivision. However, the current owner is proposing to reduce this number to three and provide much larger lots with expanded access and views of the River. Lots 1 & 2 will comply with all property development regulations. However, Lot 3, which extends into the Loxahatchee River is difficult to access from the Loxahatchee River Road. In order to provide access to this isolated lot a twenty foot wide easement will be extended through the subdivision along lot 2. This results in this easement being used in calculating the lot width. In doing so the 20 foot wide easement portion of the lot will not meet the literal interpretation of lot width requirement.

Therefore, although the developer has control over how many lots will be developed on this tract of land the overall reduction in the lots by eight units greatly affects the overall financial return needed in order for this project to be developed. The reduction in the units will ensure this subdivision is more characteristic of the residential development patterns in the general vicinity.

Although, the 11 units are consistent with the land use and zoning it would be more intense use of the land than the proposed three lots. The three lots will allow for more open space between units and maintain the rural character of this area.

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 lot width variance for lot 3 will not grant a special privilege to the applicant. The developer is proposing to meet all property development regulations for this proposed subdivision. Lot 3 is unique in that it is isolated in terms of access to Loxahatchee River Road. In order to maximize the views and access to the River an extended twenty foot access easement must be extended from Loxahatchee River Road to

Lot 3. The easement is in turn used in calculating the lot width. The lot width is determined by finding the mid point of the lot lines and drawing a parallel line to both opposite property lines. In this situation when one calculates the extended 20 foot easement into this calculation the lot width is skewed. The general intent of the lot width will be met if one considers the width of the lot once one enters the actual lot.

The applicant is proposing to significantly reduce the impact the current approved subdivision will have on this general area by reducing the number of units by 8. This reconfiguration of the subdivision has resulted in Lot 3 being located partially into the Loxahatchee River and thereby making access from the right-of-way difficult.

This in turn effects how the lot width is calculated.

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 literal interpretation of the code requires the 20 foot access easement that extends from the Loxahatchee River Road to Lot 3 to be used when calculating the lot width. The lot width is measured by finding the mid points of the lot lines and joining them with a parallel line. In this situation, in doing so the extended 20 foot easement must be used in this calculation. As stated in number 3 above, this skewed the lot width calculation. The lot would meet the minimum lot width, if the 20 foot access easement did not have to be used in the calculation.

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

YES. The granting of the lot width variance for Lot 3 will allow the applicant to move forward with the subdivision. The site plan and plat will have to be amended to reflect the new lot configuration and reduction of 8 units. This variance will effect only lot 3 and considering the unique circumstance of the lot location and configuration on the Loxahatchee River, the variance request is reasonable.

The variance request will meet the general intent of the code to maintain a minimum lot width, if the 20 foot extended access easement did not have to be included in the lot width calculation. The code discourages "flag lots" and staff only looks favorable on this type of lot configuration when there are unique site constraints that warrant access from an extended easement.

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

YES. The proposed 3 unit subdivision will be consistent with the land use of LR-1 and the zoning classification of RT. The proposed modifications to the current approved 11 unit subdivision will be more compatible with the existing surrounding residential lots. Most of the lots on the

River tend to be larger lots supporting large areas of open space and expanded view of the river. The reduction in the number of units will further enhance the unique rural character of this area.

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

NO. The granting of this variance to Lot 3 will allow the developer to proceed with the modifications to the currently approved Site Plan and subdivision approval. It will ensure the subdivision supports only 3 lots instead of the currently approved 11 units. This will be beneficial to everyone in the area in that it will preserve the unique rural character of this area and the views of the Loxahatchee River.

ENGINEERING COMMENT

No comment regarding requested variance. However, the applicant should note that the stormwater "retention areas", shown on the submitted site plan as being within proposed Lot Nos. 1 and 3, must be established within separate common area water management tracts for subdivision purposes.

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 lot 3. (BLDG PERMIT:BLDG)
2. By July 18, 1999, the applicant shall apply to DRC to amend the site plan for the subdivision (DATE:MONITORING-ZONING-DRC)
3. Approval of the revised plat before February 18, 2000, shall vest this lot width variance for Lot 3. (DATE:MONITORING-ENG)

CHAIR PERSON KONYK: Next item on the consent is BofA 9900005, Brefrank, Inc., to allow landscape diamonds in the parking lot instead of alternating between landscape islands and diamonds.

Is the applicant present?

MS. LINDSEY: Yes.

CHAIR PERSON KONYK: Your name for the record?

MS. LINDSEY: Jean Lindsey; Williams, Hatfield and Stoner.

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

MS. LINDSEY: Yes.

CHAIR PERSON KONYK: Jon, is there any letters?

MR. MacGILLIS: We just had a letter from -- we sent this application out to the Village of Wellington because

it's -- it's in their jurisdiction. The planning, zoning and building director, James Kusdows (phonetic), stated he has no objections to substituting the landscape diamonds for landscape islands provided there is no net loss on either the parking spaces or landscape green area.

We would, however, request that additional landscaping be transferred that requires perimeter landscape buffering surrounding the parking area.

There is no loss of trees in here. What they're doing is, rather than having islands parallel to the parking stalls, they're putting in punch-out diamonds in front of the vehicles. Therefore, there's no net loss. So there's nothing to transfer. It's all going to remain in the parking lot.

CHAIR PERSON KONYK: Okay. Anybody here from the public to speak on this item?

(No response.)

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

(No response.)

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

STAFF RECOMMENDATIONS

APPROVAL, 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 111 MUPD "G" parcel is within the overall 466 acre Wellington Mall site. The project will support a regional shopping mall with 5 major anchor stores and inline retail. The site is a Development of Regional Impact (DRI) and has received approval from Development Community Affairs (DCA) and the Board of County Commission for this use. The applicant requires the requested variance in order to finalize the site layout and landscaping for the regional shopping mall. The site is currently vacant, however, site preparation (clearing vegetation) is currently underway. What is peculiar to this parcel of land is the fact that it is a regional mall and one of the first approved in the unincorporated Palm Beach County in 20 years. The site is surrounded by loop roads that surround the parcel. The road provides access to the development while others provide access to the other parcels within this development. The building layout is typical to other large scale shopping centers with major anchors located at ends of the shopping center. There will be in-line retail stores linking the major anchors.

The applicant is requesting the Board of Adjustment to allow the required landscape islands to be replaced with landscape diamonds throughout the parking lot. When the BCC approved DOA 96-40 (A), condition K.2. which

required the parking lot to be landscaped with alternating islands and diamonds. However, the condition did permit the applicant to submit to Board of Adjustment for a variance, if an alternative design was proposed. The applicant states that the same number of parking lot trees will be planted with the diamonds as would have been provided with both islands and diamond design layout.

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

NO. The applicant is satisfying the intent of BCC condition K.2., which requires the parking lot to be landscaped with islands and diamonds. However, over the past several months the final design details for the mall and site landscaping are being complete it was discovered that in order to install both islands and diamonds additional parking spaces would have to be reduced. Since the applicant has already obtained variance relief (BA98-34) to reduce the overall parking for the mall by 245 spaced any additional parking reduction cannot be accomplished without compromising the parking needs for the tenants and customers. Therefore, since the condition did provide language that the applicant could seek variance relief to install only landscape islands, the applicant will be satisfying the intent of the landscape code and condition.

The overall landscaping for this site exceeds the minimum landscape code. The perimeter landscape buffers and along access aisles have been upgraded significantly by BCC condition. Also, the landscaping around the foundation of the buildings and the parking spaces nearest to the building will have upgraded landscaping.

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 intent of the landscape code and BCC conditions K.2. is to ensure the overall parking lot has adequate vegetative cover. As previously stated above, the applicant is not proposing to reduce the overall number of trees required in the parking lot but simply to install only landscape diamonds. The proposed layout is typical to other large scale shopping centers constructed in south Florida. The diamonds allow for vegetative cover of the parking spaces while allowing for additional land area to accommodate the large number of parking spaces required for this use.

Therefore, the granting of this variance to install only landscape diamonds instead of alternating islands and diamonds is a reasonable request that will not confer any special privilege on 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. The applicant is requesting the Board of Adjustment to allow for deviation from the literal interpretation of

installing alternating landscape islands and diamonds every 120 linear feet throughout the parking lot. The applicant states that due to the limited size of the parcel of land that has to accommodate structures, parking, landscape, retention, et cetera, land area is at a premium. To install the islands would require a further reduction in the number of required parking spaces. The applicant is requesting that the Board approve their proposed design option to install only diamonds in the parking lot. Since there will be no loss in the number of required trees, if this variance is granted, the general intent of both the landscape code and BCC condition will be satisfied. The overall site will comply with all other landscape code requirements, in fact the site exceeds minimum code in many areas as a result of BCC conditions to upgrade the buffers and plant material.

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

YES. This site is approved as a large scale shopping center by the BCC. The petition was approved with many conditions to ensure the site would be in harmony with the surrounding area. All approvals have been obtained and the site is currently being prepared for construction. In order for the final site plan to be completed the applicant must resolve the parking lot landscaping conditions. Condition K.2. requires the applicant to install landscape islands and diamonds throughout the parking lot. However, as previously stated now that the final layout details have been resolved the applicant is requesting to be permitted to install only landscape diamonds. This would ensure the overall parking requirement can be satisfied. Since the diamonds are installed at the intersection of four parking spaces and take up no additional land area while the islands run parallel to the parking space and are six feet in width (five feet landscape with 2-6" curbs). In a parking lot of this size, if the islands are installed it would mean a significant loss in parking spaces or an overall reduction in the square footage of the building in order to reduce required landscape parking. Since the general intent of the landscape code and BCC condition will be satisfied with the proposed landscape diamonds this variance request is a reasonable request to allow this regional shopping center to move forward with construction.

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

YES. The intent of the landscape code is to ensure minimum landscaping is provided on site. This site will be required to install significantly more landscaping than required by code. The BCC conditions of approval have ensured that perimeter buffers, access aisles, building foundations, lake slopes are all planted in excess of minimum code in terms of quantity of plant material and increased buffer planting widths.

The granting of this variance request is not to reduce the number of trees, but to locate trees in

diamonds in front of the parking spaces rather than alternating between islands and diamonds. Therefore, considering the site has received all necessary approvals, the BCC wrote language into condition G.2 that allowed for an alternative design and the fact that additional required parking spaces will be reduced if the islands have to be installed, the requested variance is a reasonable request and will meet the general intent of the landscape code and BCC condition.

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

NO. The overall regional shopping center site will have upgraded landscape material. The site will be aesthetically pleasing to the future patrons. The applicant is proposing landscaping that will be inviting to the user of the site. With shade trees placed in the parking lot, buffers and around the foundation of the buildings to provide the most visual impact on the site to the visitor as well as providing screening from the glare of of the summer sun as pedestrians walk from the parking lot to the entrances of the mall.

Therefore, Granting of this variance will meet the general intent of the code and BCC condition and not be injurious to the area involved.

ENGINEERING COMMENT

No Comment. (ENG)

ZONING CONDITIONS

1. By March 21, 1999, the applicant shall amend the site plan to reflect the proposed landscape island layout in the parking lot. A landscape detail shall be provided on the Site Plan that clearly delineates a typical parking row with diamonds and trees. (DATE:MONITORING-DRC)
2. Prior to DRC certification, the applicant shall ensure the BOFA conditions are shown on the site plan. (DRC:ZONING)
3. The applicant shall comply with the ULDC minimum 75% shade tree requirement in the parking lot. (ONGOING)

CHAIR PERSON KONYK: Next item on consent is board of adjustment time extension 9900007, requesting a six-month time extension to condition number two that required a building permit be obtained by January 16th.

Is the applicant present?

MR. PARKER: Mark Parker.

CHAIR PERSON KONYK: I'm sorry?

MR. PARKER: Mark Parker.

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

MR. PARKER: Yes.

CHAIR PERSON KONYK: Jon, is there any letters on this?

MR. MacGILLIS: It's a time extension.

CHAIR PERSON KONYK: It's a time tension, so we don't advertise that.

Any board member have an objection to this?

(No response.)

CHAIR PERSON KONYK: Okay. Remains on the consent.

STAFF RECOMMENDATION

Staff recommends Approval of a six month time extension of BA98-22, Condition #2, from January 16, 1999, to July 16, 1999, consistent with Section 5.7.H.2 of the ULDC, to provide additional time for the petitioner to commence development and implement the approved front setback variance.

The property owner shall comply with all conditions of approval of BA98-22 unless modified herein:

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 January 16, 1999, the property owner shall obtain a building permit for the single family dwelling. (DATE:MONITORING-BUILDING PERMIT)

IS HEREBY AMENDED TO READ:

By July 16, 1999, 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 construction. The tree shall be preserved by the property owner. (Bld Insp:ONGOING)

ENGINEERING COMMENT

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 & egress easement (varying in width from 30 ft. to 41.46 ft.) as shown on the recorded survey for Lot 1A.

The ingress & 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. Given the above, it appears that the setback variance request should be revised to reflect required and proposed setback from the Base Building Line (i.e. interior easement line) as established and not from the south property line as shown in the application.

CHAIR PERSON KONYK: BofA 9900010, William T. Little as Trustee of the William T. Little Revocable Trust dated June 17th and Frances A. Little, Trustee of the Frances A. Little Revocable Trust, to allow for an existing single-family dwelling and proposed addition to encroach into the side interior and rear setbacks.

Is the applicant present?

MR. POSNER: Michael Posner for the applicants, William Little and Frances Little. The Littles are also present.

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

MR. POSNER: Yes, we do.

MR. MacGILLIS: Actually, we've been going back and forth with the agent. Apparently, engineering had an original comment on the -- it's a lot that's legally created.

They have submitted a unity of title and we handed it to the County Attorney's office yesterday. But we've been playing phone tag. We haven't been able to resolve it. So I think we need to put a condition on here. They've drafted up a unity, but the County Attorney's office needs to look at the two parcels to make sure they're correct. So we'd recommend a condition here, I think would --

CHAIR PERSON KONYK: Do you want to read the condition --

MR. MacGILLIS: Right.

CHAIR PERSON KONYK: -- and see if the applicant agrees?

MR. MacGILLIS: By April 17, 1999, the applicant shall execute a unity of title for parcels 5 and 5-2 and provide the zoning division with a copy.

MR. POSNER: Yes. We can accept that condition.

CHAIR PERSON KONYK: Okay. So you understand and agree with that condition?

MR. POSNER: It's already been executed.

CHAIR PERSON KONYK: Okay. Any letters?

MR. MacGILLIS: No. No letters.

CHAIR PERSON KONYK: Anybody from the public here to speak on this?

MR. COHEN: Yes. My name is Fred Cohen. I'm an attorney. I represent the Getzes, the adjacent property owners immediately to the north.

We object.

CHAIR PERSON KONYK: Okay. Then this item will be

pulled from the consent.

MR. POSNER: Madam Chairperson. There was a letter from the easterly -- or westerly property owner consenting to the variance application which was presented to staff.

MR. MacGILLIS: I'm sorry.

MR. POSNER: I just wanted to clarify that.

CHAIR PERSON KONYK: Okay. When you make your presentation, you'll have your opportunity to tell us that.

But he's not the westerly property?

MR. POSNER: No, he's not.

CHAIR PERSON KONYK: Okay. This will become the first item on the regular agenda.

CHAIR PERSON KONYK: Next item on the consent is BofA 9900011, Marianne Hall and Edward Hall to allow a proposed addition to a single-family dwelling to encroach into the rear setback.

Is the applicant present?

MS. HALL: Yes.

CHAIR PERSON KONYK: Your name for the record.

MS. HALL: Marianne Hall.

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

MS. HALL: Yes, I do.

CHAIR PERSON KONYK: You do?

MS. HALL: Yes, I do.

CHAIR PERSON KONYK: Okay. Jon, is there any letters on this?

MR. MacGILLIS: Which one?

CHAIR PERSON KONYK: BofA 9900011.

MR. MacGILLIS: Looks like there were two letters, one for approval from Trambilli (phonetic).

And one opposing it from Charleson Polloski (phonetic). The undersigned are the owners of the property adjacent to 3121 Palm Drive. The undersigns are in the process of attempting to sell their property located at 910 Intracoastal Road, Delray, and believe that the proposed encroachment would negatively impact our ability to --

(Thereupon, there was an interruption by the court reporter.)

MR. MacGILLIS: The undersigned are the owners of the property adjacent to 3121 Palm Drive. The undersigns are in the process of attempting to sell their property and believe the granting of this variance would have a negative impact on their being able to sell the property.

MR. MacGILLIS: In the staff report, staff has detailed that there is existing mature landscaping that's actually on their property, the applicant, that you can see in the photograph is well maintained. And I believe there's also a fence there that provides a visual buffer --

CHAIR PERSON KONYK: You're not concerned about it?

MR. MacGILLIS: No.

CHAIR PERSON KONYK: Okay. Anybody here from the public to speak on this item?

(No response.)

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

(No response.)

CHAIR PERSON KONYK: Seeing none, BofA 9900011 will remain on the consent. Thank you.

STAFF RECOMMENDATIONS

APPROVAL, 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 conforming lot is in a RS Zoning District and meets the required setbacks, lot coverage, width and depth. The house was constructed in 1957 by a previous owner and exceeded the minimum front setback requirement at the time of 20 feet which lessened the amount of usable space in the rear of the property. The current code requires 25 feet. The variance request would allow a five hundred sq. ft. room addition to be constructed on the rear or east side of the home. Between the subject property and the neighbor to the east there exists a chain link fence and a mature landscape buffer with trees and shrubs that are maintained by the owner. The fencing and landscaping will mitigate any negative impacts associated with the proposed addition.

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

NO. The current owners purchased the property in August of 1998, assuming the rear setback to be 10 feet. The applicant interviewed several contractors for construction of a pool and room addition. Throughout the bid phase the prospective contractors were under the impression that the rear setback requirements were 10 feet not fifteen feet. The chosen contractor took the pool plans through and received a permit (B#98028925) for construction. As the pool was coming to completion the contractor went through to apply for a building permit for the room addition and was informed the proposed room could not be constructed due to the fifteen foot rear setback requirement. Once this was discovered, the completion of the pool was put on hold by of Building Division until the additional rear setback issue was resolved. The applicant is requesting the minimum variance in order to accommodate the needed additional living space.

3. GRANTING THE VARIANCE SHALL CONFER UPON THE APPLICANT

SPECIAL PRIVILEGE(S) DENIED BY THE COMPREHENSIVE PLAN AND THIS CODE TO OTHER PARCELS OF LAND, BUILDINGS OR STRUCTURES, IN THE SAME DISTRICT:

NO. The applicant's request is consistent with the overall character of the Trade Winds Estates Subdivision.

There would be no special privileges given to the applicant that do not currently exist within the same district. The applicant's request would not be an excessive use for the subject property. The requested variance with assist the applicants to improve their family's quality of life. The existing mature landscape buffer along the east property line will mitigate the minor encroachment.

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's request would be consistent with the overall character of the neighborhood. As stated previously, the house is setback 30' and because of this has an unusually small back yard compared to the rest of the homes within the subdivision. The home is located on a corner lot and is screened on both the east and south sides by mature landscaping that is maintained by the applicant. The variance would allow the family to adequately accommodate the needs of their extended family.

