

PALM BEACH COUNTY

BOARD OF ADJUSTMENT

JUNE 17, 1999

MINUTES

100 AUSTRALIAN AVENUE
WEST PALM BEACH FLORIDA 33406

APPEARANCES

BOARD MEMBERS:

CHAIR PERSON CHELLE KONYK
STEVEN RUBIN
ROBERT BASEHART
NANCY CARDONE
STANLEY MISROCH

STAFF MEMBERS

DAVID CUFFE
LAURA BEEBE, COUNTY ATTORNEY
JON MacGILLIS
JOYCE CAI

I N D E X

- BATE 99-00043 Brian J. Collins, to allow for a six-month time extension on conditions 3 & 4 BA99-02 approved on February 18, 1999. LOC: 6584 Patricia Drive, Southwest intersection of Patricia Drive and Elaine Road and approximately .22 miles west of Jog Road and .34 miles north of Summit Boulevard, in the RS zoning district. 6
- BATE 99-00044 BHLM Partnership & SILC RW, to allow for a one-year time extension of the development order for BofA 98-038 Approved May 21, 1999. LOC: Vacant lot on the south side of Okeechobee Boulevard, approximately .22 miles east of Military Trail, Public Storage MUPD, within the MUPD zoning district (Pet. PDD 97-119). 6
- BOFA 99-00046 Ronald David and Denise J.K. Simon, to allow a proposed SFD to encroach into the required front setback. LOC: Vacant corner lot on La Reina Road and Cain Road, approximately .5 miles west of State Road 7 and South of West Atlantic Avenue within the Tierra Del Ray Estates unrecorded subdivision, in the AGR Zoning District. 7
- BOFA 99-00047 Florida Atlantic Foundation, Inc., to allow a proposed eight foot privacy wall to exceed the permitted height along a portion of the front yard (Southern property line) along Summit Boulevard and the side yard (West property line) along Jog Road. LOC: 6301 Summit Boulevard, at the northeast intersection of Summit Boulevard and Jog Road, Pine Jog Environmental Center, in the RS Zoning District. 11 & 23
- BOFA 99-00048 Scott E. Harbaugh & Linda Campana-Harbaugh, to allow a proposed SFD to encroach into the required front setback. LOC: Vacant lot on 80th Road North approximately 300' south of the intersection of South Elizabeth and Lillian Avenue, within the Square Lake subdivision, in the RE zoning district. 12

- BATE 99-00049 Richard D. Litten, to allow for the Development Order for BofA 97-104 and 18 months for Conditions 2 & 3. LOC: 6790 Osborne Drive, East side of Osborne Drive and .1 mile south of Cambridge Road in the RS zoning district. 17
- BOFA 99-00050 EFES Corporation & Coral Petroleum, Inc., to allow a reduction in the width of the right-of-way buffers along Military trail and Summit Boulevard. LOC: 963 South Military Trail & 4509 Summit Boulevard at the Northwest intersection of South Military Trail and Summit Boulevard in the CG zoning district. 18
- SD-95 Petition of Indian Spring Country Club & Indian Spring Maintenance Association, Inc., requesting a variance from the maximum allowable side slopes for storm water detention ponds and berms be placed within legally established water management tracts and lake maintenance easements, respectively.
- Requirements set forth in the Unified Land Development Code 8.24.F.4, and Section 8.24.G.1 and 2. LOC: South of Woolbright Road and East of Jog Road, in the PUD zoning district. 22

CHAIR PERSON KONYK: I'd like to call the meeting to order, the June 17, 1999, Board of Adjustment meeting. And start with the roll call and the declaration of quorum.

MS. MOODY: Mr. Bob Basehart?

MR. BASEHART: Here.

MS. MOODY: Mr. Joseph Jacobs?

(No response.)

MS. MOODY: Ms. Nancy Cardone?

MS. CARDONE: Here.

MS. MOODY: Mr. Raymond Puzzitiello?

(No response.)

MS. MOODY: Mr. Glenn Wichinsky?

(No response.)

MS. MOODY: Mr. Stanley Misroch?