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

YES. The applicants spent a substantial amount of time with their contractor reviewing alternative design options with no success other than what is proposed. Staff considered alternative design options that would meet the applicant's needs by reconfiguring the uses within the proposed addition and thereby eliminating the need for a variance. The only alternative achieved reduced the distance between the pool and the proposed structure to 3'. It is the recommendation of the building division that a distance of five feet be maintained between the pool's edge and a structure. Taking into consideration the owner's five small grandchildren and the recommended distance from the pool to the structure, it was determined by staff that there was not an option that would properly address the applicant's needs without possibly compromising the safety of the applicant's family. The proposed buffers screening the adjacent properties from exposure. The approval of the variance will improve the overall quality of living for this extended family and future owners of this property.

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

YES. This variance is consistent with the goals and objectives in the Comprehensive Plan by preserving urban residential development and by improving existing housing

within this 1950s subdivision. The use will not negatively impact surrounding properties as it will be adequately buffered by existing vegetation to the east and south.

The general intent of the rear setback provision is to establish minimum separation between properties and structures on adjacent properties. The applicant is proposing a 11.77 foot setback and considering the existing mature vegetation that exists along the east property line the minor 3.23 foot variance will be mitigated and satisfy the general intent of the code.

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

NO. Allowing for the proposed addition will not be injurious to the area or the public welfare. There currently exists a mature landscape buffer along the east property line that will mitigate any negative impacts on the adjacent property owner to the east. The neighborhood currently is being rejuvenated with the remodeling changes that are currently taking place on many of the homes in the area. The request will be consistent with the changes that are occurring.

ENGINEERING COMMENTS

Land Development Division has no record of subdivision approval for combining existing platted lots into a single building lot in accordance with Palm Beach County subdivision regulations.

ZONING CONDITIONS

1. By July 18, 1999, 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:MONITORING-BLDG)
2. By September 18, 1999, the applicant shall obtain a building permit for the proposed five hundred sq. ft. room addition. (DATE:MONITORING:BLDG PERMIT)
3. By October 18, 1999, the applicant shall obtain a special permit for the accessory apartment. (DATE:MONITORING:BLDG PERMIT)
4. The existing mature landscaping along the east property line shall be maintained in perpetuity by the property owner to ensure a solid visual buffer between the pool and lot 118 to the east. (ONGOING)

allow for a reduction in the side interior setback for a proposed convenience store and to reduce the width of the right-of-way buffer along Haverhill Road.

Is the applicant present?

MR. MCGINLEY: Yes, Kevin McGinley.

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

MR. MacGILLIS: There's a modification to the conditions.

CHAIR PERSON KONYK: Wait a minute.

MR. MacGILLIS: Kevin called me. He has some concerns with some of the conditions with a time certain on it. Just for your information, this project is in the annexation area of Greenacres. We did send them a letter. They are looking at them coming into the city. Bill Morris said they have no objection to the variance.

(Thereupon, there was an interruption by the court reporter.)

MR. MacGILLIS: The City of Greenacres has no objection. Condition number 2 and 3, we recommended deleting them. Those were just time certain conditions to make sure the applicant comes in here to vest the variance. But if it's going to be annexed into the city, we would leave it up to them eventually to monitor the pulling the building permits.

Condition one would suffice anyway because that ensures that we send a letter out to them two months before the variance expires and tells them if they haven't pulled the building permits, they have to come in for a time extension.

So we would recommend, staff, that condition number 2 and 3 be deleted. And condition number 5, the date be taken out; and it would just read, prior to final certificate of occupancy of the convenience store, whichever occurs -- well, you don't need that, whichever occurs first. Delete that. And the applicant shall install the following landscaping.

CHAIR PERSON KONYK: Do you understand and agree with the four conditions as modified?

MR. MCGINLEY: Yes, I do.

CHAIR PERSON KONYK: Any letters?

MR. MacGILLIS: We had several phone calls just from surrounding neighbors inquiring of what the variance was.

Once they found out it was a convenience store, there was no objection.

CHAIR PERSON KONYK: Any member of the public to speak on this item?

(No response.)

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

(No response.)

CHAIR PERSON KONYK: seeing none, BofA 9900012 will remain on the consent.

STAFF RECOMMENDATIONS

APPROVAL, 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 .55 legal nonconforming CN lot is located along a major commercial corridor in Palm Beach County, Lake Worth Road. The site has frontage onto two major rights-of-way, Lake Worth Road and Haverhill Road. The land use designation is CH-high Commercial and the zoning classification is CN. The applicant is proposing to rezone the property to CG which is consistent with the land use and to request a conditional use A, convenience store and gasoline sales. The site acreage and having access onto to right-of-way does limit the design options available to design this property for a commercial use. A convenience store is a typical use to be located at the corner of two major intersections. The applicant is proposing a site layout that complies with code to the greatest extend possible. The overall site layout functions efficiently in terms of circulations, queuing, parking and egress/ingress. The two requested variances have been limited to a reduced landscape buffer width and building setback and not parking or queuing regulations, which would have a more significant impact on the site, if granted variance relief.

Therefore, considering the size and location of this legal non-conforming site there are limiting factors unique to this property.

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

NO. The applicant is proposing to redevelop a legal nonconforming lot to support a convenience store. The applicant will be required to rezone the property to bring it into compliance with the underlying land use and to obtain a conditional use A for a convenience store and gasoline sales. The BCC encourages the redevelopment of infill of lots along major corridors that either support nonconforming uses and/or are currently vacant or undeveloped. The proposed use and site layout will be consistent with the ULDC. The applicant is requesting the minimum variances that will allow a reasonable use of this lot. The variances have been limited to a minor reduction in the width of a buffer and building setback, which can be mitigated by conditions of approval. Staff is recommending landscape conditions of approval that will mitigate the variances and ensure the general intent of the code is satisfied.

Therefore, the applicant has prepared a site layout that complies with the ULDC to the greatest extent possible while taking into consideration the limited size of this commercial property and the fact it has ingress/egress onto two major rights-of-way which encourages cross site circulation and limits alternative site design to avoid variances.

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 Board of Adjustment has granted variances to property owners for variances under similar circumstances.

In order for lots that are nonconforming in terms of acreage, property dimensions or structures to be developed or redeveloped the property owner occasionally needs variance relief. In this particular situation the applicant has limited the variance requests to the minimum. The two variances can be mitigated by conditions of approval to ensure the general intent of the code is satisfied.

Therefore, the granting of the landscape buffer width and setback reduction will not grant a special privilege on the property owner. The variances are specifically related to the limited size of this commercially zoned property, which is located on two major rights-of-way.

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 not proposing to over utilize this commercial property. The 2,000 square foot convenience store is smaller in size than many of the new prototypes being constructed by the industry. The pump island are limited to ensure there is adequate queuing that does not conflict with other vehicular uses on site such as customer parking, vehicular circulation, deliveries, etc.

The two requested variances can be mitigated with the installation of upgrade landscape material. The right-of-way buffer variance along Haverhill Road, will have native shade trees and palms installed at 20 feet on-center to provide a visual buffer between the use and the right-of-way. The upgraded palms and native shade trees along the portion of the east property line where the encroachment occurs (56 feet) will mitigate the encroachment on the property to the east that supports an office/warehouse. There is a parking lot adjacent to this common property line and therefore the impact will be less than if the building had been located closer to the east property line.

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

YES. The redevelopment of this .55 acre legal nonconforming lot required careful planning and design to ensure all county code requirements are satisfied. The applicant is proposing a use that requires BCC review and approval. A convenience store with gasoline sales is a typical use that to be located at a major intersection. The layout provide the customer with clear ingress/egress from both Lake Worth road and Haverhill Road. The pumps have been situated on site so the vehicles can easily que and not interfere with the customer parking or other on-site vehicular circulation.

Therefore, the granting of a right-of-way landscape buffer reduction of 2.5 feet and a building setback

variance of 10 feet is a reasonable request and will allow the applicant to proceed to obtain all the required zoning and building approvals in order to redevelop this site.

6. GRANTING 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 CH-high commercial land use designation with a CN zoning classification. The applicant is proposing to rezone the property to CG-general commercial to support a conditional use A for a convenience store with gasoline sales. The land use designation encourages intense commercial use on this property, such as what is being proposed. The ULDC establishes minimum right-of-way buffer widths and setbacks for structures which the owner is requesting to reduce. The proposed landscape and building setback reductions being proposed are minimal and will meet the general intent of the code with the proposed conditions recommended by staff to upgrade the plant material in the buffers along Haverhill Road and along the east property where the encroachment occurs.

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

NO. The proposal to develop this site to support a convenience store with gasoline sales will have to comply with all county approvals. The proposed site layout meets all zoning requirements and will provide for efficient on-site circulation, queuing and parking to the future customers.

ENGINEERING CONDITIONS

The requirement that the Base Building Line for the west side of the subject property be forty feet beyond the existing right-of-way of Haverhill Road is hereby waived in part. Said Base Building Line is hereby established at eleven feet east from the existing east right-of-way line, being also eleven feet east from the west property line of the subject property, and following the interior line of a standard forty foot corner clip at the northwest corner of the subject property. Note that the proposed landscape buffer appears to be in conflict with the Base Building Line and corner clip (i.e. safe sight triangle) as established herein.

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 October 18, 1999, the applicant shall apply for a building permit for the convenience store. (DATE:MONITORING-BLDG PERMIT)
3. By January 18, 2000, the applicant shall obtain a building permit for the convenience store. (DATE:MONITORING-BLDG PERMIT).
4. Prior to DRC certification, the applicant shall ensure the

BOFA conditions are shown on the site plan. (ZONING-DRC)

5. By January 18, 2000, or prior to the final certificate of occupancy for the convenience store, whichever occurs first, the applicant shall install the following landscape:

1. Lake Worth Road Right-of-Way buffer, shall be upgraded with native canopy trees planted twenty feet on-center or cluster of three booted cabbage palms planted twenty feet on-center.

2. The east five foot landscape buffer shall be upgraded with booted cabbage palms planted fifteen feet on-center for that portion of the buffer adjacent to the convenience store (approximately 56 feet). DATE:MONITORING/CO-BLDG INSP.)

6. There shall be no overhangs on the east side of the convenience store into the landscape buffer. (BUILDING PERMIT-INSPEC)

Next item on the consent is BofA 9900013, Boca Corporate Center, to allow a proposed commercial business which would be located adjacent to residentially-zoned property to commence business operations prior to six a.m.

Is the applicant present?

MS. LOCKHART: Yes, ma'am. Sara Lockhart with Gee & Jenson. I don't think I'm going to stay on consent.

CHAIR PERSON KONYK: I don't think so either.

I'll just cut to the chase. Is there any members of the public to object to this item?

(Public raises hands.)

CHAIR PERSON KONYK: Seeing that there are, this item will be pulled from the regular agenda -- I mean, the consent agenda and will be reordered to the second item on the regular agenda.

Next item on the consent is board of adjustment time extension 9900014, requesting a six-month time extension for conditions 1 and 2.

Is the applicant present?

MR. TUFTS: Cotleur, Hearing.

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

MR. TUFTS: Yes.

CHAIR PERSON KONYK: Any board member object to this

time extension?

(No response.)

CHAIR PERSON KONYK: There's no letters because you didn't advertise it?

MR. MacGILLIS: Correct.

CHAIR PERSON KONYK: So this item will remain on the consent.

ZONING CONDITIONS

1. By January 16, 1999, the applicant shall apply to the Building Division for building permits for the proposed office building. (DATE:MONITORING-Bldg)

IS HEREBY AMENDED TO READ:

By July 16, 1999, the applicant shall apply to the Building Division for building permits for the proposed office building. (DATE:MONITORING-Bldg)

2. By April 16, 1999, the applicant shall obtain a building permit for the office building. (DATE:MONITORING-Bldg)

IS HEREBY AMENDED TO READ:

By October 16, 1999, the applicant shall obtain a building permit for the office building. (DATE:MONITORING-Bldg.)

3. There shall be no modifications to the site plan, Exhibit 19, presented to the Board of Adjustment, unless consistent with the Board of Adjustment approval and reviewed by the Board of Adjustment staff. (ZONING)

4. By January 16, 1999, 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:MONITORING-Bldg.)

IS HEREBY AMENDED TO READ:

By July 16, 1999, 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:MONITORING-Bldg)

ENGINEERING COMMENTS

1. The Engineering Department has no objection to approval of back-out parking along the platted alley (variance #4), and no comment regarding the other requests (Variance #1, 2, 3 and 5). (ENG.)

CHAIR PERSON KONYK: Okay. I'm going to read the items that are remaining on the consent and then ask if a board member can make a motion for approval.

The items remaining on consent are BofA 9900002, BofA 9900003, BofA 9900004, BofA 9900005, Board of Adjustment

time extension 9900007, BofA 9900011, BofA 9900012 and Board of Adjustment time extension 9900014. Those are the items that are remaining on the consent.

MR. BASEHART: Madam Chairman, I make a motion that those items that were just read be approved on consent with the staff report and recommendations being made a part of the record.

MR. PUZZITIELLO: Second.

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

Any --

MR. RUBIN: Madam Chair, just for the record, I'll be voting against 99-2 and 99-11 but not asking them to be pulled from the consent.

CHAIR PERSON KONYK: Okay.

MARY MOODY: Which one was that?

MR. RUBIN: 9900002 and 9900011 -- and a 10. Excuse me --

(Thereupon, there was an interruption by the court

reporter.)

MR. RUBIN: 99-2 and 99-11.

CHAIR PERSON KONYK: Okay. All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: Opposed?

(Mr. Rubin indicates previous opposition.)

CHAIR PERSON KONYK: Mr. Rubin.

So the motion carries five to one on those two items only. You know, what he said.

Motion by Mr. Basehart. Second by Mr. Puzzitiello.

MR. MacGILLIS: If there were no changes to your conditions, Mary will give you your letter. Genny has them here. If you're on the consent agenda, your letter should be there.

MS. BEEBE: At this point, board members, would you like to --

(Thereupon, there was an interruption by the court

reporter.)

MS. BEEBE: At this point, could the board members disclose any ex parte contacts that they had with any regular agenda items.

CHAIR PERSON KONYK: I had no ex parte communication with any of the regular agenda items.

MS. BEEBE: Did anybody have any?

MR. BASEHART: Does that count letters?

CHAIR PERSON KONYK: Well, that was Dennis's letter.

But I didn't read it, Dennis, sorry. I never read that stuff, so then I don't have to disclose it.

MS. BEEBE: Letter would count as an ex parte communication.

MR. RUBIN: I received Mr. Koehler's letter which I think also we got it in the package.

MS. BEEBE: Could you disclose the nature of the letter.

MR. RUBIN: The letter is the same letter that we also got sent to us from the staff.

MS. BEEBE: Okay.

MR. PUZZITIELLO: It's in the package.

CHAIR PERSON KONYK: I don't think that would be ex parte communication if staff is providing it for us.

MR. MacGILLIS: We did provide it.

MS. BEEBE: Okay. If it wasn't from Mr. Koehler.

MR. WICHINSKY: Are we talking all regular agenda

items or this first one?

MS. BEEBE: All of them.

MR. WICHINSKY: I received one phone call on item number eleven, 9900013, from the applicant. It was a general fact summary of what was being presented. The telephone conversation did not sway my opinion one way or the other, and my judgment will be reserved until the hearing is conducted.

MR. BASEHART: And the same for me.

MS. BEEBE: You received the same phone call?

MR. BASEHART: Yes. Well, not the same time.

MS. BEEBE: You received a similar phone call?

CHAIR PERSON KONYK: He received a similar phone call.

CHAIR PERSON KONYK: First item on the regular agenda is BofA 9900010. If the applicant could come forward and state your name for the record. And then we'll have the staff introduce the item.

MR. MacGILLIS: He's first.

CHAIR PERSON KONYK: Who's first?

MR. MacGILLIS: The one that was taken off the consent agenda.

CHAIR PERSON KONYK: Oh, I'm sorry. I apologize. We had -- no. That was it. That was the first one.

MR. BASEHART: Are you 99-10?

MR. YECKES: Rolly Converse. I am --

CHAIR PERSON KONYK: I did call BofA 9900010.

MR. BASEHART: Number eight.

CHAIR PERSON KONYK: Oh, I'm sorry. I apologize.

MR. YECKES: I'm number eight.

MR. POSNER: We're first. It doesn't matter.

CHAIR PERSON KONYK: No. You're number eight on the agenda, but your item number BofA 9900010?

MR. MacGILLIS: No. He is eight. He's the first item on the regular agenda.

CHAIR PERSON KONYK: Okay. But you're 00010?

Would the party that I called come forward, please. I want William Little. That one.

MR. POSNER: You got it.

CHAIR PERSON KONYK: Okay. Great.

MR. MacGILLIS: This is BofA 99-10 on page seventy-seven of your back-up material. The applicant is William T. Little as trustee of the William T. Little Revocable Trust, dated June 17, 1999 (sic), and Frances A. Little, trustee of the Frances A. Little Revocable Trust, dated September 27, 1985.

The request is to allow an existing single-family dwelling and proposed addition to encroach into the side interior and rear setback. The location of the property is 1941 Lenmore Drive, approximately six hundred feet southeast of the intersection of Palmwood Road and Fred

Small Road, within the Moore's Landing Subdivision in the AR zoning district.

CHAIR PERSON KONYK: Okay.

MR. POSNER: Good morning. My name is Michael Posner. I represent the Littles in connection with this --

CHAIR PERSON KONYK: I'm sorry. We have to do something more important. We have to swear everybody in that's going to speak on this item. So if everybody that's going to speak on this item would raise their hand, right hand. You want to swear everybody in at once? Everybody that's going to speak on any item stand and raise your hand. If you think you might speak, get sworn in. It won't hurt.

THEREUPON,

ALL THOSE TO SPEAK ON ITEMS,
being by me first duly sworn to testify the whole truth as is hereinafter certified, testifies as follows:

CHAIR PERSON KONYK: Okay. Thank you.

MR. POSNER: Again, my name is Michael Posner. I represent the Littles in connection with this variance application. In addition, with me is Lori Guild, Esquire, Greenberg, Traurig. She represents Entimen (phonetic) and supports the application. He is the existing property owner. My client, Mr. little, is contract vendee purchasing the property.

As part of my -- our due diligence in examining the property and the plans that my client had for purchasing the property, we discovered that the property --

CHAIR PERSON KONYK: Excuse me. I'm sorry. I apologize. There's too much noise. And the court reporter is having a difficult time. And maybe that door needs to be closed. Is that door open? So everybody -- if you have anything to discuss with somebody, you're going to have to take it out of this room. She has a very difficult time.

The acoustics aren't that good in here. Thank you. I'm sorry.

MR. POSNER: Can everybody hear me?

I have a big mouth anyway. So I'll just talk loud.

As part of our due diligence, we discovered that the property was zoned agricultural, which provides in special-sized lots a twenty-five-foot rear and twenty-five-foot side setback. The agricultural zoning is generally for lots that are ten acres or more. There is a special exception for lots that are less than one point two five acres to allow a smaller setback.

When the property was constructed in 1974, a building permit application was submitted, a copy of which is in your package. The property was submitted with an RS zoning. We don't know if that was intentional. Neither the current property owner or the purchaser were the applicant for this building.

The RS zoning was accepted by the county, and the house was constructed with a seven point five side setback to the west and an approximately eighteen point eight foot rear setback to the north. The RS zoning requires seven point five feet and fifteen feet setbacks. The actual setback requirements for this lot are twenty-five feet on both sides.

When we discovered that the property was, in fact, built in the RS standard and not the AR standard, we made the variance application. In addition, our client is

desirous to construct an addition to the existing property using the northern facade of the property as shown on this picture. This is the existing improvement. As you can see, this grade-in line right here is the proposed addition.

We have two variance applications. The first variance application is to permit the existing twenty-five-year-old improvement to retain its existing location on the property to the side and to the rear.

The second variance application is to allow a portion of this building to be permitted to use the existing eighteen point eight foot setback as opposed to require the building to be built at a twenty-five-foot setback.

I have, if I may distribute, to show you and highlighted in yellow is the area which is, in fact, effected by the side setback. Just to give you a more graphic presentation, to show you it's not the entire improvement that's being effected, a copy has been given to the objecting party. This is a copy.

CHAIR PERSON KONYK: I'm going to accept this into the record.

MR. POSNER: Essentially as to variance one, it's one of the most classic cases of when a variance should be granted. You have a hardship not created by the applicant that is not detrimental to the community and would be extremely detrimental to the property owner and the purchaser because, if the variance is not approved, the county would have the legal right to require the building to be destroyed because it is not located within proper setbacks.

The staff has clearly set forth in their recommendations that the variance one should be approved because it meets all seven conditions.

In addition, as to variance two, there may be a question that this is a hardship being created by the applicant.

However, that is overcome by the actual hardship that will be created if the variance application is not approved. Because what will happen is it will require the construction of the addition with a small, insignificant cut-out, which will eliminate the flow-through from the house, require extensive additional costs because they will not be able to use the rear foundation wall and slab and will add no benefit whatsoever to the other properties as a result of having a two-story addition with a very small, minor cut-out. That's why I wanted to show you how small of an area we're actually talking about.

The objection that you're going to hear from the adjacent property owner is based on probably what I would consider a sad situation. On Monday, February 15th, I was contacted by attorney Keith Selden who represents the purchaser of the lot lying northerly of our clients lot who advised me he had just been informed of the variance application.

We immediately hand-delivered to Mr. Selden a package describing what we were proposing, and we were advised by Mr. Selden that his client would not purchase the property. So as a result of this variance application, the property owners have apparently lost the sale of their house.

We were told by Mr. Selden the basis for his

objection was, quote, if his client had known a two-story structure was going to be constructed on the property, they would have never signed the contract.

I want to make it clear to this board that the two-story structure will be constructed regardless of whether or not the variance is permitted. We will just have to make accommodations for the small portion that would not lie within the setback. So any objection that's based on the two-story structure, which is properly permitted and allowed to be constructed on this property has no basis in connection with the variance application.

So we believe that that is the grounds and the basis for the objection. Therefore, we believe that the variance application as submitted should be approved; that the conditions imposed by the staff are reasonable; that the variance application will comply with all the seven conditions required by Palm Beach County in connection with variance applications.

I also want to point out that there may be a question or argument that the objecting party did not receive notice -- or timely notice. On December 15th we contacted Admiral's Cove homeowners' association through their general counsel Sherry Hyman and informed her in writing of our variance application. At the time we also informed her of a fence extension.

On January 4th we timely submitted our application and the objecting party received the certified mail package and signed for it on January 30, 1999. There was plenty of time for them to contact us or to send written objections to staff, but no objections were ever sent in or received. And, therefore, any argument that there was no timely notice of this hearing is void.

I would ask, then, that the board approve variance one and variance two as submitted with the conditions submitted. Thank you.

I do have just -- excuse me -- one other thing. I also have the architect here to -- if the board would like to hear testimony with regard to the effect of the cut out. I would be happy to present him. I don't know if the board needs to hear that.

CHAIR PERSON KONYK: Let's wait and see what happens.

MR. POSNER: I just wanted to let you know.

CHAIR PERSON KONYK: Staff?

MR. MacGILLIS: Staff is in agreement with what the applicant stated. And just to go -- I don't think there's any need to go over it other than to state that the first variance request is for the validation of a building permit that was issued over twenty years ago to the original portion of the house.

As the applicant has stated, the property, although it has AR zoning, it's a legal nonconforming lot. The building division staff applied the RS factors, which are less stringent. The house was built and existed for twenty years.

And, as they stated, when the applicant -- client purchased the property, they had plans to do the addition on it. They came to the county. They were told that the original house was incorrectly -- setbacks were incorrectly applied to it. So when they met with staff for the variance application, staff recommended they get the variance on the original structure because the variance would then take it out of the legal nonconforming

status. If we left it in there, there's a limitation on how much renovations you can -- improvements you can do to a legal nonconforming structure. That explains the first variance.

The second one is the applicant has stated in the drawing submitted here this morning, it's only a small corner of the -- the proposed addition that's going to encroach into the setback. And based on the fact that the original house is existing and you're trying to put a footer and line up the elevation and roof line on the house is very difficult to cut a portion of the house out, as we've shown on this drawing.

We feel that the existing setbacks on that side of the house and with the existing landscape conditions recommended by staff and taking into the fact that it's a legal nonconforming lot, staff feels the applicant has met all seven criteria necessary for the board to grant this variance.

CHAIR PERSON KONYK: Okay. Any opposition?

MR. COHEN: Yes.

THE COURT: State your name for the record, please.

MR. COHEN: My name is Fred Cohen. I represent the Getzes, Jack and Jan Getz, who are present.

The basis of the objection by the Getzes, who happen to be the property owners immediately north of this subject parcel, the property owners -- this is incorrectly depicted here. This -- the property, which my clients own, is a vacant parcel of land. There is no three-story residence on that. So, for openers, I'm not sure how they intended to describe this. There are other homes in Admiral's Cove which are to the north. But the property that is the subject matter of my clients --

CHAIR PERSON KONYK: Okay. So there's not a house there.

MR. COHEN: It's vacant land.

CHAIR PERSON KONYK: Okay. Vacant.

MR. COHEN: Mr. Posner references a transaction where another lawyer, Mr. Selden, representing a buyer, contacted him on Monday or Tuesday regarding this.

MARY MOODY: We need him at the microphone because it's not going to pick him up.

MR. COHEN: Let me clarify that issue. The Getzes are the owners of the vacant land and have sold their property to Mr. and Mrs. Barns who were represented by Mr. Selden. The communication of this variance was limited, very limited. In fact, the communication started off with an issue concerning a fence, a chain link fence, that separates the property toward the water.

CHAIR PERSON KONYK: Can you tell me why you object to this variance.

MR. COHEN: There is -- we will not object to the first part of the variance, the existing house. We understand that that single-family house has been there for twenty-five years. We're not unreasonable in that respect, and we had no problem with that. But we were not led in the sense --

CHAIR PERSON KONYK: Wait a minute.

MR. COHEN: We have no objection to the first phase of the request.

The second phase, the addition of this to -- the two-story addition in the setback is objectionable, and we object to that. And we don't think that there is a

hardship created. In fact, this has caused us to lose the sale of our transaction because the purchaser was apparently not aware of what was going on. And we, as the owner of the adjacent property, where it started off as a chain link fence issue, escalated into a variance issue on the existing structure which, again, we don't object to and now has escalated into a variance.

The hardship does not exist, as a matter of law. If anything, the hardship and tragedy exists on our side because of what's now happened.

CHAIR PERSON KONYK: And what happened?

MR. COHEN: Our clients' sale, which was to close on Tuesday, the purchasers cancelled the deal.

CHAIR PERSON KONYK: Because of the seven-foot variance?

MR. COHEN: Because of the addition.

CHAIR PERSON KONYK: Okay. But the seven-foot variance is not the reason they cancelled the sale. It's because the man is adding an addition to his house, which he's allowed to have.

MR. COHEN: In addition, in the area. If the people have the legal right to do whatever they wish to do within the legal, conforming uses, that's their prerogative. But this has now stretched.

Again, the house is there. We understand that. It's a single-family house. And we're -- we knew that when we bought the property and the purchaser whom we've sold it to knew it when they signed the contract. This has escalated far beyond that which we had any knowledge of and far beyond that which we think should be tolerated by the adjustment board.

And we think that, A, there does not exist a hardship. So we think and we believe firmly that you should deny the request for any variance beyond that of approving the existing structure.

Jack Getz is here. I asked him to come today. And, I believe, he would like to make one or two brief comments, if we may.

CHAIR PERSON KONYK: Okay. That's fine.

MR. COHEN: By the way, I need to mention this because Jack is going to also mention this. And this, again, is not clear from this. We only received this plan this morning. I'm sorry. I'm not talking into the microphone. But I need to point something out.

MR. BASEHART: I don't think the microphones are working anyway.

CHAIR PERSON KONYK: Yes, it is.

MR. COHEN: This area which they suggest here is the additional area where they're putting on the two-story addition, there exists a building there in this crosshatched darkened area. There exists a building there that's like an equipment room. It's like a pool equipment room. And we're not sure that they even got the proper permit for that building because that building was constructed approximately a year ago. So we're not sure what the status -- I don't know if the staff has done that --

CHAIR PERSON KONYK: Do you have a copy of this little drawing that I have that's got the highlighted area that shows actually where the variance is?

MR. COHEN: Yes.

CHAIR PERSON KONYK: I mean, everything but that

little highlighted area can be built without a variance.

MR. COHEN: Perhaps.

CHAIR PERSON KONYK: No. It can, correct?

MR. MacGILLIS: That's correct.

CHAIR PERSON KONYK: So the only portion of the building that you could -- we could prevent from being built because we -- if we were to deny the variance would be the area that's highlighted.

So is your clients' objection to the area that's highlighted, or is your clients' objection to the entire structure?

MR. COEHN: Both.

CHAIR PERSON KONYK: Well, you can't object to the entire structure. You can only object to the --

MR. COHEN: Well, if, in fact --

CHAIR PERSON KONYK: -- area that's highlighted.

MR. COHEN: If, in fact --

(Thereupon, there was an interruption by the court

reporter.)

MR. COHEN: We definitely object to that highlighted area.

CHAIR PERSON KONYK: Okay. Well, that's the only thing that you can object to here --

MR. COHEN: Well, I can object to --

CHAIR PERSON KONYK: -- because that's the only thing that we're hearing is that highlighted area.

MR. COHEN: Well, we're not sure that they've complied with the required zoning for this building that I've just designated, whether that, in fact, is even a proper building.

CHAIR PERSON KONYK: Again, I'll ask staff, do they have any code enforcement issues?

MR. MacGILLIS: I'm not sure what he's referring to.

MR. BASEHART: Well, it seems to me --

MR. PUZZITIELLO: One of the surveys they're showing a framed building next to the pool.

MR. BASEHART: According to the plan, it appears that that building will be removed.

MR. COHEN: I'm not sure exactly -- like I say, that plan was just received. That building -- that building is there. Are they tearing that building down and adding a new building?

MR. POSNER: To answer that question, that building, regardless, is not an issue here. But that building would be torn down as part of the new addition.

CHAIR PERSON KONYK: Okay.

MR. RUBIN: Can I ask you a question, please?

MR. COHEN: Yes.

MR. RUBIN: If you know, what part of the real estate contract was referenced when the purchasers elected to cancel the contract based on the variance application?

MR. COHEN: Their position was that they did not have knowledge of the variance request, that, apparently, they had no awareness for -- as a matter of fact, we did -- we only thought this was a chain link fence issue. And we were not aware that this was -- they did not contact us -- the applicants did not contact my clients directly. They contacted the homeowners' association.

And, in fact, our clients have legal title to the property. They're listed on the deed, and they are the proper ones to be contacted, not associations. We're the owners.

MR. RUBIN: Based on the Barns's claim --

MR. COHEN: The Barns's --

MR. RUBIN: -- you gave -- did your clients give the Barnses the deposit back?

MR. COHEN: No. We -- this only happened the other day. The Barnses may very well go forward with this if this is turned down, this second request.

The existing building issue, again, we say will not be --

CHAIR PERSON KONYK: Okay. I just need to speak to the variance, though. Whether or not their sale was lost or whatever, that has, really, nothing to do with us. The only thing that we're here to hear is about this variance. That's the only thing that we're concerned with is whether or not this variance can be permitted.

MR. COHEN: And our position is it should not be.

CHAIR PERSON KONYK: Okay. And you've made that position. And I think Mr. Getz has something that he would like to say.

DR. GETZ: Good morning. My name is Dr. Jack Getz. I'm the owner of the said property.

When I was first contacted in December relative to a variance, it was outlined that the variance would include the extension of an existing chain link fence. That's all I knew about. I had not been contacted about anything else whatsoever. And this came as a complete surprise and shock to me.

Again, I am the owner of the proper, both my wife and I jointly. And we have never been communicated with in any way, shape or form. This has imposed a great hardship to us in the loss of the sale of this property as a result of this.

Secondly, we found that in addition to this request of extending a chain link fence, they requested that we remove the southern property wall of Admiral's Cove to accommodate their view. Subsequently, I found that out just two days ago. But as far as knowing anything about a second-story -- two-story dwelling, I have never been contacted by anyone.

CHAIR PERSON KONYK: Jon, did they not receive the notice that they were supposed to receive?

MR. MacGILLIS: Just for the record, staff would submit this to the board. This is the standard notice, which is the legal ad that goes out to the property owner by certified mail. This is where the gentleman who's speaking wife signed for it, which explains in the legal ad the fact that what you have in front of you, the package this morning --

CHAIR PERSON KONYK: Can you briefly read what it says, the part that pertains to his --

MR. MacGILLIS: BofA 99-10 with the trustees for the applicant is, to allow an existing single-family dwelling and proposed addition to encroach into the side interior and rear setbacks in the location of the property.

CHAIR PERSON KONYK: Okay.

MR. MacGILLIS: And we have the signed receipt -- return receipt that was signed.

CHAIR PERSON KONYK: The date?

MR. MacGILLIS: January 30th '99.

CHAIR PERSON KONYK: Is that proper notice?

MR. MacGILLIS: Yes.

MR. RUBIN: Could you show that to the attorney and

ask him just to take a look at that and verify the signature, see if the applicant --

MR. MacGILLIS: This is what would have come in the letter that would have been --

MR. RUBIN: Dr. Getz can identify the signature.

MR. MacGILLIS: This is the return receipt that staff got back.

MS. BEEBE: Was this also noticed by publication and posting?

MR. MacGILLIS: Yeah. Palm Beach Post, it was advertised. Plus there's a board put on the site. There's a big yellow board posted on the site telling there's a variance request. Anyone having any questions to contact staff.

MR. JACOBS: I have a question?

CHAIR PERSON KONYK: Let's get this clarified.

MR. COHEN: This whole process, I believe, according to some correspondence --

MR. MacGILLIS: You need to speak into the mic.

MR. COHEN: The process with Mr. Posner and Admiral's Cove started with a letter concerning a fence issue.

MR. RUBIN: What about the question --

CHAIR PERSON KONYK: Asking a --

MR. COHEN: I want to bring a point out to you --

CHAIR PERSON KONYK: Okay.

MR. COHEN: -- that this apparently was received by Jan on -- it looks like January 30, 1999, well after this process had all been started.

CHAIR PERSON KONYK: They have fulfilled their legal requirements. That's all we're trying to determine here.

Dr. Getz, can you come to the microphone?

MR. RUBIN: We still need to know, for the record, is there any question that that was not received by your wife on the date that --

DR. GETZ: No. I think -- I assume that she did get that. Yes.

MR. RUBIN: Thank you. That's all.

DR. GETZ: I answer in the affirmative.

CHAIR PERSON KONYK: Dr. Getz, could you come forward. I just want to ask you a couple questions. No.

I mean, to the microphone. Not too close.

You had a question?

MR. JACOBS: I did.

Is there any written documentation from the prospective buyer with respect to the sale? Did he send a letter formally terminating the transaction?

DR. GETZ: Yes, he did.

MR. JACOBS: Do we have a copy of that letter?

CHAIR PERSON KONYK: It doesn't apply. We don't need a copy. We don't want a copy of that letter.

MR. RUBIN: Why --

CHAIR PERSON KONYK: Why would we want a copy of that letter? It has nothing to do with the variance.

MR. RUBIN: The adjoining property owner is claiming he's been adversely effected by the proposed variance.

CHAIR PERSON KONYK: Okay.

MR. RUBIN: It may have relevance. It may not be conclusive. It may not --

CHAIR PERSON KONYK: Do you have a copy of it?

DR. GETZ: I do have a copy of it.

CHAIR PERSON KONYK: Dr. Getz, I wanted to ask you a question. I'm sorry.

Do you realize that this area that we're talking about is just this little square here?

DR. GETZ: I do now.

CHAIR PERSON KONYK: Okay. So when you realize that this whole structure can be built except for this little corner, do you still have the same objection?

DR. GETZ: Yes, I do.

CHAIR PERSON KONYK: Okay. So, in other words, you object to the corner right here being built?

DR. GETZ: Yes, I do.

CHAIR PERSON KONYK: Okay. And you're going to have to live with this whole structure even if that corner is not built. You understand that?

DR. GETZ: Yes, I do.

CHAIR PERSON KONYK: Okay. Thank you.

I think your wife has something she'd like to say. Could she come forward and give her name for the record.

MS. GETZ: My name is Jan Hanford-Getz (phonetic). I have a question regarding the rear setback. Is this a request for a variance as well, the rear setback of this proposed structure?

CHAIR PERSON KONYK: I don't know. I believe it's only this little yellow area.

MR. MacGILLIS: That's on the existing house.

CHAIR PERSON KONYK: Oh, on the existing.

MS. GETZ: So the existing house already encroaches on the rear setback?

CHAIR PERSON KONYK: Correct.

MS. GETZ: And what they are requesting to do is further encroach on the rear setback. That's what we have objection to.

CHAIR PERSON KONYK: On the side setback.

MR. BASEHART: Technically, the portion -- the wall of the existing house and the proposed addition that faces your property is the rear of the property because the road accesses on the other side. So that makes this a rear setback.

MS. GETZ: When we discussed the rear setback, we're discussing the northern portion of this building here.

And my question is the eastern boundary of this new proposed structure, that is, that portion of the structure closest to the water, does that also violate existing setbacks?

MR. BASEHART: No. That meets the code. The only part of the proposed building or the existing building that's before us today is, first of all, the first variance to request what was built twenty-some years ago to remain; and then the second variance is to allow the addition to be constructed. But, with respect to the addition, if you look at this drawing, only the little wedge in yellow would violate the code.

So if this variance is denied, this entire proposed structure can be built; but they'll have to put a notch in this so it doesn't violate the code.

The request today is only to eliminate the requirement to notch the building, in effect.

MS. GETZ: Excuse my ignorance. But may I ask what is the rear or the -- from the water, the required setback?

MR. BASEHART: Jon?

MR. MacGILLIS: The water, it depends. We have what's referred to as the building construction line. And

I'm not sure. It varies depending on where the property is located. I don't think that's being affected here. He's meeting that, from the water's edge, from the Intracoastal.

DR. GETZ: May I say something?

CHAIR PERSON KONYK: Uh-huh.

DR. GETZ: Since our property is contiguous with this to the north, our building setbacks are some fifty feet further west than what you're proposing here. So I don't understand how it can be fifty or sixty feet further east for this gentleman and fifty or sixty feet further west for me because my building -- my building lot is very -- which is larger than this. We have approximately one point four acres. And I can't get that far east. So I don't understand this. That's the point that we're making.