MR. MISROCH: Here.

MS. MOODY: Mr. Steven Rubin?

MR. RUBIN: Here.

MS. MOODY: Ms. Chelle Konyk?

CHAIR PERSON KONYK: Here.

I have before me proof of publication in the Palm Beach Post on May 30, 1999.

Remarks of the Chairman of the Board.

The first thing I'd like to do is welcome our newest member, Nancy Cardone, who was appointed by Karen Marcus. And she's filling -- Gil Moore resigned, and Nancy was appointed to fill his position.

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

Items on the consent are items that have been recommended for approval by staff either with or without conditions. The applicant agrees with the conditions; there's no opposition from the public, and the Board members have read the staff report and do not feel the item warrants a full hearing. If your item remains on the consent agenda, you're free to leave after we vote on the consent agenda.

If your item is reordered to the regular agenda because of opposition from the public or the applicant doesn't agree with the conditions or a Board member feels the item warrants a full hearing, it will be reordered to the first item on the regular agenda.

Items on the regular agenda are items that have been recommended for denial by staff, or the applicant does not agree with the conditions, or there's opposition from the public, or a Board member has read the staff report and feels that the item warrants a full hearing.

The item will be introduced by the staff. The applicant will have an opportunity to give their presentation. We'll hear from staff. Then we'll hear from the public. After the public portion of the hearing is closed, the board members will have an opportunity to ask questions of the applicant and the staff and then vote on the item.

Next item on the agenda is the approval of the minutes from the last meeting, which was April -- no -- May 20, 1999. You've all received a copy of the minutes. Does anybody have any corrections or additions?

MR. BASEHART: I make a motion to adopt the minutes.

MR. MISROCH: Second.

CHAIR PERSON KONYK: Motion by Mr. Basehart. Second

by Mr. Misroch.

All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: Motion carries unanimously.

Next item on the agenda is remarks of the zoning director.

MR. MacGILLIS: The County Attorney would like to swear in the new board member.

MS. BEEBE: Would you raise your right hand.

Repeat after me.

I do solemnly swear to faithfully and impartially execute the duties.

MS. CARDONE: I do solemnly swear to faithfully and impartially perform the duties.

MS. BEEBE: Of my office as a member of the Board of Adjustment.

MS. CARDONE: Of my office as a member of the Board of Adjustment.

MS. BEEBE: According to my best ability and understanding.

MS. CARDONE: According to my best ability and understanding.

MS. BEEBE: And support the laws of the State of Florida and Palm Beach County.

MS. CARDONE: And support the laws of the State of Florida and Palm Beach County.

CHAIR PERSON KONYK: Anything else?

MR. MacGILLIS: No comment.

CHAIR PERSON KONYK: Any changes to the agenda?

MR. MacGILLIS: Yes. We have a withdrawal of item number ten, B of A 99-38 Home Depot USA. They have requested this item to be withdrawn.

CHAIR PERSON KONYK: Okay.

MR. MacGILLIS: It's by right.

Also on item number one, the appeal, BAAA 99-19. That should be the Frankle B case. It's not the case -- the case property has already been withdrawn. So that's an error. But they're requesting -- the thing's been postponed for four months. They've been in -- the applicant's been in negotiation with the county commission to resolve some other BCC conditions that relate back to this appeal. That was revoking a special permit to allow a billboard on this site. So they're hoping -- they've already had one meeting with the commission, and they're hoping that within the next thirty days to have it resolved and we can withdraw this appeal. But they requested it be postponed one more time, and staff supports it.

CHAIR PERSON KONYK: Is it by right?

MR. MacGILLIS: No. We'll need a vote.

CHAIR PERSON KONYK: So we need to vote on that?

Okay. We need to have a motion on BAAA 99-00019 to approve another thirty-day postponement.

MR. BASEHART: So moved.

CHAIR PERSON KONYK: Motion by Mr. Basehart.

MR. MISROCH: Second.

CHAIR PERSON KONYK: Second by Mr. Misroch.

Any discussion?

MR. MacGILLIS: That will be time certain, July 15, 1999.