CHAIR PERSON KONYK: The required setback is twenty-five feet, not fifty.

DR. GETZ: I understand that. But my setbacks -- and I have a larger piece of property than he has. My setbacks are some fifty feet further west than his. And I go right to the water also.

MR. MacGILLIS: The applicant is not asking for a variance from that setback. So it's not even an issue here today.

DR. GETZ: But I'm asking if that setback from the east is indeed proper.

MR. MacGILLIS: Yes, it is. Staff has drafted that up and reviewed that. What you have in the report is correct. You're asking for the setback from the Intracoastal --

DR. GETZ: That's correct.

MR. MacGILLIS: -- which is not an issue here today.

He's not applying for a variance from that. We're in the assumption he's going to meet it whatever it is -- whatever it's going to be.

DR. GETZ: I'm assuming that it's not. That's why I'm asking the question.

MR. MacGILLIS: We assume in the affirmative, that it is, unless he requests a variance for it. If he comes in to get a building permit for that addition, they're going to measure it from wherever that building construction line is from the Intracoastal. If he doesn't meet it, he would need a variance.

CHAIR PERSON KONYK: Okay. We need to move this hearing along. We have many people to hear today, and we have other things that we have to do.

So do you have anything that you would like to address here?

MR. POSNER: Just one issue.

If you would like to hear the hardship that will be created caused by my clients' inability -- forced a notch, I have an architect, if the board would like.

In addition, I just want to clarify one issue where they were claiming they didn't get notice and they knew about some quote/unquote fence extension.

As early as December 16th, I wrote Sherry Hyman of Admiral's Cove, who I'm familiar with. I just want to make it clear for the record that the letter which included the first paragraph stated about the existing fence. The second paragraph stated, I quote, in addition, our client is going to apply for a variance to allow the

existing structure setback on the side and rear to be deemed a legal nonconforming use as well to permit the enlargement of the existing structure along the easterly side of the property to utilize the existing setbacks.

A variance is required since the current setbacks are twenty-five feet and the house only lies eighteen feet from the boundary line between our clients' property and Admiral's Cove. And also attached was a drawing, a survey --

CHAIR PERSON KONYK: That was sent to, not --

MR. POSNER: But they claim that they knew about the fence extension, but they did not know about the variance.

CHAIR PERSON KONYK: That doesn't matter. We've already clarified that they knew about the variance because we have the certified letter.

So, I mean, this is a neighbor against neighbor thing that makes us all very uncomfortable.

MR. POSNER: Sure. I understand.

CHAIR PERSON KONYK: And we don't like to prolong it and make it worse than it already is. I mean, we like to see that neighbors get along. I mean, obviously, as neighbors, we're all neighbors somewhere, so...

MS. POSNER: Sure. Would you like to hear the architect discuss the construction problems?

CHAIR PERSON KONYK: If the board needs to hear it, we can hear it. I don't feel that it's necessary. I think it's pretty obvious that the structure would have to be built with a chunk out of it if there wasn't --

MR. POSNER: It will affect both the construction of the roof, the construction of the foundation slab and the wall.

CHAIR PERSON KONYK: Does any member of the board feel that they need to hear that?

(No response.)

MR. POSNER: Okay. Thank you.

MR. COHEN: Madam Chairman, you had requested a copy of this letter --

CHAIR PERSON KONYK: Okay. I'll accept that.

MR. POSNER: I haven't seen that letter, so...

CHAIR PERSON KONYK: Well, we'll make sure you get a copy.

MR. BASEHART: Well, let him read it.

MR. POSNER: Can I see it?

CHAIR PERSON KONYK: It's a long letter.

MR. POSNER: I can read fast.

CHAIR PERSON KONYK: Here, I'll read it.

MR. POSNER: Are you going to read it to me, or would you like to --

CHAIR PERSON KONYK: I'll read it.

MR. POSNER: Okay.

MS. BEEBE: He should be permitted to look at a copy.

CHAIR PERSON KONYK: This is a letter that Dr. and Mrs. Getz, I guess, received from the prospective buyer that withdrew from the sale.

MR. POSNER: I'll just read over your shoulder.

CHAIR PERSON KONYK: I was just going to go to the paragraph that applied, and I was going to read it out loud. Then everybody would have heard it.

Where does it apply? Where is the part that applies?

MR. POSNER: Well, the main thing is regardless --

(Thereupon, there was an interruption by the court

reporter.)

CHAIR PERSON KONYK: She's having a hard time hearing. That's okay.

Where is it?

MR. POSNER: Starting at the bottom of the first page and going over on to the second page.

CHAIR PERSON KONYK: Okay. Both Admiral's Cove and your clients became aware of the existence of the variance application on or about December 16th, which variance application was never disclosed to my clients. Regardless of your ascertain, the proposed construction of a two-story addition, which would overlook and face directly into my clients' proposed swimming pool area, is a material factor which should have been and was, in fact, required to be disclosed.

Okay. That's the part that applies.

Any other questions from the board?

MR. BASEHART: Now, this property is not within Admiral's Cove?

MR. MacGILLIS: Correct.

MR. BASEHART: So the common property line with the adjacent property owner is the Admiral's Cove boundary line?

MR. MacGILLIS: Correct.

MR. BASEHART: Could the difference in setback requirements be based on the fact that Admiral's Cove is a Planned Unit Development and has different development standards than an individual freestanding piece of property? Could that be where the difference in setback requirements the doctor mentioned could be?

MR. MacGILLIS: That's a good point. Admiral's Cove is a Planned Unit Development. It has various setback requirements depending on housing type. Whereas, if you're in a straight subdivision, we just look at the underlying zoning RS. You have one set of setbacks. Whereas, in a PUD, if it's a patio home, multi-family, single-family, there's a range -- you could pick from three or four different sets of setbacks.

MR. BASEHART: Right. Plus you have PUD buffer requirements and stuff like that. If the setback requirement for your property is different than it is for the applicants, that's probably the reason. If you weren't in the PUD, if you were just a subdivision lot, you know, that had long existed, then you'd probably have less setback requirements.

DR. GETZ: Thank you.

CHAIR PERSON KONYK: Did you have something else you wanted to add?

MR. COHEN: I just wanted to point out something. The notice that Jan Getz received was 1/30/99, January 30th '99. The contract of sale that was signed by the Getzes and the Barns was on 1/11/99. The Getzes did not know that this variance --

CHAIR PERSON KONYK: I think that's a great argument for when you go to enforce that sale.

MR. COHEN: I think that the issue, thought, as far as the board is concerned, so that you understand that the Getzes were not aware of this, and that, in fact, this is why we object to that variance.

CHAIR PERSON KONYK: I understand that. And I do understand that they weren't aware of it until January 30th. But, unfortunately, that's what is required. You were noticed within the required time frame. And,

actually, in retrospect, as far as your other issue is concerned, I think it's in your favor you weren't noticed until January 30th of '99. If you had been noticed December of '98, then your -- his argument would be correct, your prospective buyer.

So I would agree that they weren't noticed until January 30th of '99. But they weren't required to be noticed before that time. So I think that's in their favor, though, actually.

MR. BASEHART: It seems to me also in reading this letter from the attorney for the purchasers indicates that the issue that caused them not to want to buy the property is the fact that a two-story addition was going to be constructed going toward the water, which would block the view of the purchaser from their pool area of the Intracoastal. And it would appear to me that that's the reason they didn't want to buy the lot. Whether or not a variance is approved wouldn't matter because --

MR. COHEN: That's not necessarily -- I would disagree with you.

CHAIR PERSON KONYK: Well, I don't think that's even an issue for us to decide. I think the fact of the matter is that the homeowner has, you know, a right to object to the variance. We've heard both sides of the issue, and I think it's time for the board members to ask any questions that they feel that they need to ask, and we need to proceed here.

Does anyone have any questions of either the applicant, the opponent or the staff?

(No response.)

CHAIR PERSON KONYK: Is anyone prepared to make a motion?

(No response.)

CHAIR PERSON KONYK: No?

MR. WICHINSKY: Madam Chair, I'm move for approval of BofA 9900010 as recommended by staff and as conditioned in the staff report.

CHAIR PERSON KONYK: We have a motion by Mr. Wichinsky. Do we have a second?

MR. PUZZITIELLO: Second.

CHAIR PERSON KONYK: Second by Mr. Puzzitiello.

We have a motion and a second. Is there any discussion?

(No response.)

CHAIR PERSON KONYK: Seeing none --

MR. BASEHART: Wait a minute.

CHAIR PERSON KONYK: I'm sorry.

MR. RUBIN: Just a brief discussion. Looking at the lot in total, it appears that there would be no unnecessary hardship by having a -- no unnecessary hardship because it's an addition. I mean, I don't have any concern about the existing property since it's been there for twenty-five years. But the key in my mind to support the approval is the fact that the lot itself should be or was intended to be a ten-acre parcel in this district for the twenty-five-foot setback.

And as the staff report reflects, it has one-tenth the required area, if you do the math. Maybe the side yard setback in excess of twenty-five feet should be two point five feet. That, to me, is the uniqueness of this parcel. That's why I would be in favor.

CHAIR PERSON KONYK: Okay.

MR. BASEHART: Madam Chairman, the situation here from I guess a historical perspective, back when this lot was created, the agricultural zoning district only required ten thousand square feet for an agricultural lot. When the code was amended in '73, it became a five-acre requirement. Then when the new code was adopted in '92, the minimum lot size became ten acres. So the change in requirements, I think, is a factor here.

But, beyond that, I think a hardship has been demonstrated, you know, predominately because, you know, you have an existing established line, setback line, to a house which can be continued except for just a small little notch because of the configuration of the property. And I can't see in any way, shape or form where allowing the construction -- normal construction, which would allow a normal traffic flow within the house, to create any sort of a hardship or to be contrary to the objectives in the code at all. I think it is a -- really a unique circumstance in this case.

And, for those reasons, I'm going to support the variance.

CHAIR PERSON KONYK: Okay. All those in favor?
(Panel indicates aye.)

CHAIR PERSON KONYK: Motion carries -- all those opposed?

(No response.)

CHAIR PERSON KONYK: Motion carries unanimously.

Dr. Getz, I would imagine that you might want a copy of that certified letter receipt and that notice that was received so maybe if staff could make you a copy of that.

MR. LITTLE: Thank you very much, not just for us but for everybody else. Because I know what is involved. And you're taking your time out of your busy lives to do this sort of thing. I've done it myself up north.

CHAIR PERSON KONYK: Thank you.

MR. LITTLE: You're to be commended.

CHAIR PERSON KONYK: Thank you. Thanks.

STAFF RECOMMENDATIONS

APPROVAL, 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 legal nonconforming 1.2 acre lot is within the MR-5 land use and RS zoning district. This lot is within the Moore's Landing Subdivision, which is located east of Palmwood Road on Lenmore Drive. There are only 6 subdivisions to the north, which is in the Town of Jupiter. The lot to the north is currently vacant. The property supports a 3,851 square foot one story single family residence, swimming pool, dock and gazebo. The dwelling was permitted, constructed and inspected in 1974/75 with the RS setbacks instead of the required AR

setbacks. The encroachment into the setbacks was not discovered until the current property owner inquired as to the setbacks for the proposed room addition to the east facade of the house. The owner is requesting setback variances to legalize the existing setback encroachments and for the proposed room addition encroachment along the north property line. If the variances are granted the structure will be considered conforming and not restricted to the nonconforming structure 10% renovations limitations.

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

NO. The applicant's client purchased the property in December 1998 assuming the existing house was correctly permitted and inspected. When the property owners decided to renovate the existing dwelling and add an addition to the east facade they were informed that the setbacks applied would be the 25 foot AR nonconforming lot setbacks. This is when the existing setback encroachment was discovered. The applicant has submitted the variance application to legalize the existing structure and request the additional rear setback in order for the proposed room addition to align with the existing foundation and elevation along the north property line. The granting of the variance will allow the existing house to remain and the room addition to be constructed. There is existing vegetation along the north property line that will mitigate the proposed addition. The lot to the north is currently undeveloped, however, will support a single family residence in the future.

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. A previous property owner applied and was granted a permit for the dwelling with RS setbacks instead of the required AR setbacks. The house was constructed over 20 years ago and the encroachment was only recently discovered by the applicant. The granting of the variance will simply recognize the existing structure as conforming and allow the proposed addition to be constructed as the same rear setback as the existing house. The wall of the addition is only 35 feet long and therefore will be a minor encroachment when one considers the depth of this lot. By placing the addition along the east facade the remainder of the lot will remain open to allow views of the intracoastal waterway for the property owner. There is existing vegetation and a privacy wall between the two properties that are effected by this variance request.

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 existing house is within the setbacks. If the variances are denied the applicant would be required to demolish the house. The house has existed in this

configuration for the past twenty or more years without any complaints that it was in the setbacks. In fact, it was only through the research of the applicant was it discovered an error was made when the setbacks were applied to the existing dwelling in the early '70s.

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

YES. This particular area of the county which abuts onto the intracoastal waterway has been under transition in terms of older homes being demolished to support larger estate homes. This applicant is proposing to renovate the existing residence and add an addition to the east facade.

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

YES. The intent of the ULDC setback requirements is to maintain a minimum setback between property lines and structures. As previously stated, the RS setbacks were applied to this lot and not the AR as required. However, it should be noted that the MR-5 land use permits RT and RS zoning with is more characteristic of the lots within this general vicinity. The land use designation was changed while the zoning remained inconsistent with the land use. This places a hardship on the property owner, especially when there is an existing structure since the AR zoning has setbacks that are more stringent than the RS zoning district. The granting of the variance to allow an existing dwelling to remain in the setbacks after twenty years is a reasonable request. The room addition setback variance is also a reasonable request and will allow the existing foundation and elevation lines of the existing house to be extended to the addition. The existing vegetation along the north property line will mitigate the existing and proposed encroachment into the setbacks.

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

NO. The lots within this general vicinity differ in zoning classification, lot size and setbacks. The intent of the setbacks is generally to ensure consistency within the neighborhood. Some of the lots are within platted or unplatted subdivision and therefore there is no uniform consistent set of setbacks. This dwelling has encroached into the setbacks for twenty years without anyone noticing it. The existing vegetation will mitigate the encroachment into the setbacks.

ENGINEERING COMMENTS

Land development division has no record of the subject property having been established as a valid building lot in accordance with Palm Beach County subdivision regulations.

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 October 17, 1999, the applicant shall apply for a building permit for the proposed addition.
(DATE:MONITORING-Bldg permit)

3. By January 17, 2000, the applicant shall obtain a building permit for the proposed addition. (DATE:MONITORING-Bldg Permit)

CHAIR PERSON KONYK: Your name for the record?
Wait a minute. Let me get the -- which one are we on? BofA 9900011, the second item that was pulled from the consent.

MR. BASEHART: Number 11. It's 13.

CHAIR PERSON KONYK: Sorry. Number 13. BofA 9900013, Boca Corporate Center, to allow a proposed commercial business.

MR. RUBIN: Before you begin, I see, I believe, Mr. Carol Meyer in the audience. Is that correct?

MR. MEYER: Yes sir.

MR. RUBIN: I think I need to inquire for my own benefit. I represent several associations in the Boca West Development, the Bridgewood Association. I know Mr. Meyer is the manager of those associations. And if they are in opposition to this request or going to be speaking on it, I believe I should recuse myself. I just need to know from Mr. Meyer -- I know he's here -- are you here today on the BofA 13?

MR. MEYER: Yes. I intend to speak to this issue.

MR. RUBIN: Excuse me?

MR. MEYER: I intend to speak to this issue.

MR. RUBIN: Madam Chairman, I think I have a conflict and I will be abstaining.

MR. WICHINSKY: Does that relate to the portions of this development that you represent or...

MR. RUBIN: For the record, I represent the Bridgewood Association within the Boca West Community.

CHAIR PERSON KONYK: Are you here to speak for Bridgewood?

MR. MEYER: Yes, ma'am.

CHAIR PERSON KONYK: Let the record reflect that Mr. Rubin has chosen to recuse himself from this item.

MS. LOCKHART: Good morning. Sara Lockhart with Gee & Jensen representing Smear and Fearing Properties and Boca Corporate Center. Also with me today is Penny Wheeler. She is the vice president for property management for the company.

May I move the easel over here?

CHAIR PERSON KONYK: Uh-huh.

MS. LOCKHART: It might be easier to hear.

CHAIR PERSON KONYK: Yes, you may. Well, as long as

it's not right in front of everybody.

MS. LOCKHART: This request is to allow a twenty-four-hour operation for a Kinko's that would be located in this proposed structure right here. Boca Corporate Center is located on Glades Road and the Turnpike, at that intersection. There is an existing office complex that consists of four stories and approximately eighty thousand square feet. There's an existing restaurant right here that's a Major's Grill right now.

The request would be to allow this area -- I'm sorry. The request would be to allow this building right here to house the Kinko's that would be the twenty-four-hour operation. When this project was originally approved, this entire area was owned by the Arvida Corporation. And, as such, they master planned all of their facilities. And we can see that in the lake system and the golf course that has been set over here to buffer the residential portion of Boca West from the Turnpike. Also Glades Road is buffering -- the residential properties are buffered from Glades Road by this lake system.

That also applies to this existing commercial structure. The golf course fairway blinds the backside of Boca Corporate Center. There's a lake system right through here. And then this is the Bridgewood Condominium Association.

Our request would be for Kinko's to be located in this one-story building. And we believe that this meets the intent of the code to allow them to be open twenty-four hours without impacting the adjacent residential area because there's an existing wall through here. There would be no activity back here. This is a green space that would be incorporated into the existing landscape buffer. Then we have over two hundred and seventy feet of separation between our structure and the first residential community. This has been drawn to scale to reflect how things would sit in the built condition.

If this had all been developed as one master planned PUD by Arvida and this had been incorporated into that original development request, then we would automatically meet the requirements that are in the code today. Section six point eight for planned development recognizes that you can have commercial areas in residential complexes and that they can have variations in their hours of operation provided there's adequate separation. And there's a distance figure that's given as that adequate separation which we meet in this situation.

We are in agreement with the staff conditions of approval. We did meet with the Boca West residents on Monday in an attempt to resolve the Bridgewater (sic) concerns. I think you'll hear from them that their concerns are crime.

CHAIR PERSON KONYK: Let's wait until we hear from them.

MS. LOCKHART: Okay. All right. So that point --

CHAIR PERSON KONYK: Then you can have time for rebuttal.

MS. LOCKHART: Thank you. I believe that Mr. MacGillis did get a letter from the Boca West Master's Association. And I believe he also heard from Tom Gallagher of the West Boca Community Council who facilitated our meeting and elected not to participate in

this discussion on behalf of the West Boca Community Council.

CHAIR PERSON KONYK: Okay. Staff?

MR. MacGILLIS: This is BofA 99-13. The applicant's asking for a variance to allow a commercial business to operate twenty-four hours a day in a MUPD. The code restricts hours of operation not to commence before six a.m. in the morning and eleven in the evening?

MS. LOCKHART: That particular section has no stop time. It just says commence hours of operation. You can close at five fifty-nine.