CHAIR PERSON KONYK: Okay. Any discussion?

(No response.)

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

CHAIR PERSON KONYK: Motion carries unanimously to postpone BAAA 99-00019 to time certain July 15, 1999.

MR. MacGILLIS: Those are the only changes to the regular agenda.

MR. BASEHART: That was the agenda.

CHAIR PERSON KONYK: Okay. Consent items.

Our first consent item is Board of Adjustment time extension 99-00043. Bryan J. Collins, to allow for a six-month time extension.

Is the applicant present?

MR. COLLINS: Yes, I am.

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

MR. COLLINS: Bryan Collins.

CHAIR PERSON KONYK: The staff has recommended five conditions.

Do you understand and agree with those five conditions?

MR. COLLINS: Yes, I do.

CHAIR PERSON KONYK: Is there any letters on this?

MR. MacGILLIS: It's a BATE. There's no --

CHAIR PERSON KONYK: Oh, okay. That's right. And there's no opposition from the public, right?

MR. MacGILLIS: No.

CHAIR PERSON KONYK: Okay. You can sit down.

Any member of the Board object to this being a time extension?

(No response.)

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

Next item is Board of Adjustment time extension 99-00044 BHLM Partnership and SILC RW, to allow for a one-year time extension. Is the applicant present?

Your name for the record?

MS. ANDERSON: Candy Anderson, Kilday and Associates.

CHAIR PERSON KONYK: The staff has recommended three conditions.

Do you understand and agree with those conditions?

MS. ANDERSON: Yes, we do.

CHAIR PERSON KONYK: Any letters? No. No letters. No public.

Any Board member feel this item needs to be pulled?

(No response.)

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

MS. ANDERSON: Thank you.

CHAIR PERSON KONYK: Next item on consent is B of A 99-00046, Ronald David and Denise Simon, to allow a proposed SFD to encroach into the required front setback. The Applicant? Name for the record?

MS. LOCKHART: Sarah Lockhart with Gee and Jenson representing the Simons.

CHAIR PERSON KONYK: Staff has recommended four conditions.

Do you understand and agree with those conditions?

MS. LOCKHART: Yes, ma'am.

CHAIR PERSON KONYK: Any letters?

MR. MacGILLIS: No letters.

CHAIR PERSON KONYK: Is there any member of the public here 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 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. The subject lot is a vacant lot located approximately .5 miles west of State Road 7 and South of West Atlantic Avenue, within Tierra Del Ray Estates unrecorded subdivision, in the AGR Zoning District. The lot is part of an unrecorded subdivision that has been exempted from the Palm Beach County Subdivision and Platting Regulation Ordinance No. 73-4. The subject lot is a five-acre lot known as lot 15A which was subdivided from a lot 15. The lot is conforming in terms of width, depth and lot area.

Special circumstances and conditions do exist which are peculiar to this parcel of land. The Tierra Del Ray Estates is a private gated community consisting of 240 acres divided into 41 lots with an average lot size of five acres. There are 23 home sites on La Raina Road, which ends in a cul de sac. 21 of them have shorter frontage (335') and greater depth (650'). The subject property (lot 15A) and the site across the road to the north (lot 7A) are the only sites with greater width (713') and shorter depth (330'). In addition, an existing lake runs through the rear and sides of subject property

covering approximately 1/3 of the lot.

The property owners are proposing to construct a custom designed 6,684 square foot, single family residence on the subject site. As indicated in the justification with this application, the garage was designed to project out of the main structure into the front yard setback. This would ensure the garage does not detract from the view of the lake from the hobby room, which is the important design amenity of the house layout. The port cochere is also a necessary element to accommodate the needs of the property owner's elderly mother who is in a wheelchair and will reside in with them.

Due to the above-mentioned lot configuration, physical constraints and special circumstances, there are limited alternative design options available to the applicant. As a result, a front setback variance is required. The proposed residence is consistent in architecture and layout to other dwellings in the surrounding neighborhood.

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

NO. As previously indicated, the lake, which runs through the sides and the rear of the subject property, was in its current location and configuration when the applicants purchased the property in 1996. The special lot conditions restrict the developable area by limiting the proposed residence to shift to the rear of the lot so that the front setback would not be required. Therefore, special circumstances and conditions are not the result of the applicants.

The applicant hired an architect to design a custom home that takes full advantage of the views onto the lake. Considerable time and money has been spent by the owners to ensure that their "dream home" complied with all applicable code requirements. It was not until late in the design phase was it realized that a base building line waiver couldn't be obtained. Therefore, the house, as proposed, would be extending into the front setback by 36 feet. The applicant shifted the house four feet to the south (rear) at the staff's request so that the majority of the dwelling will comply with the 100-foot front setback.

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

NO. Granting the variance shall not confer upon the applicant special privileges denied by the comprehensive plan and the ULDC to other parcels of land in the same district. The lot supports an existing lake which covers 1/3 of the property to the side and rear. As a result of this site restriction, the applicant is requesting variance relief from the front setback of 100 feet in order to construct a house to the north (property affected by the variance request) is separated from the subject site by La Reina Road which is a 30' wide private road.

Therefore, there will be no impacts to the surrounding residential area. The proposed lawn, landscaping and driveway between the right-of-way and house will mitigate the setback 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. Due to the previously-mentioned special circumstances and conditions, the literal interpretation and enforcement of the terms and provisions of ULDC would create an unnecessary hardship to the subject property. The required 100' front setback and the existing lake in the rear reduce the land area for the rear yard. Meeting the front setback requirement would result in the proposed house being relocated closer to the lake edge without an appropriate slope to the lake, resulting in a possible safety issue.

As indicated by the applicant, the proposed house is consistent in character and size to other homes in the neighborhood. Furthermore, the Homeowner Association has reviewed and approved the location and architectural style of the proposed dwelling.

Therefore, the requested variance, if approved, the dwelling will be in keeping with the characters of homes in the neighborhood while satisfying the general intent of the ULDC front setback requirement.

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. Considering the reduction in the buildable area due to the existing lake on the property and the lot configuration with a longer side of the lot facing the front street and base building line requirement, there are limited alternative design options or solutions available to the applicant to avoid or reduce the variance request. The existing lake covers about 90 feet of the 330 feet of the lot depth or 1/3 of the lot. The required front setback in the AGR zoning district is 100 feet measured from the interior 15' easement line. IN addition, the proposed house has to be placed at a minimum of 20 feet away from the existing lake to accommodate to a rising water line. This distance is also needed to create an appropriate slope around the lake for safety and maintenance. This results in a buildable area of 105 feet in depth and 300 feet in width.

As indicated previously, the main portion of the structure will meet the front setback requirement. The proposed residence is consistent in size and architectural character with the other houses in the area. The variance requested for the proposed garage, port cochere and portion of the main building connecting garage is the minimum to allow a reasonable use fo the parcel of land, building and structure.

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

YES. The intent of the front setback is to maintain uniformity and consistency in building placement as well as to buffer the adjacent properties from the impacts of a residential use, such as noise and shadows and to allow a minimum area for a vehicle to safely ingress and egress the property. In this case, the applicant is requesting a front setback of 64 feet which would result in a front setback encroachment of 36 feet. Between the 64' front setback line and the adjacent front property line to the north (affected property by the variance request) is an additional 15' easement and a 30' private road. Therefore, the proposed distance between the right-of-way and the subject residence will provide ample area to satisfy the proposes, goals, objectives, and policies of the Comprehensive Plan and ULDC code.

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

NO. Granting of the variance will not be injurious to the area involved or otherwise detrimental to the public welfare. The applicant is proposing to construct a 6,844 square foot, single-family dwelling unit. Due to the lot constraints created by the lot configuration, an existing lake and not being able to obtain a base building line waiver, the applicant is requesting a variance from the required front setback. The adjacent property to the north will not be affected by the variance request since it is separated by a 30-foot-wide private road (La Reina Road). In addition, to minimize the impact associated with this variance, the subject property owners propose to install landscape in the front yard in order to buffer any negative visual impacts associated with the 36-foot setback encroachment.