MR. BASEHART: Then, under the code, if you opened at six the first morning of business and never closed, you wouldn't be violating the code, would you?

MR. MacGILLIS: Actually, the applicant had asked us to clarify that for us. And the outcome is this variance. I mean, she did propose that to us. The intent of the code provision is that certain commercial uses that are open twenty-four hours a day could be restaurants, bars and stuff would have a negative impact adjacent to residential uses with dumpsters and deliveries and pick ups before normal people getting to go to work in the morning. Therefore, that's why this provision is in the code.

Staff is recommending approval. The findings of fact are found on page one twenty-eight. Staff feels that the applicant has clearly demonstrated compliance with the seven criteria in order to be granted the variance.

The proposed building where the Kinko's will be located staff feels with adequate landscaping between that east property line and with the two hundred feet that's provided by the golf course and that water body that's on the property to the east that supports the residential subdivision would not be negatively impacted by this.

Staff is recommending a condition as well that the site plan as shown with the building having no parking, loading access on that east side of the building would force the -- any type of deliveries and customers to be coming in either the front or the side of that building. Therefore, there would be no noise on that side of the building.

And another issue is that the use itself could go into this building. The only thing is, Kinko's is a chain that operates twenty-four hours a day. I know Sara really didn't get into that. But the Kinko's operation, typically their stuff is sent over the e-mail internet during the evening by their clients. It's downloaded into computers. They have technicians in there in the evening, two or three people working on the stuff that clients send during the night. I mean, you're really not going to have customers. She can clarify exactly when the actual customers would be coming in. But the majority of this time when people would feel it would be having a negative impact on the neighbors, there's not going to be customers really coming here. It's going to be people working in the building operating the stuff that comes by clients via the internet.

CHAIR PERSON KONYK: Customers could come in, though?

MR. MacGILLIS: She can clarify that; but, yes, they could.

MS. LOCKHART: Yes.

MR. MacGILLIS: The majority of the people -- you

know, you're not going to have people up at four in the morning going to Kinko's. It's very few. But the fact that they are asking for a variance, yes, there could be people there.

But staff feels with the existing wall that's there, the landscaping and the separational buffer that's provided by both that golf course and the lake, that the general spirit and the intent of the code is that the intent will be met, that the -- it's not going present a negative impact to the neighbors with hearing dumpsters and stuff because there's nothing on that side of the building. Therefore, the literal interpretation of this code would deprive the applicant for moving it here and providing a service in a corporate center where a lot of their clients would be people who would be travelling back out on to Glades Road. So, in a sense, it's capturing trips in that area where people aren't on Glades Road, which is almost at capacity already with trips. Providing these types of services in these centers where you have a lot of professional offices is a service.

Therefore, staff is recommending approval with the conditions there are recommended on page one thirty-one.

CHAIR PERSON KONYK: Okay. Any questions, board members?

MR. PUZZITIELLO: This is a proposed building, correct?

MR. MacGILLIS: Correct.

MR. PUZZITIELLO: And the parking is already there?

MS. LOCKHART: Of course there's parking there. It will need to be reworked in order to accommodate the entire parking for the project.

MR. PUZZITIELLO: The park lot lighting, is that a question?

MS. LOCKHART: No, not really. It hasn't come up. There is parking lot lighting in the --

MR. PUZZITIELLO: Already there?

MS. LOCKHART: Yes. That's correct.

CHAIR PERSON KONYK: Any other questions by the board members?

(No response.)

CHAIR PERSON KONYK: Seeing none, we'll hear from the public now.

Just to verify, everybody has been sworn in, correct? Your name for the record?

DR. FRIEDMAN: Good morning, my name is Dr. Eugene Friedman. I'm an officer and spokes person for the Boca West Homeowners' Association. We are a voluntary umbrella service organization representing eighty-eight percent of the fifty-five villages of Boca West.

We appear here on behalf of two members villages, Bridgewood Townhouse One and The Villas, which consist of over fifty homes directly adjacent to the proposed twenty-four-hour retail business.

As concerned citizens, we constantly hear the term Browardization to signify the deterioration of a beautiful county by the failure to maintain the quality of life for which their voters opted when they moved here.

The north side of Glades Road extending westward from Butts Road to the Florida Turnpike is a residential stretch of over five miles with no commercial enterprises. It is a beautiful belt -- green belt, and it's the adoration of everyone who sees it.

Fourteen years ago when this board granted the Petitioner the right to build the corporate center, we objected; and you turned us down. We have lived with the corporate center as good neighbors despite the fact that their presence has made it easier for intruders to enter Boca West for criminal purposes. Now the Petitioners are asking you to break the final barrier by allowing a twenty-four-hour, high frequency retail operation to invade this green belt.

There is no pressing community need for these services. Less than a quarter of a mile across the road west is the Office Depot with a large installation that provides these very same services and can be taken care of on an overnight basis. Office Depot closes their place at nine o'clock, but they'll work overnight to produce if any of these urgent needs of the people in the corporate center.

As a matter of fact, our association was a tenant of the corporate center, one of the earliest tenants. We were there for fifteen years. We just moved out about six or seven months ago. And I can tell you that Office Depot is very convenient for mass jobs. And they're not open twenty-four hours a day.

Office Depot is one of Palm Beach County's good citizens. They contribute to community projects, they respect their residents' rights and they're a Palm Beach organization -- a national organization based in Palm Beach. And we're proud of them. They do not remain open twenty-four hours a day. They close at nine. They deliver at eight the next day.

Our group will concede the building and the operation within the confines of the hours that the corporate center keeps it's doors open. They lock it at seven p.m. -- because I used to need the card to get in there -- and they open at I think at seven a.m. the following day. And that's perfectly acceptable to our people.

But, on the other circumstances, it remains a threat to our security and the peace and quiet and really is going to turn us into a Browardization thing with a big Kinko sign facing that green belt from Glades Road.

We oppose this variance, and we ask for your consideration. I'd like to call on Bill Raimond for the Master Association which handles our security to speak on this issue.

MR. RAIMOND: Good morning. My name is Bill Raimond, William Raimond, R-a-i-m-o-n-d. I'm the executive director of the Boca West Master Association.

Everyone at Boca West, by virtue of accepting a deed, is a participant in my organization. And we have two primary charter functions. One is to provide for the safety and security, and the second is that the people get to enjoy their neighborhood and the quiet.

As it pertains to this particular parcel, we have knowledge that in previous years prior to a suitable fence being erected on the block wall that separates this parcel from Boca West that there was intrusions. As a matter of fact, they had a rash of bicycle thefts from the Bridgewood Village, a substantial number of thefts. And we verified that the thieves were taking the bicycles over the wall. They'd sneak them off there, and we'd see other tracks indicating to our deputies, who are contract deputies, that that's how they were getting out.

Then a fence was built. We still had intrusions because our Deputy Sheriff's patrol Boca West; and we find people who are unauthorized in or around our golf course, either to fish in our lakes or to hit a golf ball. And when they're asked how did they get in, they point to the corporate center; and they say they hopped over the wall, over the fence, near their dumpster, et cetera, et cetera.

With the erection of the fence, we've had a reasonable reduction in the number of thefts at Boca West. We also suffer residential burglaries. It is -- and just recently when we checked that fence, there was a hole in the fence. And, just recently, we also learned that Bridgewood is suffering another rash of bicycle thefts from that same location. So that is our concern.

As a former chief of police of Florida International University, I can tell you that when one is on patrol and has clear sight of something, particularly at night, it's easy to look at it and say, there are no bad guys there; it's not a problem. When this building goes up, despite the fact that there will be a buffer between it and the wall, the Deputy Sheriff's who by our contract must patrol that area, we ask them twice per shift to go out of Boca West over to the corporate center and take a look at the dividing property line, given the past history.

Now, when that building is there, that will conceal anyone behind the building regardless of whether or not there's a dumpster there. So the cop will actually have to get out of the car. If it's not a twenty-four-hour-a-day operation, the cop can quickly determine if there are any individuals there or vehicles there. But if it is a twenty-four-hour-a-day operation, it's going to make his or her job much more difficult. And, on that basis, I would object from a security standpoint.

Speaking to the quiet enjoyment of the neighborhood, I can tell you that when we constructed our north security gate, which is on Yamato Road just a hundred and fifty feet from our neighbors in a community called Fox Landing, we used to use that security point as the meeting place for the off-going afternoon shift deputy and the oncoming midnight shift deputy. And just their conversation between those two individuals at that site, a hundred and fifty feet away from a neighbor triggered phone calls to my office that it was disturbing their quiet enjoyment and their sleep. And we had to do something about it, and we moved that operation to another site that was well within inside Boca West so as not to disturb neighbors.

It would be my opinion that having the doors open to a commercial enterprise would interfere and negatively affect the residents of Bridgewood who enjoy the neighborhood because they will have some type of vehicles pulling up, the engines starting, the doors slamming, maybe a radio blaring, et cetera, et cetera. So on that basis, the Boca West Master Association representing three thousand three hundred and eighty property owners is opposed to the approval of this variance. Thank you.

MR. MEYER: Hi. My name is Carol Meyer. I'm the manager for Village of Bridgewood. I'd like to challenge the staff report on a couple points before I go to my prepared text.

What they're referring to is this mature landscape buffer between here and here is actually Florida Holly.

And that holly is going to have to be cut down sometime in the near future. So we're not going to have a buffer there sometime soon.

Also it's important that you understand that there is a parking lot, even though the staff report says that there's no outside activity proposed on the east side of this building, there is a parking lot here. And the parking lot is actually at the closest point to our villas condominium units here. You've got a lot less than three hundred feet there. When the Florida Holly goes, you're going to have a straight shot into the villas in there.

As far as the surrounding market demand for this Kinko's, that does not exist. Where there's an Office Depot a quarter mile from the corporate center, there's a Kinko's on Federal Highway less than three miles from the corporate center. As far as causing less trips on Glades Road rather than more trips, I don't understand that at all. If a business is there, it's there to draw people in. There's going to be a lot of people driving to Kinko's. That's why they advertise that they're going to be there. So I respectfully disagree with the staff on those points.

Fourteen years ago I stood before this board to oppose construction of the corporate center. We were concerned about security because we felt that the corporate center would provide easy access for thieves. I said then that the corporate center parking lot would be a perfect place for thieves to load the loot into their cars that they had stolen from Boca West and thrown over the wall.

At that hearing many years ago, Smear and Fearing promised an impactual barrier, a huge wall that would be monitored. Well, what we got was an ugly wall that is completely ineffective. I can scale it in less than thirty seconds. I'm saying this under oath, and I will do it, if you want me to. And the thieves that hit us could probably do it a lot faster than that.

We regularly see holes ripped in the fence that Boca West Master's Association had to erect on top of the wall. It's safe to presume that the holes were made by criminals entering Boca West. I really don't think these guys are ripping holes in chain link fences to come in to go swimming in our pools.

Boca West security personnel know that this is a weak area on our perimeter and can check the corporate center parking lot late at night for suspicious activity. It's obvious who belongs there and who does not because all of the businesses in the corporate center are closed late at night. Therefore, any late-night activity in this vulnerable area is obviously suspicious to our security staff and can be dealt with immediately. Allowing the twenty-four-hour Kinko's as requested will make it impossible to determine if cars parked in the lot are germane to the businesses or are waiting to be loaded with loot from Boca West. Late-night business at Kinko's will be very sporadic giving criminals ample opportunity to enter and exit our community without being seen by anyone including Kinko's staff and customers.

Most thieves like to operate very late at night for an obvious reason. Everybody else is sound asleep. Allowing a twenty-four-hour activity at Kinko's provides a perfect cover for thieves working in their favorite hours.

Some of these thieves already know about this point of access into Boca West. We know this is true because we haven't caught them yet. I'm sure they will be overjoyed if you approve this variance making their sinister work even easier.

The people that live less than three hundred feet from the proposed Kinko's worked hard all their lives so they could enjoy their retirement years in a safe comfortable community. For example, Mrs. Elaine Ross, the second closest unit to this proposed Kinko's asked me to speak on her behalf today because she's taking her kids to the airport.

Mrs. Ross served in the US Navy for twenty-three years. Don't you think she deserves to be allowed to sleep peacefully through the night, or do you think that it is right and proper for her to have to deal with a Kinko's that makes noise twenty-four hours a day.

Now, I know that the developer told you that Kinko's is not going to make noise that's audible outside of the concrete block building, just like they told us that the corporate center would not hurt our security fourteen years ago. Promises. Promises. What about employees taking cigarette breaks outside of the building? Who's going to stop them when they're tossing a football in the parking lot or unloading a truck with important supplies that couldn't get there during the day. What about college students that bring last-minute work to Kinko's at two a.m. and decide to wait for the work in a parking lot with their mega base two hundred decibel car stereos blasting. Sure our retirees can call the police after they are awakened. But do you think they worked hard all their lives to be able to buy a secure home so they could listen to Kinko's and call the cops all night long. What if it was your mother who lived in one of those units? Would you make her deal with these nightmares by approving this variance request? God, I hope not because I know that these people deserve a little peace and quiet and security in their twilight years. This is what they worked hard for all their lives. Please don't take that away from them. Thank you.

CHAIR PERSON KONYK: Thank you. Anyone else to speak on this item?

MR. GODSHAW: I'm on the board of the Bridgewood Townhouse One. And I represent seventy-six units there. And we are opposed not to Kinko's but to the twenty-four-hour operation of that because it definitely will change the whole area's outlook and change the aspect of our life there. Thank you very much.

CHAIR PERSON KONYK: Thank you.

Name, for the record.

MR. GODSHAW: Hal Godshaw, G-o-d-s-h-a-w.

MS. ZIMMERMAN: Good morning. My name is Evelyn Zimmerman. And my husband Richard and I live in the property immediately adjacent to the effected area.

We strongly object. I've had a lot of personal experience with Kinko's. I, too, have been in there stores in New York City at two and three and four in the morning when our in-house staff could not meet the production. It's full of college kids. It's full of commercial people. It's a constant business. With FAU and other universities here, you'll get a lot of college kids. And there also are a lot of people that utilize the

facility because they can have access to very sophisticated on-line equipment which they don't have at home or couldn't have to that level.

So it's does attract. I would seriously doubt that Kinko's would build there only to accommodate the corporate center. They're too smart an operation to think they can derive the business that they need from that small corporate center. Thank you.

CHAIR PERSON KONYK: Thank you.

MR. SACHS: My name is Jerry Sachs. I just moved into Boca West. And I think if I knew about this when I decided to move in there, I wouldn't have. I really don't want anybody having a twenty-four-hour operation where I'm -- practically in their back yard. Thank you.

CHAIR PERSON KONYK: Thank you. Any questions?

MR. JACOBS: I'll hold my comments.

CHAIR PERSON KONYK: Okay. Thank you.

Just for the record, the public portion of the hearing is now closed.

MS. LOCKHART: Just to recap, the use that we're requesting is permitted and the building as it sits on the site plan is permitted. That's been certified by the DRC. So that buffer will remain in the back in order to shield the building and the parking areas from the adjacent properties. Crime prevention through environmental design has principles that we employ in order to make areas less attractive for thieves. And this certainly exhibits the said principles. There are open spaces that need to be crossed. There are barriers there that do not allow for people to hide. The wall was constructed as part of the commercial operation. And, yes, there was a bicycle-stealing incident five years ago. Smear and Fearing told Boca West that, yes, you can put up a fence on our wall. And they did so. They have not maintained that fence. There was a hole on their side that we found out about at Monday's meeting with them. They have sense gone back and repaired that.

The hedge -- or the ficus and Brazilian Pepper is on their side of the wall. We have our own landscaped area that we maintain. Also there is a berm on their side of the wall which makes it very easy to go up a six-foot wall. You can't scale it from our side because the fence is there also.

In addition, we've had discussions with Bob Fitzgerald who is their chief of security who was at the meeting with us on Monday. And we discussed with him, you know, what incidents are you aware of that we don't know about since five years ago. And he said, yes, there had been another rash of bicycle thefts. However, based upon his observation of the wall area, they did not come through Boca Corporate Center. It was a week and a half ago.

So given that, there is no connection for this facility to connect with Boca -- with Boca West community. So there is not that issue that's been presented to you today. This is a variance for twenty-four-hour operation that would service the existing office building. There is a Smith-Barney there that would create a lot of demand that does keep additional trips off the road.

MR. WICHINSKY: Sara, I'd like to ask you a question. Whether or not I agree or disagree with the crime connection, I'd, first, like to address the possible noise

issues. Your matter and Mr. Koehler's issue that's coming up later, I think a large concern of this board is noise pollution, noise activity. What days of the week, hours of operation, so on.

Can you give me and the board an idea of what kind of deliveries? Are there overnight deliveries of materials, supplies that add to the concerns of the citizens?

MS. LOCKHART: No, sir. There are no evening deliveries. Those occur during normal business hours.

MR. WICHINSKY: If that were ever a condition, would that create a problem?

MS. LOCKHART: No, sir. That would not.

MS. COHEN: Excuse me. We have a Kinko's representative here if you would like to speak with him.

CHAIR PERSON KONYK: Do you have a question?

MR. JACOBS: Would Kinko's go into the facility if it were not permitted twenty-four-hour operation?

MS. LOCKHART: No, sir.

CHAIR PERSON KONYK: That's all they operate is a twenty-four-hour operation.

MS. LOCKHART: And, again, that's because of the day and age that we're in. They have to have a technician there so that when they load up the computers to run the prints, that if there's a paper jam or something goes wrong with it; there's a power glitch, the back up supply doesn't work, that the batch is run and you don't walk in first thing in the morning to a mess.

CHAIR PERSON KONYK: Although, they do allow customers in at that time?

MS. LOCKHART: Yes.

CHAIR PERSON KONYK: Do you have any statistics on how many people would frequent the Kinko's operation at night? I mean, I know that there's a Kinko's near me; and I have been in there late at night.

MS. LOCKHART: It depends --

CHAIR PERSON KONYK: Me and maybe one other person.

MS. LOCKHART: It depends on the location. In areas where you've got high retail, you're going to have more traffic. But in an office setting like this, once that office shuts down, you might get a few people in the office who are working late and have to run in. But it is nominal.

CHAIR PERSON KONYK: The college students, would they probably be closer to the location on Federal Highway --

MS. LOCKHART: Yes.

CHAIR PERSON KONYK: -- than they would be to this one?

MS. LOCKHART: Yes. They would use Federal Highway.

CHAIR PERSON KONYK: Where are these bicycles that keep getting stolen? Are they outside? Do the people --

MR. MEYER: They're locked in bike racks.

CHAIR PERSON KONYK: Outside?

MR. MEYER: Yes.

CHAIR PERSON KONYK: People don't have garages?

MR. MEYER: No.

CHAIR PERSON KONYK: Do you have a question?

MR. BASEHART: No.

CHAIR PERSON KONYK: Any other questions?

MR. MacGILLIS: Excuse me. We do have letters of opposition.

CHAIR PERSON KONYK: I figured that out.

MR. MacGILLIS: Just to go through them so they're on

the record. Several people have already spoken here this morning: Mr. Sachs; Evelyn Zimmerman; Jean Friedman; Bill Raimond; Mr. Friedburg; Whitehall, Modest & Weingart. Their major concerns was objections to possible noise, light and traffic and open twenty-four hours a day.

I did receive a call yesterday from the West Boca Community Council, Tom Gallagher, who is the first vice president, stating they will have no objections to this request.