ENGINEERING COMMENTS

No Comment, except to note that the Base Building Line for (i.e. line from which setback is measured) for lots abutting a local street, such as La Reina Road, is established by Sec. 6.5G.7.6, ULDC at 30 feet from center of the street right-of-way or easement, as applicable, for street widths of 60 feet or less. Since the interior easement line of La Reina Road is also currently located at 30 feet from centerline of the established street (with a total combined right-of-way and easement width of 60 feet), no waiver can be granted to move the Base Building Line closer to centerline. (ENG)

ZONING CONDITIONS

1. By August 17, 1999, the property owners 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, in order for PR98012931 to be processed. (DATE: BLDG PERMIT-bldg)
2. By November 17, 1999, the property owners shall obtain the

building permit for the proposed single family dwelling.
(DATE:MONITORING-Bldg Permit)

3. The building permit site plan shall be revised to reflect that the proposed water well on the subject lot complies with applicable code requirements, prior to issuance of a building permit. (MONITORING-HRS)

4. The 36-foot front setback variance is approved for the house design layout presented to the Board of Adjustment. Any modifications to the layout that are not consistent with the original layout will require further Board of Adjustment approval. (ON-GOING)

CHAIR PERSON KONYK: B of A 99-00047, Florida Atlantic University Foundation, to allow a proposed eight-foot privacy wall to exceed the permitted height. Applicant present?

Name, for the record?

MS. COLEMAN: My name is Carla Coleman. I'm Vice President for University Advancement and Executive Director of the FAU Foundation.

CHAIR PERSON KONYK: Okay. Staff has recommended five conditions.

Do you understand and agree with those conditions?

MS. COLEMAN: One question. Jon, it deals with the pulling of the permit. By law, the state university system acts as its own permit provider. If we, as we internally pull our own permit, provide you with the things set forth here, does that meet those requirements?

MR. MacGILLIS: Yes.

MS. COLEMAN: We have no objection.

CHAIR PERSON KONYK: You do understand and agree with those conditions?

MS. COLEMAN: Yes.

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

Do you have an objection?

MR. DOWDY: Yeah, I do.

CHAIR PERSON KONYK: Okay. Can you step forward. Your name for the record?

MR. DOWDY: Ralph Dowdy.

CHAIR PERSON KONYK: Your objection?

MR. DOWDY: I live on Jog. And you put an eight-foot-high wall there now -- it's all residential section on the west side -- the noise is just going to kill the houses over there. And I know they're putting in a privacy fence to protect the animals, and I can understand that. But you put a fence up, and you're just going to ruin the beauty of the woods.

And a couple years ago an animal came out of there, and I called the Pine Jog Center, and they said they don't

protect their animals. So I just think the wall is --

MR. BASEHART: One thing I think you need to understand. This Board is not going to decide whether a wall goes up.

MR. DOWDY: Oh, I know.

MR. BASEHART: It's whether it's six foot --

MR. DOWDY: Or eight foot.

MR. BASEHART: -- versus eight foot.

MR. DOWDY: I know. I understand, because the county gave them permission to put up the six-foot wall. You go eight foot, the noise is just going to be unbelievable on the other side of the street.

MR. BASEHART: Well, then, I think we need to pull this item if we're --

CHAIR PERSON KONYK: Do you want this item to have a full hearing? Is your objection strong enough that you want them to go through the full-hearing process?

MR. DOWDY: I think it should.

CHAIR PERSON KONYK: Okay. We'll pull it.

B of A 99-00047 has been reordered to the first item on the regular agenda.

It is the first item on the regular agenda.

CHAIR PERSON KONYK: Okay. Next item on the consent is B of A 99-00048, Scott Harbaugh and Linda Harbaugh, to allow a proposed single-family development to encroach into the required front setback. They must have meant dwelling.

Applicant present?

MR. HARBAUGH: Yes.

CHAIR PERSON KONYK: Your name, for the record?

MR. HARBAUGH: Scott Harbaugh.

CHAIR PERSON KONYK: Staff has recommended five conditions.

Do you understand and agree with those conditions?

MR. HARBAUGH: I do. The only one thing that I wanted to know was I had two trees that I may have to move away from the house. One of them I could move -- transplant it. It's a little Oak right now, and I want to keep that one. The only other one is I have a pine tree that's laying, like, right up against the house. I have one.

MS. CAI: Okay. I think for whatever you do, you have to apply to the permit for removing trees from --

MR. HARBAUGH: Okay. That's not a problem. Yeah. I have no problem with that.

CHAIR PERSON KONYK: Okay. So you understand and agree with the five conditions?

MR. HARBAUGH: Oh, yes. Definitely. Thank you.

CHAIR PERSON KONYK: Any letters?

MR. MacGILLIS: Yeah. There was several letters of opposition: From a James and Sarah Tracy. They're

opposed to them getting a setback variance. Additionally, there are other means available to build a house without encroachment. Another letter of opposition from DC Craig, at 4970 80th Road, single-family dwelling to encroach into the required setback is not in keeping with the other properties. Another letter of opposition from John -- I can't pronounce this. It's S-c-h-m-a-l-h-a-u-s-c-h-n, at 4971 80th Road North, just opposition with no reason. Another opposition with no reason from Francis Elbers from 4892 80th Road North.

I didn't -- Joyce had received several calls from, actually, adjacent neighbors. Staff has prepared some graphics to show that there is significant amount of vegetation on this site. And based on the other location of other houses on the street, because of the way we've been interpreting setbacks in the AR zoning district, there's three interpretations; the regular hundred-foot setback, or you have a percentage setback, or you can go with at twenty-five-foot setback. So there's been a lot of inconsistency. And the fact that this site, if you see some of our photographs, it's heavily vegetated, that we felt that the setback encroachment would be mitigated by the existing native vegetation on the site.

And the site constraints with the lake and stuff on there warrants the applicant to apply for a variance. The staff would recommend that it remain on the --

CHAIR PERSON KONYK: Consent?

Is there 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, this item will remain on the consent.

MR. HARBAUGH: 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 subject property is a vacant lot located on 80th Road North, approximately 300' south of the intersection of South Elizabeth Avenue and Lillian Avenue within the Square Lake Subdivision in the RE zoning district. The lot supports an existing pond which is located at the rear half of the property. The pond has existed for over twenty years having mature vegetation on both sides. There are also a 30' road and drainage easement located along the subject front property line as well as a 50' utility easement and a canal along the rear property line. The subject lot is conforming in terms of lot width and depth but nonconforming in terms of lot size.

Special circumstances and conditions do exist which are peculiar to this parcel of land which are not applicable to other parcels within the same zoning district. The applicant is proposing to construct a 4,019 square foot house on the subject lot that will encroach 15 feet into the required 50 feet from setback. The applicant is requesting for a front setback variance due to the limitation created by the pond that has existed in the rear half of the lot for over twenty years. In addition, there are required easements in the front and the rear of the lot. A minimum of 20-foot distance is also needed between the proposed house and the pond for adequate slopes. As a result, the total developable depth of the lot for locating the proposed house is 70 feet out of 332 feet of the total lot depth. Therefore, a front setback variance is required in order to construct the proposed house. Due to the alternative design options available to the applicants. The applicant is proposing to preserve the existing stands of mature native slash pines that exist on the property. The house has been located on the property to take advantage of the views of the pond from the house while maximizing preservation of the vegetation.

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

NO. As previously mentioned, the pond, which is located on the rear half of the property, was in its current location and configuration for over 20 years. The applicant purchased the property in 1994 and is proposing to construct a 4,019 square foot home on the subject site.

In order to construct a house while maintaining the existing vegetation and providing a minimum separation between the pond and the structure, variance relief is required for the front setback. Furthermore, the adjacent property to the north, across the 80th Street North will not be impacted by the variance request since it is buffered from the subject lot by the 60-foot-wide road (80th Street North) and the vegetation located in the front yard of the subject lot.

Therefore, the special circumstances and conditions are not a self-created hardship or action of the applicants.