I also received two letters from the Boca West Association. The first one dated February 2nd stating that they would not have an objection to the construction of an additional building as requested in the variance. The second letter came in on February 12, 1999, from a William Raimond, stating they would have an objection.

CHAIR PERSON KONYK: So what is their position? They have on objection? Who wrote the first letter?

MR. RAIMOND: I wrote both of them, ma'am. Given that the variance request says to operate a business before six a.m., that's the basis of my first letter. Doesn't say never to close their doors. Doesn't say twenty-four hours a day. The variance request, you may look at it, says -- the variance request is to open it before six a.m. I was under the impression that they wanted to open it at five-forty-five, five-thirty, five o'clock, not never close their doors. That's a big difference.

MS. LOCKHART: That's always been portrayed. Kinko's is twenty-four hours. They advertise that. I mean come on.

MR. RAIMOND: It doesn't say Kinko's on there either.

MS. LOCKHART: It does in the staff report.

CHAIR PERSON KONYK: Do you have any statistics or anything to support how many people would frequent a Kinko's in the middle of the night? And that would be my first -- I mean, is it a lot of people or --

MS. LOCKHART: I would say less than five because --

CHAIR PERSON KONYK: Do you think -- and I guess I'm addressing the homeowners. If you have an operation that has legitimate employees there open, you know, people that work there, I would think that that might be a deterrent to crime because maybe if your business would -- you know, by being open, it's going to discourage people from going and trying to climb that -- scale that wall because somebody's doing to see them do it.

MS. LOCKHART: That's correct.

DR. FRIEDMAN: It's our understanding that the building is going to be built like a cement block, so it will be completely shielded from the boundary behind it which is where the activity would take place. There would be no way an employee or anyone else would see what's going on.

CHAIR PERSON KONYK: Well, they could see a car come into the parking lot and go around the back of the building

MR. MEYER: Not if the car parks on the east side of the parking lot, like I showed you there. That car can come in right there. Unless they have x-ray vision, they can't see what's going on in that parking lot.

(Thereupon, there was an interruption by the court

reporter.)

CHAIR PERSON KONYK: One at a time.

And I got the answer. Thanks.

MR. WICHINSKY: Sara, question for you. The property as it is right now, is there security there in the evening? I mean, I'm curious what prevents a security problem right now because I'm very familiar with that lot.

MS. LOCKHART: There is no security right now. And it's interesting you bring this up because I was aware that the residents would have a crime issue from talking with Mr. Gallagher. And on the way in to meet with him, I'm passing Rolls Royces, Jaguars, BMWs, you know, cars that you would expect to be stolen or at least vandalized; and they've had no reported incidents like that at Boca Corporate Center.

CHAIR PERSON KONYK: Any other comments by the board?

MR. PUZZITIELLO: Exactly how does the code read about the -- there was a question on the hours. It says -- it only says when it can open not when it can close; is that correct?

MR. MacGILLIS: Correct. Actually, it's on page one twenty-six of your backup material where the required code section is. That's basically how it reads, all commercial use adjacent to residentially-zoned properties shall not commence prior to six a.m. daily. It doesn't give any closing time.

MS. LOCKHART: Which raises the question, where's Walgreen's and Eckerd's and everybody else out there?

CHAIR PERSON KONYK: Well, the public portion of the hearing is closed.

Anybody have a -- anybody prepared to make a motion on this item?

MR. BASEHART: Well, if nobody else is, I'd like to make a motion that the variance request be approved based on the staff report which concludes that the criteria for approval has been met. And also, you know, I think the code provision itself creates a hardship in an interpretation because, I mean -- I mean, the way I read the code provision, it says you can't open before six in the morning. There's no requirement on when you close. So it would be an arbitrary thing for the government to order the business to be closed at ten at night or at midnight or at one in the morning when there's no support within the code to back it up. And I think legitimately a twenty-four-hour operation -- hour-a-day operation could occur without violating the code because, if you don't close, then you don't have an opening time; and you won't be violating that provision.

But, in any event, that notwithstanding, I think when you look at the situation clearly, I think a twenty-four-hour-a-day operation of the type of business that we're talking about here is appropriate. And my conclusion would not create a hardship or any negative impact on the surrounding area.

There's a golf course in between the nearest residential units and this particular building and lake areas. The design of the building is such that land use activity on the site won't impact them because the back area of the building is all landscaped. There's no parking back there. There's no circulation back there. And there won't be any people activity there. Plus you've got the wall and the fence. I think that the potential for criminals to use the corporate center property to access Boca West to do whatever they're going in there for

will not be increased by the addition of this facility.

And I agree with you, Madam Chairman, I think having people activity on the site all the time would be a deterrent. It may be harder for security people to identify a bad guy versus a good guy. But I think the fact that there is people activity there would be a deterrent to criminals who might want to access the property.

So I think the criteria for the granting of the variance has been met, and that's why I'm making the motion.

MR. JACOBS: I'll second the motion.

CHAIR PERSON KONYK: We have a motion by Mr. Basehart, a second by Mr. Jacob.

Any discussion?

MR. WICHINSKY: Will the maker of the motion agree to placing a condition in his motion which would place a reasonable restriction on deliveries, possible deliveries to that location?

MR. BASEHART: Sure. I think that would be appropriate. I mean, the only real potential that I see here for any kind of negative impact from a noise point of view would be if delivery trucks came in and made noise doing their delivery.

So I would like to -- I probably didn't mention it, but my motion included the four conditions recommended by staff. And I'd like to add a fifth that would prohibit deliveries -- or deliveries to the site later than ten o'clock in the evening and not before six in the morning.

CHAIR PERSON KONYK: Do you normally receive deliveries at ten o'clock in the evening?

MS. COHEN: No.

CHAIR PERSON KONYK: What would your normal hours of delivery be?

MS. COHEN: We could live with eight.

CHAIR PERSON KONYK: What time in the morning?

MR. TODA: In the usual business hours. I mean, somewhere after eight o'clock or four or five o'clock in the afternoon.

CHAIR PERSON KONYK: Eight to Five?

MR. TODA: Eight to five.

I mean, I would be happy to agree for Kinko's from seven o'clock to six or something like that. If it rains one day --

CHAIR PERSON KONYK: Let's make it eight. Yeah. Okay.

MR. BASEHART: No deliveries after eight o'clock in the evening or before eight in the morning.

CHAIR PERSON KONYK: Okay. So eight to eight.

Do you understand and agree?

MS. LOCKHART: Yes. That's applied to that building?

CHAIR PERSON KONYK: A condition for that building.

MS. LOCKHART: There's a restaurant.

CHAIR PERSON KONYK: Your name for the record?

MR. TODA: My name is Chris Toda. I'm with Kinko's.

You have -- I think we're speaking of your larger delivery trucks that are bringing supplies; is that correct? The reason I'm asking this question is we have smaller Kinko's mini delivery vans, mini vans, that are popular now. And those --

CHAIR PERSON KONYK: I don't think we're talking about in-house. I think we're talking about deliveries of

paper and --

MR. WICHINSKY: My suggestion was more for noise-generating type of vehicles, shipment deliveries.

MS. LOCKHART: The big trucks?

MR. WICHINSKY: Right.

CHAIR PERSON KONYK: So there will be no outside deliveries between the hours of 8 p.m. and 8 a.m. You'll agree to that?

MS. LOCKHART: Yes.

CHAIR PERSON KONYK: And that means none.

MS. LOCKHART: Yes.

MR. MacGILLIS: Condition number five, all deliveries for the Kinko's business shall occur only during regular business hours, eight a.m. to eight p.m.

MR. BASEHART: Right.

CHAIR PERSON KONYK: I don't think that would be regular business hours. I think it should be only between the hours of eight a.m. and eight p.m.

MR. MacGILLIS: Between the hours of eight a.m. and eight p.m.

CHAIR PERSON KONYK: Right.

MR. WICHINSKY: Is that specific to Kinko's?

MR. BASEHART: No, just the Kinko's. The other uses on the site aren't before us.

MR. WICHINSKY: I'm talking about any subsequent tenant.

MR. BASEHART: Any tenant in that building.

MR. JACOBS: You're only talking about outside deliveries?

CHAIR PERSON KONYK: We're talking about noise-generating deliveries --

MR. MacGILLIS: Right.

CHAIR PERSON KONYK: -- which would probably be outside deliveries. But that's for that building, not for Kinko's. So if Kinko's moves out and someone else moves in, that would apply to them as well.

So we have a motion. We have a second. We have a fifth condition added that the applicant has agreed with. Any discussion?

(No response.)

CHAIR PERSON KONYK: Any other questions?

(No response.)

CHAIR PERSON KONYK: Okay. Do you want to do a roll call or...

MR. BASEHART: Sure.

MARY MOODY: Mr. Joseph Jacobs?

MR. JACOBS: Aye.

MARY MOODY: Mr. Bob Basehart?

MR. BASEHART: Yes.

MARY MOODY: Mr. Raymond Puzzitiello?

MR. PUZZITIELLO: Yes.

MARY MOODY: Mr. Glenn Wichinsky?

MR. WICHINSKY: Yes.

MARY MOODY: Ms. Chelle Konyk?

CHAIR PERSON KONYK: Yes.

MR. BASEHART: You forgot Mr. Rubin.

CHAIR PERSON KONYK: He recused himself.

MR. BASEHART: That's right.

CHAIR PERSON KONYK: Okay. So the variance is granted with the fifth condition. And why don't we take a three- or four-minute break.

STAFF RECOMMENDATIONS

APPROVAL, 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 6.42 acre commercial site is located along Glades Road immediately east of the Florida Turnpike. The property has a C/8 land use designation with MUPD zoning classification. The site is irregular in shape (pie shape) with frontage on Glades Road while the west property line is adjacent to the Florida Turnpike and Boca West PUD to the east. The site currently supports two structures, a 74,000 square foot 3-story building along the northwest portion of the site and a 6,628 square foot 1-story building along the southwest property line. The applicant's client is proposing to locate in the 8,500 square foot building that is currently not constructed. The building will be located along the east property line.

There will be no parking or loading between the east property line and building. There is an existing landscape buffer with CBS wall located along the east property line separating this commercial use from the residential property to the east. The residential property to the east supports a golf course and lake, which are over 100 feet in width from the common property line.

The applicant's client is proposing a printing (Kinko's) business that operates 24 hours a day. All work is conducted inside the building. The code provision that restricts commercial businesses from commencing operation before six a.m. would prevent this business from moving into this proposed structure. The type of service offered by this business is a valuable service needed for the offices located in this general vicinity.

Therefore, the unique configuration of this pie shaped lot that has the Florida Turnpike to the west, Glades Road to the south, Boca West to the east and having no north property line has only residential property to the east. The existing buffering along the east property line, which includes landscaping and a 6 foot concrete wall in addition to the fact there is a golf course and lake (approximately 100 foot in width) before reaching the first residence. The general intent of the code of prohibiting commercial business from commencing operation before six a.m. so as not to infringe upon the residential community will be satisfied.

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

NO. The site location, surrounding land uses and existing buffering conditions are unique and warrant special consideration in terms of applying the hours of operation

provision to the proposed use. The applicant's client is proposing to locate in a proposed building on this site. However, the nature of this printing business requires the flexibility of operating 24 hours a day. The ULDC limits the hours of operation in a MUPD in order to protect the surrounding residential properties with respect to noise associated with the commercial business: deliveries, dumpster pickup, customer parking. However, this business (Kinko's) will occur indoors and there will be no storage of material, deliveries, dumpster pickup or customer/staff parking along the east side of the property that abuts the residential property line. The majority of the business is done on the computers and often the final produce to E-mailed to the customers. There are no heavy printing equipment that was once associated with a printing business.

Therefore, although the applicant's client has a choice of where to locate their business, this particular location will benefit many of the offices on this site and businesses within the general vicinity. It will help capture trips that would otherwise be impacting glades road by users having to travel off-site to have their printing needs met. Also, it should be noted that since only the east property line abuts residential, and the units are located more than 200 feet away from the common property line and there is adequate buffering along this property line, the general intent of the code will be met.

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

NO. The applicant has a unique site and use that warrants special consideration in terms of applying the literal interpretation of this code provision related to hours of operation. The intent of the code is to protect adjacent residential uses from negative impact associated with early deliveries, dumpster pick-up, customer pick-ups. However, this site is unique in that only the east property line abuts residential and the units are located at least 200 feet away from the common property line and are separated by buffer, golf course and lake.

Therefore, no special privilege will be granted to the applicant. If the variance is denied, the applicant would have to seek another location in the area where the hours of operation do not apply.

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's client is proposing to locate a business in this area to meet the surrounding markets demand for this type of service. The use is permitted by right, however, the hours of operation are limiting the use from locating on this site if a variance is not granted. Staff is recommending a condition of approval that would ensure the use is limited to a use that does not have outdoor storage or deliveries and furthermore, that the open space located to the east of the building

remain as landscape space, without parking or a service area. This will ensure that any future uses that might move into this 8,5000 square foot building will adhere to the intent of the variance approval.

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

YES. The applicant states that the nature of the printing business has changed considerably in the past several years. No longer are large printing machines, ink barrels and paper spools used. The majority of the business is performed on computers. The applicant states the need for the variance is to allow the business to operate 24 hours a day. Many drawings/images are generated and reproduced automatically during off hours with a technician to monitor the progress. Customer service will still occur primarily during regular business hours.

Therefore, this configuration of this lot, layout of the site and proposed nature of the use warrants special consideration, when interpreting the general intent of limiting hours of operation. The general intent of the code will be satisfied, if the variance is granted.

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

YES. The general intent of the ULDC hours of operation limitation, as stated previously, is to protect the adjacent residential properties from negative impacts associated with early deliveries, drop offs, dumpster pick-up, etc. However, in this particular situation the only residentially zoned property is along the east property line. The code language is general in terms of detailing where and how one is to apply the language "adjacent residential." In this case, staff has applied it to mean the common property line, even though the nearest dwelling is over 200 feet from the property line.

Also, as previously stated, there is existing buffering, golf course and lake between the residences and the proposed commercial building that will support this use.

Therefore, the granting of this variance will meet the intent of the ULDC. The adjacent residential use will not be impacted by this printing business from operating 24 hours a day instead of regular business hours. All work is performed inside the building and is done on computers. There are limited deliveries to the use, since many requests are delivered by walk in customers or via e-mail.

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

NO. The separation between the proposed commercial business and the residential units within Boca West PUD to the east will provide adequate buffering to mitigate any negative impacts associated with this business from operating 24 hours a day. Furthermore, staff is recommending conditions of approval that will limit the use and site layout to ensure future tenants meet the

intent of the Boards approval.

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. The variance is approved only for a permitted general retail use that will have no outdoor activity (storage, deliveries, etc.) (ONGOING)
3. By March 21, 1999, the applicant shall ensure the Board of Adjustment conditions are attached to the certified site plan. (DATE:MONITORING-ZONING-BA)
4. There shall be no modifications to the site plan that would permit any outdoor activity (storage, parking, loading, deliveries) along the east side of the proposed 8,500 square foot building and east property line. (ONGOING)
(Thereupon, a recess was taken.)

CHAIR PERSON KONYK: The next item -- or the first item on the regular agenda -- and I apologize for the confusion before. You would have been first if we hadn't had two items pulled off the consent -- BofA 9900008.

Jon, if you could introduce the item.

MR. MacGILLIS: It's found on page sixty-four of your backup material.

The petition of Rollin E. Converse and Cheryl Converse to allow a proposed two-car garage to encroach into the side interior setback. The location is 537 Whippoorwill Trail, is approximately point three miles west of State Road 7, also known a Highway 441 and point four two miles north of Dilman Road, within the Whippoorwill Lakes Subdivision in the RE zoning district.

Zoning petitioner 81-037.

CHAIR PERSON KONYK: And your name for the record?

MR. YECKES: I have not been sworn in.

CHAIR PERSON KONYK: Oh, is there anybody else that's going to speak that's not been sworn in?

(No response.)

THEREUPON,

MR. STEPHAN A. YECKES,
being by me first duly sworn to testify the whole truth as is hereinafter certified, testifies as follows:

CHAIR PERSON KONYK: Okay. Thank you for pointing that out.

MR. BASEHART: Before we start this item, Jon, I noticed that the legal ad says that the property is at 537 Whippoorwill Drive, approximately three-tenths of a mile west of State Road 7. This is east of State Road 7. Is the legal ad incorrect?

MR. MacGILLIS: It is east?

MR. BASEHART: Well, sure. Whippoorwill Estates is east of State Road 7.

MR. MacGILLIS: You put the posting boards up on the site?

MR. YECKES: Yes.

MR. MacGILLIS: I didn't get any calls on it, and the notices went out. I don't know if the -- the notices --

CHAIR PERSON KONYK: Did the notices go out to the correct people, or did they go out to people west of State Road 7?

MR. MacGILLIS: The correct people. We use the tax map to do the radius on it. So they would have all gone out. I didn't get any calls whatsoever on this. And the posting board would have been on the site. So anyone in the neighborhood --

CHAIR PERSON KONYK: Do we need to do anything about that?

MR. MacGILLIS: I think the intent went out that was for the variance. The address is right, so anyone who would have been interested in it would have been notified.

CHAIR PERSON KONYK: For directional purposes?

MR. MacGILLIS: The direction was more -- like somebody typically calls us and says, look, you mean, east, don't you? We would have clarified that --

CHAIR PERSON KONYK: We have the correct address, 537 Whippoorwill Trail. We could just reflect that it's point three oh miles east of State Road 7, not west.

MR. YECKES: My name is Stephan A. Yeckes. I am a registered architect, and I am the applicant for Mr. and Mrs. Converse for the request for this variance.

The request for the variance is to add a two-car garage plus pertinent storage space. The -- in my opinion, as an architect, this is the only place I can put this garage, primarily. And I'll come to the drawing. Can you still hear me on the...

This drawing here shows the site plan of the proposed garage on the north side. The house is placed roughly in the center of the house with respect to side setbacks. On the south side is the bedrooms of the house, so it would not be appropriate to put a garage there since we couldn't walk through the house.

Certainly, then on the north side is where it would go. To put the garage further back would not help the variance problem. I would have to pull it farther back and toward the pool. And I still would not get it within the setback if I wanted a garage of this size.

Understand that the septic tank and drain field is to the rear of the proposed garage. If I pulled it back, I would actually have to relocate the septic system, which is there.

Putting it to the front would still be a setback problem and also be a roof line problem, et cetera, et cetera. So it is the right place.

I will show you by pictures that the neighbor to the north has a very large garden to that side which basically blocks his view totally of the Converse residence. He

would, therefore, not be effected.

The hardship here is very simple. Mr. Converse purchased this house with his wife in 1996. He was not aware of the intricacies of setbacks and variances. He felt that his family could grow there. He wanted to potentially enlarge the house. When he went to try to get a permit for a garage, he found himself in a predicament because basically the side setbacks are forty feet, and he would have to encroach to build something there.

On this site plan, you see a red line from east to west. That shows where the forty-foot setback is. It is roughly to the center of the proposed garage, and it's shown on the floor plan as well.

The interesting thing about this variance is the staff report gives you all kinds of indications that it's not fitting within the neighborhood, that it would bestow things on this person that would be different than other persons, et cetera, et cetera.