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

NO. Granting of this variance shall not confer upon the applicants special privileges denied by the comprehensive plan and this code to other parcels of land in the same district. The proposed single-family residence and accessory structures are permitted in the RE zoning district. The Comprehensive Plan permits residential land uses in this district. Other properties in the RE zoning district and general neighborhood have single-family dwellings.

The applicant is requesting a variance to reduce the front setback by 15 feet as a result of the lot features

(vegetation and pond), if approved, the applicants will be able to preserve the existing pond configuration as well as the mature native vegetation in the rear half of the property while enabling the applicants to construct a house which is similar in size and character to the other homes in the neighborhood. Therefore, granting this variance request for a reduced front setback will not confer special privilege upon the applicants.

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

YES. A literal interpretation and enforcement of the terms and provisions of the Code would deprive the applicants of rights commonly enjoyed by other parcels of land in the same district. The setbacks in the RE residential zoning district are established for 2.5-acre parcels and are intended to establish the buildings 50 feet from the front and rear property lines or base building lines. The setback distance is to maintain uniformity along the street while maintaining adjacent property values and establishing minimum separation between adjacent structures. However, the lot's amenities and constraints place restrictions on the applicants' desire to protect the existing pond and mature vegetation, the applicant is requesting a variance for a front setback reduction so that the proposed house can be constructed on the lot, similar to the other residences in the surrounding area.

Therefore, granting the variance will allow the applicants to construct a house which is consistent with the other houses in the area and but would not work an undue hardship on them.

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 variance requested is the minimum necessary to allow a reasonable use of the parcel of land. The proposed single-family residence would be located 35 feet from the base building line and 65 feet from the subject front property line. The applicant will comply with all other property development regulations. Granting the requested front setback variance of 15 feet will result in a larger rear yard which is necessary for maintaining an adequate and safe slope between the proposed house and the existing pond. Considering the reduction in the buildable area due to the pond on the subject property, the easements along the front and rear property lines and applicants' desire to preserve the native slash pines, there are limited alternative design options available to the applicants that would eliminate the need for a variance on this property. As previously mentioned, the existing lot limitation results in a buildable area of 70 feet in depth out of 332 feet of total lot depth. In addition, the adjacent property to the north (affected by the requested variance) is buffered by a 60-foot-wide road

(80th Street North). By allowing the proposed house to encroach 15 feet into the required front setback, the existing pond and mature native vegetation can be maintained and preserved. Considering these factors, the requested front setback variance is minimal and will allow the proposed house to be constructed in keeping with the character of the other homes in the neighborhood.

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

YES. Granting of the variance will be consistent with the purposes, goals, objectives and policies of the Comprehensive Plan and the ULDC. The intent of the front setback is to buffer the adjacent properties from impacts of a residential use, such as noise and shadows as well to ensure uniformity along the street, protect adjacent property owners, and maintain property values.

The required front setback for the subject property is 50 feet. The proposed front setback is 35 feet due to the fact that the subject property supports an existing pond and mature native vegetation which the applicants proposed to maintain, preserve and incorporate into the site layout. The proposed house will encroach 15 feet into the required front setback. However, the preservation of the mature native slash pines on the property will ensure that the encroachment is mitigated from the street.

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

NO. The grant of the variance will not be injurious to the area involved or otherwise detrimental to the public welfare. The property to the north is separated from the subject site by a 60-foot-wide road (80th Street North) and the existing mature native vegetation. Furthermore, the proposed house will be similar in architectural character and square footage to the other houses in the neighborhood. The requested front setback of 35 feet would ensure adequate land area remains in the front to preserve the vegetation while the rear yard is maintained to support the existing pond and space between the house and the pond for the slopes. The surrounding neighbors will not be negatively impacted by this variance request.

ENGINEERING COMMENTS

NONE. (ENG)

ZONING CONDITIONS

1. By January 17, 2000, the property owners shall provide the Building Division with a copy of the Board of Adjustment Result letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application. (DATE:BLDG PERMIT-Bldg)

2. By January 17, 2000, the property owners shall apply to the Building Division for building permit for the proposed 4,019

square foot single-family dwelling. The location of the single-family dwelling at the time of permitting shall be in the same location as shown on Exhibit 19 & 20 in the BA 99-048 file.