It also says it's a variance request for sixteen-feet plus. That's in a sense not true because what you really have here is a variance request for twenty-four inches. And why do I say that? Because this wouldn't need a variance at all if my roof line median point was within the ten-foot mark of grade.

So this drawing is the east elevation, which is the proposed front of the house. It shows a red line up here which is the median of my projected house and the lower line at the ten-foot line which is perfectly allowable for this structure at this setback. And it would not need a variance.

So, essentially, you have a twenty-four-inch difference in the height of the median roof line that I'm coming before you and needing this variance. So what, basically, you're saying to me is you would rather have me design a flat roof, which would meet that criteria because the flat roof would have to be -- I could still go higher than the ten-foot point. The median of that flat roof would have to be within the ten-foot setback or the ten-foot height limitation and I would need a variance.

Obviously, we feel that it is better to match the existing residence. It is better not to have a flat roof. We don't want a flat roof nor would the homeowners' association let us have a flat roof. We have come to you here today to allow us to match the house, to make that additional twenty-four inches and grant us the variance required to do it. Otherwise, we have to basically pull down the roof some way, make it look different than the house, make it a flat roof, make it something so that we can come and build it without a variance.

So the idea that this is injurious to the neighborhood and not in character with the neighborhood is not an argument at all because, if I change the roof, I could build it. And anyone, in fact, could build it because that's what the code says.

So all I'm saying to you is I'm not asking for the major change in anything other than I would like to build a detached garage with the storage area that looks like the rest of the house. And the reason it's detached and I can't come in any further is because on this side of the house where I have a breezeway is where the meter service is, is where the air conditioning systems are, the pool pumps, the pipe to the septic tank. I can't build a

structure adjacent to the house at that point. There's too many things there that preclude me from doing that.

So for a distance of twenty-five feet four inches, I am asking for a setback alleviation of sixteen feet and the reasons given therefore.

CHAIR PERSON KONYK: It says here you're only asking for thirteen feet.

MR. YECKES: I'm sorry. It's thirteen feet, thirteen point three feet, right. Twenty-six feet is the setback.

CHAIR PERSON KONYK: Staff?

MR. MacGILLIS: This is BofA 99-08. Staff is recommending denial of the request. The applicant has not demonstrated compliance with the seven criteria necessary to grant this variance. There's nothing unique about the lot. It's a typical lot within the Whippoorwill subdivision. There has been similar variances that were applied for in the past. The board denied one for front setbacks, but never applied -- there was a similar variance BofA 87-77 to allow a reduced setback for room addition, which the board denied based on the fact that there was other options similar to what staff feels that are available to this applicant.

Staff has reviewed the application. And, even though we realize what he's saying, that if he lowered the roof, that is one of the options we discussed with him. We told him to present his case to the board. He can't lower the roof to bring the structure under ten feet because, if you bring it below ten feet, an accessory structure, we can apply different setbacks.

CHAIR PERSON KONYK: So what would apply if you brought it below the ten feet?

MR. MacGILLIS: I believe it's -- I think you're going to have a ten-foot setback.

MR. YECKES: Yeah. I mean, we would be well within that allowed --

MR. MacGILLIS: Yeah. It would be a ten-foot setback, because you think of an accessory structure less than ten feet, your Ted's sheds and your little garden things and stuff like that.

The code is clear, the ten feet and we had a peak roof, we measure to the midpoint of the peak roof. I discussed this with the applicant saying, can you not lower it? You won't even need a variance when you come in here. In fact I looked at it, why are you coming in for a variance anyway? He said, I can't. The existing house line I'm trying to match it up. And to start fooling around with the detached garage, I can't do it. I've got to keep this pitched on the roof and stuff. And I said, well, if you're over ten feet, you're going to have to meet the setbacks of the principle structure which is the forty feet. And I said, as far as staff's concerned, you already have a two-car garage, and the garage that you're proposing, if you took the storage area and try to reduce the size of it, because if you look at the -- I don't know if we have the plan in here. But you have the thing in there, part of it is a two-car garage -- yeah. In that drawing underneath the east elevation, he's got a two-car garage. And on the right side where the two-car garage is there's a large storage area, which he states his client needs. But staff feels -- I mean, they purchased the house just recently knowing what the limitations were on it. He claimed they didn't. But staff's position is you

new you bought a typical three-thousand-square-foot home with a two-car garage. Now, the family has two extra cars that they want to keep inside. Therefore, they need extra storage space.

CHAIR PERSON KONYK: So what will you have? A four-car garage now or --

MR. YECKES: The intent is in the future to perhaps enclose the existing garage that's attached to the house to make it a rec room. And, therefore, the garage will be built right now as an extra garage but, in the future, as the garage.

And I did want to show you these pictures that I mentioned that shows the neighbor to the north here. And the side -- it shows a typical corner of the house and then the neighbor to the north with the garden that I mentioned. And that's the side we're building toward.

MR. BASEHART: The neighbor to the -- to that side doesn't object?

MR. YECKES: No. He does not.

CHAIR PERSON KONYK: Do any of the neighbors object?

MR. MacGILLIS: We never received anything. In fact, no phone calls, no letters.

MR. PUZZITIELLO: If he lowered that to a flat roof, which obviously would not make the house look as nice, it would still fit within the zoning?

MR. MacGILLIS: Correct. It would be considered then an accessory structure. The different provision in the code would apply. Right now he's under the regular setbacks for a house because it's over ten feet.

MR. BASEHART: I'd like to ask you a question. You indicate that the property is in the LR-2 comp plan category and zoned RE and that it's conforming. Isn't the minimum lot size requirement two and a half acres in RE?

MR. MacGILLIS: It's legal nonconforming. Page sixty-five at the top. It's legal nonconforming, one point four one acres.

MR. BASEHART: As a legal nonconforming lot, applying percentage setbacks wouldn't help him?

MR. MacGILLIS: No.

CHAIR PERSON KONYK: Any other questions?

MR. JACOBS: I have one.

CHAIR PERSON KONYK: Okay.

MR. JACOBS: What was the nature of the similar variance request that was denied in 1989?

MR. MacGILLIS: Page sixty-five, if you look at that little second drawing on the left-hand corner. It's the lot -- just for the court reporter, I'm looking at the drawing on page sixty-five, the middle drawing. The one down towards the bottom is the actual lot that came into apply for a side setback for a single-family home. They're adding a bedroom onto the side. It's --

MR. PUZZITIELLO: Which lot?

MR. MacGILLIS: Lot 412. It's got the squiggly marks around it there. It was Petition 87-77. Staff had recommended denial, and the board supported that denial. It was a similar -- almost the identical amount of variance for a room addition. They had an extended family, and they needed the extra room. It was denied.

MR. JACOBS: Thank you.

CHAIR PERSON KONYK: Anybody else have any questions or comments?

(No response.)

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

MR. RUBIN: I'll make a motion that BofA 99-00008 be denied incorporating by reference the staff report and findings.

CHAIR PERSON KONYK: We have a motion.

Do we have a second?

MR. WICHINSKY: Second.

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

Any discussion?

(No response.)

CHAIR PERSON KONYK: All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: All those opposed?

(Thereupon, there was an interruption by the court

reporter.)

CHAIR PERSON KONYK: Why don't we do a roll call. We'll do a roll call.

Let me just clarify this. The motion is to deny the variance.

MARY MOODY: Mr. Jeffrey Jacobs?

MR. JACOBS: Aye.

MARY MOODY: Mr. Bob Basehart?

MR. BASEHART: No.

MARY MOODY: Mr. Raymond Puzzitiello?

MR. PUZZITIELLO: No.

MARY MOODY: Mr. Steven Rubin?

MR. RUBIN: Yes.

MARY MOODY: Mr. Glenn Wichensky?

MR. WICHINSKY: Yes.

MARY MOODY: And Ms. Chelle Konyk?

CHAIR PERSON KONYK: Yes.

I'm sorry. The variance has been denied.

MR. BASEHART: I'd just like to say I think, although he could build the garage where he wants by lowering the roof slightly, I think from an aesthetic point of view -- this looks like a very nice area. From an aesthetic point of view, the only impact here is that we're going to have a lightly higher roof line. And looking at pictures and surveys and site plans, you know, with the extensive hedge along the side property line on the effected side and the nature of the land use on -- you know, which is basically open space on the other side, there would be no negative impact on it.

I think the criteria has been met, but --

MR. YECKES: I'll let you take another vote.

STAFF RECOMMENDATIONS

DENIAL, 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:

NO. This legal 1.41 acre nonconforming RE residential Estate lot complies with all minimum property development regulations. The lot is typical to other lots within Whippoorwill Lakes Subdivision. The lot supports an existing single family residence and swimming pool. The property owner is proposing to construct a 700 square foot 2 car garage on the north side of the existing house. The proposed garage will be separated from the main house by a 10 foot wide breezeway. The applicant states the garage is needed by the property owner to accommodate the additional vehicles the family owns and needed storage area for lawn equipment. The applicant states the addition cannot be located to the rear or the south end of the house without blocking views of the canal or light into the bedrooms.

The applicant has not demonstrated any unique conditions or circumstances exist to this lot that would warrant the requested variance. The 700 foot garage can be relocated to the rear of the house or reduced in size to reduce the amount of the variance request. A similar variance BA89-77 for a side interior setback encroachment was denied in 1989. To grant this variance to this property owner without any special unique conditions or circumstances would be a special privilege.

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

YES. The property currently supports a single family dwelling with a two car garage. The applicant is proposing to construct a 700 square foot 2 car garage and storage area to the north of the existing house. There will be a ten foot breeze way between the existing dwelling and proposed garage. The property owner purchased the property in 1996, therefore, should have been aware of the site limitations and their family needs.

The lot has adequate land area to the rear that if the property owner desires an additional garage this area needs to be explored to locate the garage without need for a variance. The proposed garage could be reduced in size to eliminate the storage area and eliminate the 10 foot separation between the existing dwelling and garage in order to meet the required 40 foot side setback.

Therefore, the request to construct a 2 car 700 foot garage in the setbacks is the result of actions of the applicant. There are other design options that need to be explored to eliminate the need for any variances. The property owner currently has a 2 car garage, therefore, denial of this variance request would not deprive the property owner of a typical right to have a shelter for vehicles.

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:

YES. As previously stated, the Board of Adjustment denied a similar variance request in 1989 to a property owner in this same subdivision. To grant this property owner this variance would be a special privilege. The applicant has not demonstrated that this variance is not self created or

there is any unique features to this lot or existing buildings that prohibited the construction of a garage on this property.

Therefore, if this variance is granted, the property owner would be granted a special privilege that has been denied to another property owner in this subdivision under similar situations. the property owner needs to explore his design options and needs to either eliminate or reduce the variance request.

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 property owner purchased this property in 1996 with the existing house and swimming pool. the owner should have considered the fact that any future expansion would have to be done in the rear of the yard. The owner currently has a 2 car garage with is typical of most residences constructed in PB County. There is ample room on the rear of the yard that can accommodate a 700 square foot garage, however, it might obstruct views of the canal to the rear. However, the owner must make a decision as to what is more important, the views or the extra storage area. Or reduce the size of the proposed garage and distance between the two structures in order to meet the required side interior setback.

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

NO. The applicant currently has a reasonable use of the land. The lot supports a house that was constructed in 1980 and has met the needs of the past owner. The current owner purchased the property in 1996 and now is requesting to construct a detached 700 foot garage in the required setback. The applicant states there is adequate room between this lot and the lot to the north that will be impacted by the encroachment. The lot to the north supports a garden between the house and common property line. However, in the RE zoning district setbacks are established to maintain the openness between the buildings on 2.5 acre lots. These legal nonconforming lots are typically 1.5 acres which is smaller than required by code. By granting setback variances will further erode the intent of the zoning district and rural residential community ambience.

Therefore, the request variance is not the minimum variance to allow a reasonable use of this lot. The applicant has design options that would eliminate or reduce the variance.

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

NO. The intent of the ULDC side interior setback of 40 foot in the RE zoning district is to maintain the openness between properties. A total of 80 feet is maintained between the two lots to ensure the rural ambience is

maintained. The granting of setback variances to allow structures closer to the property line will not meet the literal or general intent of setback requirements.

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

YES. The subdivision has existed for many years and has maintained its rural character with large lots and setbacks. The granting of variances would undermine the intent of the code for this RE zoning district and planned subdivision.

Similar variance request BA89-77 was denied by the Board of adjustment in 1989.

ENGINEERING COMMENTS

No comment. (ENG)

ZONING CONDITIONS

No conditions. Staff is recommending denial. However, if the board chooses to approve this petition staff would reserve the right to suggest conditions of approval.

CHAIR PERSON KONYK: Next item on the agenda is administrative inquiry. Question of approval of condition number eight by an agent. It's on BofA 98-00100, the hours of operation shall be limited to eight a.m. to five p.m. The business shall not open on Sunday or shall there be any outdoor activity on Sunday.

Staff?

MR. MacGILLIS: This is -- actually, this is not really an administrative inquiry. In the bylaws and ULDC, there really is no provision for reconsidering something the board has heard. However, in the past, we -- occasionally, in the past three years we've brought stuff back to the board for clarification. And the County Attorney's office was contacted when the applicant contacted us after he received his result letter from the last hearing questioning the -- one of the conditions on the result letter.

So staff contacted the County Attorney's office for direction. They said to bring it back for a motion for consideration to the board because there's a provision. And she can explain that.

MS. BEEBE: This is actually making a motion for clarification. Although there's no provision in your rules for that, you have the inherent authority to correct your orders and decisions to reflect the true intent of the order.

So, therefore, you can hear a motion for clarification. However, if you decide to grant the motion

and make a clarification, the neighbors will have to be noticed, and we'll have to come back for next month's hearing.

If you believe that the condition is clear and doesn't require a clarification, it's within your discretion to deny the motion.

CHAIR PERSON KONYK: So, in other words, if we're going to interpret it in such a way that it's different from what it clearly states, then we'd have to notice the homeowners?

MS. BEEBE: What I'm saying is, if you do not believe the condition is clear as written --

CHAIR PERSON KONYK: Okay.

MS. BEEBE: -- then you could do a clarification. But the neighbors would need to be notified prior to doing that.

CHAIR PERSON KONYK: Okay.

MR. PUZZITIELLO: Because we've already approved the minutes?

CHAIR PERSON KONYK: No. It's because --

MR. PUZZITIELLO: Of the wording?

CHAIR PERSON KONYK: No.

MS. BEEBE: The neighbors would need to be notified for due process.

CHAIR PERSON KONYK: Basically, we would be -- well, let's just see what happens. Then we'll worry about that afterward.

MR. WICHINSKY: I do have a procedural question, Laura. On any vote or reconsideration or re-interpretation, whatever you want to call it, how is the board limited in terms of who was here for that hearing?

CHAIR PERSON KONYK: It would have to be the members who were here at the previous hearing, which I believe were Mr. Rubin, Mr. Basehart, The Chair and you were at the previous hearing. So if you were going to clarify, the members that are actually clarifying would have to be the members who voted on the original motion.

MR. WICHINSKY: By majority vote?

MS. BEEBE: That's only for approval for variances. That would not be a vote. It would just be a simple majority.

CHAIR PERSON KONYK: Mr. Koehler?

MR. KOEHLER: Madam Chair, board members. My name is Dennis Koehler. I'm a lawyer who represents the Williams Soils and Sod business, the principals, Mrs. Randel and Mr. Randel, it's a mom and son business, are located here. You saw them last month.

Our request is explained in two items. I understand that the memorandum that I prepared to Mr. MacGillis, when I discovered what staff was intending to do with this eight to five p.m. limitation, I wrote that on February 4th, the one that you did not read, Ms. Konyk. I understand that this has been included in the staff backup; is that true?

MR. MacGILLIS: That's correct.

MR. KOEHLER: Okay. Thank you.

Also when staff told me about what you just heard that you have to go back to the public hearing and have the public involved and take new testimony, I said, I don't believe that's the case at all. I prepared a memorandum to staff. And I want to give each of the

voting board members a copy of that memo. I did fax copies of the original of this to the staff, including Ms. Beebe yesterday. That's just my response.

I'm not going to read it to you, but I'm going to touch on the high points. This is not a motion to reconsider. I'm not asking that you take new testimony, that the neighbors be trotted out -- and I'm not offering any new testimony. The question is: What did you intend when Mr. MacGillis offered that last-minute motion -- last-minute condition? Did you intend to limit all of my clients' business activities across the board, everything? He can't even open his doors until eight o'clock? Or did you intend what I felt you intended was to limit the noise-generating heavy equipment operations?

You remember the testimony about tractor/trailer rigs, the dump trucks. That is the only thing that the neighbors ever complained about. They never complained about noise associated from Mr. Randel's employees, straightening up of the property at seven o'clock, hand loading sod into the landscape trucks that typically come along. So there's never any testimony about a need to shut down his operations before eight o'clock and shut him down at five o'clock.

So we're kind of shocked. I thought that -- first of all, that stuff, Mr. MacGillis popped out that condition at the absolute end of the hearing. And I hope that you've had a chance to look over your transcript. That will certainly confirm what I say.

When Mr. MacGillis made his presentation to the board last month, he told you the only other issue was whether or not to go to the development review committee with the site plan, and you will recall that we reached accord on that.

Mr. MacGillis, at the last moment, tossed eight o'clock to five o'clock operating hours restrictions and no business on Sunday. Fine with us. And, as I explain in the memorandum that I just circulated, we have no problem because we felt all along it was the heavy equipment operation, the tractor-trailer rigs that caused the noise; that no one has ever complained about -- in fact, if you look at the public hearing record, the only complaint is about dump trucks. So that's why we didn't speak up.

Now, I suppose you could fault me for not saying at the end, oh, by the way, board, that only applies to the heavy equipment operations, correct? I didn't do that because I thought it was crystal clear on the record.

Now, for staff to come in and say, oh, no, you're supposed to shut down everything, that's unreasonable. For forty years this business has opened up at seven o'clock. And for staff to now say, you can't do anything until eight o'clock is absolutely outrageous. Staff should have taken care of this administratively. I suspect they handed Mr. Whiteford here, said, no, let's keep sticking it to this client, make him go through this extra drill.

Now, there's no reason to have a public hearing. You can conclude, based on the record that was made on January 21st what your intent was. Was the intent to shut down all operations before eight and after five? There's nothing to support that in the record. Or is it the heavy equipment operations only? We have no problem with that.

Now, I'm sorry if I get a little exercised about this, I've not had a good experience with this whole drill. You remember how the code enforcement board was told they couldn't even hear the arguments that permits were issued that allowed all of the construction activity to take place.

This is yet another example of the staff overreaching and hammering my poor clients, who are here from England and are wondering what kind of system of justice do we have in America where these kinds of things can happen.

So, again, I know you're not used to hearing me speak critically of staff. But I'm telling you staff is going too far here. They -- clearly, we never intended to accept a condition that shut us down as staff is now contending. We're happy to apply that to the heavy equipment. And, in fact, if I could recall -- bring your attention to the matter you just heard, the Kinko's operation. There they happily accepted a limitation of no outside deliveries, large deliveries between the hours of eight and five. That's what I thought you meant last month.

CHAIR PERSON KONYK: We made it pretty clear that's what we meant, though, with the Kinko's operation.

MR. KOEHLER: You did. But you shouldn't burden my client because I didn't jump up and say, Oh, Mr. MacGillis, where are you coming from with this operating hours restriction? Surely, you only intended to apply it to heavy equipment operations. It's not fair to penalize my client for me not jumping up and making that point crystal clear to you today. That's why I'm back here asking you it see things reasonably and not to unreasonably support the staff's unreasonable position.

CHAIR PERSON KONYK: Well, I have a comment, if I'm allowed? I guess I am since I'm the Chair.

I remember when Mr. MacGillis added that condition, and I remember sitting here being very surprised Mr. Koehler that you didn't object or ask for more clarification because it was clear to me that he said hours of operation from eight a.m. to five p.m. And I wondered at the time why he didn't ask that that only apply to the heavy equipment.

MR. KOEHLER: Because there's nothing in the record to support that.

CHAIR PERSON KONYK: That's what he said, hours of operation. I mean, that would have been the time for you to come forward and said, do you mean hours of operation?

We open at seven a.m. Or do you mean heavy equipment?

MR. KOEHLER: Mr. Wichinsky, during the public hearing, asked and received the answer that normal business hours were seven to five. That's in the public hearing record. Mr. Wichinsky led that questioning. And if you want me to find the page for you, I can do that.

CHAIR PERSON KONYK: Well, it doesn't matter. If he --

MR. KOEHLER: Page eight-one.

CHAIR PERSON KONYK: If he said normal hours of operation are seven to five and then they put a condition in that says you can't -- can only operate between eight and five, I would believe that that would have been the time for you to ask for clarification. It's very difficult because the public is no longer here to hear this now.

MR. KOEHLER: There has to be a reasonable basis for a condition. You can't just pluck it out of thin air. At no time did the citizens ever complain about normal business activities.

CHAIR PERSON KONYK: I'm not disagreeing with any of your arguments. I'm just saying that time to have brought this up would have been during the hearing. I think that you dropped the ball that day. And you should have brought it to Mr. MacGillis's attention that your client intended to open at seven a.m.

MR. KOEHLER: I think the record was clear that he had always opened at seven. Mr. MacGillis is the one who without any record testimony offered this eight to five a.m. limitation, no basis for that at any point during any proceeding.

CHAIR PERSON KONYK: Again, I'll ask you the question. Why didn't you bring it up then?

MR. KOEHLER: Because I thought the record was clear that he could not reasonably have intended the restriction to apply across the board to all activities.

MR. BASEHART: Let me say something since I was the maker of the motion. I guess I'm partly to blame. You know, I know when the condition was presented, I accepted it into my motion. It wasn't my intent that no activity in the building would be allowed to occur, you know, before those hours.

I think, you know, what Dennis is saying is right. The normal code provisions would allow a business office to operate, you know, earlier than the time that's specified by the condition. And I don't think that would have an impact on anybody in the neighborhood. The problem was the out -- was or is the outdoor activities, the use of machinery and that kind of thing.

And my feeling --

MR. PUZZITIELLO: I think the biggest thing is people hand-loading trucks outside. How does that fall into your condition?

MR. BASEHART: You know, I think hand-loading trucks doesn't bother me a whole lot as long as the trucks are already there. I wouldn't want -- I would -- I want the -- it was my intent that the condition applied to outdoor operation of machinery and trucks. I think until -- where is that condition?

CHAIR PERSON KONYK: The hours of operation shall be limited to eight a.m. to five p.m. The business shall not operate on Sunday or shall there be any outdoor activity on Sunday. That was condition number eight.

MR. BASEHART: Right.

And, you know, what I'm saying is I don't -- it was not my intent to limit activity within the building and even potentially some outdoor activity that didn't involve the generation of noise, like the running of trucks or the running of loaders or backhoes or anything like that. And I guess it slipped by me when the motion was made.

If we're here -- and, I guess, this is a legal determination. If we're here to discuss what the intent of the motion was and what the intent of the second and each member that voted was, I'm telling you that was my intent. If we're here looking at the way the condition was actually worded, you know, I agree that it's proper. That's what Jon read into the record. I said my motion was based on that, and I guess it slipped by me.

So if we're here to determine what the people that voted intended --

MS. BEEBE: Essentially clarifying your previous condition.

MR. BASEHART: If we're intending just to clarify --

MS. BEEBE: If you're intending to do that, the public is going to have to be noticed.

CHAIR PERSON KONYK: Why would the public have to be noticed? Because when we reach that point anyway, the public portion of the hearing has been closed and we're making a decision. So why would they have to be noticed?

MS. BEEBE: They would have to be noticed for due process. If they were to come in and ask for clarification from you, Mr. Koehler would have expected his clients to have received notice also.

CHAIR PERSON KONYK: I understand that. But that condition was added right before the motion was approved.

At that point, we wouldn't have heard from the public anymore anyway.

MS. BEEBE: If there is any clarification or modification to this amendment, this is going to affect the neighbors' rights. And they have a right to be --

CHAIR PERSON KONYK: Basically, it's a clarification issue. And the point is is that, even if they were here, it wouldn't have made a difference because we wouldn't have heard them.

MS. BEEBE: This is something that I've discussed with several attorneys at the County Attorney's office, and they all agree that the neighbors need to be noticed for due process reasons.

MR. WICHINSKY: Laura, are you suggesting that we give a new start on the thirty-day right of appeal, if they disagree with the vote? Is that the primary reason?

MS. BEEBE: There's even a question whether that would be appealable in the first place. But they are -- the problem is there are no provisions in the rules for clarifications. For clarifying, you're doing it by your inherent authority to do so. There are Supreme Court cases on that that says that quasi judicial boards are permitted to clarify the order to reflect the truth. The only question is whether the neighbors need to be noticed or not. And I believe they do.

CHAIR PERSON KONYK: Well, then what if they were noticed and they didn't object?

MS. BEEBE: They still need to be noticed.

MR. RUBIN: I don't think there's any question. We're going -- I think, liberally, we should allow members of the public to be advised what this board does.

CHAIR PERSON KONYK: I understand. But I just want to know what the next step will be. If we have to notice them, are you saying this has to come back for another hearing?

MS. BEEBE: Right.

CHAIR PERSON KONYK: Okay. But what if you notice them and they don't object? Do you have to come back for another hearing?

MS. BEEBE: Yes. Just at that hearing, we would go ahead and address the motion.

MR. RUBIN: We would determine what the intent is on the 18th. Whether or not they show up, that's their right if they show up, but I don't think --

MS. BEEBE: This is limited to clarification of what

activities beyond the trucking activities that Mr. Koehler's client can engage in.

CHAIR PERSON KONYK: What are you suggesting that they be allowed to engage in before eight a.m.?

MR. KOEHLER: Let me answer that question by giving you what I think we are willing not to allow to have happen. The operation and delivery of sod by eighteen-wheel tractor-trailer rigs, the delivery of soil materials and sand and gravel by these dump trucks. I know you remember the testimony about the beep, beep, backing up noises. And my client does use -- and always has used a small bobcat to lift a pallet of sod up and put it on a landscaper's truck. That doesn't make the noise.

And there's never been a complaint about that.

I would suggest that the kind of activities we would agree to have limited during that period is what I call the heavy equipment operations. I've also talked to my client about the other kind of activities. He has a truck -- you know, a normal truck that he has on-site. He'll load up his own truck and haul -- take it off to the site before eight o'clock. Again, there's never been any complaint about that. It's the dump trucks and the tractor-trailer rigs that we think -- that I thought that's what you intended to put a limit on or -- Mr. MacGillis, of course, never explained to me what he intended to achieve with that eight to five p.m. objective.

But that the kind of things that we think would be reasonable to impose limits on, the heavy equipment operations.

MS. BEEBE: Today you're really only deciding whether it needs clarification, not what the clarification will be.

CHAIR PERSON KONYK: Well, I think given the fact that in part of the testimony, they did say that their hours of operation were seven a.m. and then the condition was added to eight a.m., I can understand that there -- I can understand that this needs to be clarified. And it wouldn't have been my intention at the time to limit them from being in their office or things that don't generate noise.

But, again, I think that the appropriate time for this to have been brought up would have been at the hearing. And I apologize if I am repeating myself. But I just don't understand how we undo this now.

MS. BEEBE: It's within your discretion whether to grant or deny their motion to clarify.

CHAIR PERSON KONYK: So he's asking for us to clarify this and basically saying that we should allow him to do everything but let dump trucks and tractor-trailers on the property between seven and eight?

MR. KOEHLER: Ms. Konyk, to help a little bit. Hearing the attorney's comments and explanation for the first time, that is that the attorneys in her office have concluded that the appropriate thing to do would be, as Mr. Rubin has been saying, to ask the public come in. I guess it wouldn't be reasonable for me to stand here and say make a decision absolutely today; forget the public hearing entirely.

If, in your judgment, you conclude that you want to go back and reopen the public hearing for that limited purpose, obviously, I would have to say, yes, we would do

that. I would hope that you could clarify it today in one fell swoop.

CHAIR PERSON KONYK: I think she says we can clarify it today, but then we have to let the public know --

MS. BEEBE: All you're doing today is deciding whether or not you're going to grant the request for clarification. You will clarify it at the next hearing.

MR. BASEHART: If it's limited to that and that's all we can do, I'll make a motion that we grant the request to --

MS. BEEBE: To clarify.

MR. BASEHART: -- to clarify and that we schedule this for the next public hearing.

MR. RUBIN: Second.

CHAIR PERSON KONYK: Motion by Mr. Basehart. Second by Mr. Rubin.

MR. JACOBS: Before you vote on the motion, you --

CHAIR PERSON KONYK: You can't vote.

MR. JACOBS: I know that. But I have a point. That is, I have a personal Jeep Cherokee that has a beep, beep, beep backup on it. The beep, beep, beep backups are not necessarily limited to dump trucks.

CHAIR PERSON KONYK: Okay. Thank you.

MR. BASEHART: He backs his truck down the street early in the morning just to tick his neighbors off.

CHAIR PERSON KONYK: So we have a motion by Mr. Basehart and a second by Mr. Rubin to bring this back to the next hearing for clarification.

All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: All those opposed?

(No response.)

CHAIR PERSON KONYK: Okay. So we'll see you next month.

MR. KOEHLER: Thanks, board members.

MR. MacGILLIS: This will be advertised in the Palm Beach Post and the staff will take the responsibility for notifying the neighbors.

CHAIR PERSON KONYK: Okay. But we don't have to hear the whole thing over, right?

MS. BEEBE: That's just limited to the condition of clarification. Anything beyond the hauling and trucking activities, because everybody agrees that the condition was intended to cover that.

CHAIR PERSON KONYK: Only

MR. RUBIN: Should the --

MS. BEEBE: Not necessarily only but the --

MR. RUBIN: -- neighbors also get a letter?

CHAIR PERSON KONYK: Yeah.

MR. KOEHLER: Thanks, board members. What can I say. I'll see you next month.

MS. RANDEL: May I ask one thing? My name is Georgiana Randel. Was any of the neighbors ever mentioned eight a.m. that we open? It was never ever mentioned --

CHAIR PERSON KONYK: They just want you to close all together. They don't want you open at all.

I think we need to bring this back for clarification. As I said earlier, I think the clarification should have been gone last month.

MR. WICHINSKY: As I recall, Dennis, the main concern of the public and Mr. Moore, who was at the last meeting, was it was noise generating and dust generating

activities. So that was the crux of the public complaint.

MR. RANDEL: Am I not allowed to load anybody up with the pieces, somebody comes in at seven-fifteen and asks for ten pieces of sod? Would you --

CHAIR PERSON KONYK: I guess that would have to be clarified at the next meeting. So --

MR. RANDEL: Am I able to do it until the next meeting?

CHAIR PERSON KONYK: I would say not.

MR. BASEHART: I wouldn't. Mr. Verner will get you.

CHAIR PERSON KONYK: Unfortunately, this should have been clarified at the last meeting. Then you wouldn't have this gray area. I mean, when you're before the board, and this is a very expensive process for you, I think that all of these things need to be looked at very carefully when you're agreeing to conditions, that you understand. And that's why I always ask people, do you understand and agree with the conditions? And you indicated that you did. And the way the condition is written, it says, no operation before eight a.m.

Unfortunately, whether we agree that the condition should have been written that way or not is something going -- you know, that we'll have to do at the next meeting, correct?

MR. MacGILLIS: Right.

MS. RANDEL: This was never brought up. This was brought up at the very end, eight o'clock.

CHAIR PERSON KONYK: Sure. And then I always say, do you understand and agree with the conditions.

I mean, Dennis knows that he should understand and agree with all the conditions. I mean, that's why you hired a professional. This one slipped through the cracks, and so we'll come back next month, and we'll resolve it.

MS. RANDEL: When you were arguing about some things, why wasn't eight to five brought up before?

CHAIR PERSON KONYK: Well, You should have brought that up at the last meeting. All of these things that you're bringing up now, the appropriate time to bring them up would have been at the last meeting. When they brought up the condition, you could have questioned why it was being added in at that time. You don't have to accept a condition when they're suggested.

MR. MacGILLIS: I just want to clarify something for the record too. I mean, we had worked with the applicant right up to the end on this thing as far as the conditions. It was at the meeting when Mr. Koehler came in with the new conditions and presented them to the board where staff didn't even have a chance to look at them. I tried as a professional to sit here and go through those conditions and listen to the discussion that's going on in the audience and board members looking at me saying, you know, can we write a condition on that. Even though the verbatims may not reflect every word that goes on here because they can't -- I mean, there was the intent which I felt at the time when I wrote the condition because of the outdoor activity. And I told Mr. Koehler if there is any question, I have no problem with it going back.

I just -- I sort of resent his comments on the record that I slipped this in. And it was never my intent to slip anything in. It was my intent as a professional staff to insure what I thought the intent what the board

was going on as far as the outdoor activity that was going on out there associated with that variance with the bends in the setback that was having an impact on the neighbors.

CHAIR PERSON KONYK: Right.

MR. MacGILLIS: And I just want the record to reflect that it was never my intent to slip anything in onto the record for this application. I have nothing to gain either way other than to insure that the board's intent of the approval was adhered to.

MR. RUBIN: We already have on the record Mr. Basehart takes full responsibility.

MR. KOEHLER: And I do too. See you next month board members.

CHAIR PERSON KONYK: Actually, I think it was Dennis's fault.

MR. BASEHART: Jon, you clearly read into the record what you wanted to do. In accepting that into the motion, I misinterpreted it. You know, but...

MR. MacGILLIS: I think it came out with the Kinko's where I think -- I still had questions the way you were wording it. So in the future, anything with hours or stuff that I'm not clear on, I will -- because sometimes the board member will make a motion and I don't repeat it. And I think that's an error on staff's part.

In the future, if anyone wants a new condition read in, make sure staff goes through that new condition to make sure that everybody agrees with it so there's no misunderstanding.

MR. RUBIN: I think clearly the burden is on the applicant.

CHAIR PERSON KONYK: Yeah. I agree with Mr. Rubin on that.

MR. RUBIN: But, nevertheless, I'm not placing fault on anybody. Those things happen, and that's what clarification is about.

CHAIR PERSON KONYK: I remember when the condition was read. I with waiting for somebody -- the applicant to object to it because I could understand by the nature of his business that that would be a hardship. And he didn't object, and I was quite stunned. But it's not up to me to object for him, you know. So I can understand why he's back here. Let's put it that way.

MR. RUBIN: The real problem is that we're human.

CHAIR PERSON KONYK: We are?

MR. BASEHART: And some of us aren't even wrapped real tight.

CHAIR PERSON KONYK: Which one?

MR. BASEHART: I'm speaking about myself.

CHAIR PERSON KONYK: Oh.

Anyway, I think it's not going to be a difficulty matter to resolve at the next meeting. And if we have to notice, we have to notice.

Anyway. Next item is not adjournment.

First item. I think I gave Mary that paperwork back. Oh, no. Here it is.

Mr. Puzzitiello was on vacation at the last meeting, so he was absent. Where did you go?

MR. PUZZITIELLO: (inaudible)

CHAIR PERSON KONYK: We need to excuse his absence.

MR. BASEHART: I'll make a motion that we find Mr. Puzzitiello absence an excused absence.

CHAIR PERSON KONYK: Motion by Mr. Basehart. Second by?

MR. RUBIN: I didn't get a postcard, so...

MR. BASEHART: Motion dies for lack of a second.

MR. RUBIN: Second.

CHAIR PERSON KONYK: Second by Mr. Rubin.

All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: Motion carries -- all those opposed?

(No response.)

CHAIR PERSON KONYK: Okay. Motion carries unanimously.

MR. WICHINSKY: Question?

CHAIR PERSON KONYK: Mary, has there been any movement out of Commissioner Lee's office on appointment for position that Mr. Cunningham left?

MARY MOODY: Not to my knowledge. I've called every month to ask them please to appoint someone.

MR. WICHINSKY: Okay.

CHAIR PERSON KONYK: Next item on the agenda would be the -- is the election? Right? I don't know where it is.

My term is up. Since I've never been the Chair before, how do we handle this?

MR. MacGILLIS: Open the floor for nomination for Chair and then close it. Same for vice.

CHAIR PERSON KONYK: Okay. Then I'd like to open the floor for nomination for Chair.

MR. BASEHART: Madam Chair, I'd like to make a motion that you be re-appointed chairman for another year -- chairman can be two consecutive years?

MS. BEEBE: Uh-huh.

MR. BASEHART: For another year.

MR. JACOBS: I'll second that.

CHAIR PERSON KONYK: Motion by Mr. Basehart. Second by Mr. Jacobs.

All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: And I accept.

MR. WICHINSKY: Do we want a roll call on that?

CHAIR PERSON KONYK: We don't need a roll call today.

If other members were present, we might.

Close the floor on the nomination of the Chair and open the floor on the nomination of the Vice Chair.

MR. WICHINSKY: I move for re-election of Mr. Basehart as Vice Chair for another year.

MR. PUZZITIELLO: Second.

CHAIR PERSON KONYK: Motion by Mr. Wichinsky. Second by Mr. Puzzitiello.

All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: Opposed?

(No response.)

CHAIR PERSON KONYK: Motion carries unanimously.

Close the nominations.

Do we have to vote now?

I hope I can stick this out for another year. I don't know. Anything else?

MR. BASEHART: We have recess.

CHAIR PERSON KONYK: Motion to adjourn. Motion by Mr. Basehart. Right?

MR. BASEHART: Yes.

MR. PUZZITIELLO: Second.

CHAIR PERSON KONYK: Second by Mr. Puzzitiello.

All those in favor?

(Panel indicates aye.)

This meeting is adjourned.

(Thereupon, the proceedings were concluded at 11:58

o'clock a.m.)

C E R T I F I C A T E

THE STATE OF FLORIDA,)
COUNTY OF PALM BEACH.)

I, Rachele Lynn Cibula, Notary Public, State of Florida at Large,

DO HEREBY CERTIFY that the above-entitled proceedings were heard as hereinabove set out in the caption page hereto; that I was authorized to and did report the proceedings and evidence adduced and offered in said proceedings; that the foregoing and annexed pages, numbered 1 through 86, inclusive, comprise a true record of the proceedings in said cause.

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

IN WITNESS WHEREOF, I have hereunto subscribed by name and affixed my seal this _____day of _____, 1999.

Rachele Lynn Cibula, Notary Public