The building permit and site plan shall clearly show the location of the existing mature native vegetation to be preserved. (DATE:MONITORING-Bldg)

3. By March 17, 2000, the property owners shall obtain the building permit for the proposed single-family dwelling. (DATE:MONITORING-BLDG. PERMIT)

4. The property owners shall preserve the existing mature native vegetation (slash pines) on both sides and of the proposed residence and the existing pond. All necessary precautions shall be taken during construction to ensure the survival of the mature slash pines. Vegetation shall be maintained in the front yard to ensure the variance is mitigated from the right-of-way (see photos in BA 99-048 for existing location of vegetation) (LANDSCAPING-MONITORING)

5. Prior to final Certification of Occupancy, the Building Inspector shall ensure the existing native slash pines have been preserved. If vegetation has been removed, the Zoning Division, Board of Adjustment staff shall be contacted to ensure appropriate action is taken to have the property owners to install replacement trees. (C/O-ZONING-BA)

CHAIR PERSON KONYK: Next item on the consent is Board of Adjustment time extension 99-00049, Richard Litten, to allow for a one-year time extension. Applicant present?

MR. LITTEN: Yes, ma'am.

CHAIR PERSON KONYK: Your name, for the record?

MR. LITTEN: Richard Dean Litten, 6790 Osborne Drive, Lantana, Florida, ma'am.

CHAIR PERSON KONYK: Staff has recommended conditions, three.

Do you understand and agree with those conditions?

MR. LITTEN: Yes, ma'am.

CHAIR PERSON KONYK: Any letters?

No. It's a time extension.

Any Board member feel that this item should not receive a time extension?

(No response.)

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

MR. LITTEN: Thank you, ladies and gentlemen.

CHAIR PERSON KONYK: Next item on the consent is B of A 99-00050, EFES Corporation and Coral Petroleum, to allow a reduction in the width of the right-of-way buffers along Military Trail.

Is the application present?

MR. PRICE: Yes.

MR. BASEHART: Before you get into this, I'm involved with this application. It's going through the DRC process, and we're representing. So I will ask that, if this remains on consent, that you make a separate vote so that I can abstain.

CHAIR PERSON KONYK: Okay.

Staff has recommended four conditions.

Do you understand and agree with those conditions?

MR. PRICE: Yes, I do.

CHAIR PERSON KONYK: Any letters?

MR. MacGILLIS: No letters.

CHAIR PERSON KONYK: Any member of the public here 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. The applicant is proposing to reduce existing nonconformities on two separate contiguous properties that will be combined to create the new site. The site is located at the northwest intersection of Military Trail and Summit Boulevard in the C/8 land use classification and the CG zoning district. The southwest and northeast intersections also support existing service station, while the southeast intersection supports an insurance office. All service stations have minimal landscaping along the rights-of-way. The applicant is proposing to redevelop two parcels to support a new freestanding 15,120 square foot Walgreens building. The existing business will be demolished with the exception of one portion of the existing strip center that currently supports a tenant with a long term lease. The applicant is proposing to maintain a 3,914 square foot freestanding building for this user. All parking, signage, and other site improvements will be removed. There is existing mature trees along a portion of the Summit Boulevard landscape buffer adjacent to the strip center as well as in the

parking lot. The trees within the Summit Boulevard landscape strip (western portion of buffer) will be maintained. All other vegetation will be removed and new plant material installed once the site is redeveloped. The applicant has purchased these two businesses in order to have adequate land area, 2.5 acres, in order to support this new use. However, after carefully site planning the site the required landscape buffer widths along both Summit Boulevard and South Military Trail cannot be met. The applicant is proposing to reduce the Military buffer to 10.5 feet and the Summit Boulevard buffer to 5.7 feet (only along the western 149 feet, which is opposite the entrance off Summit Boulevard). The applicant will be reducing existing nonconformities on the site and complying with current code to the greatest extent possible.

The required plant material will be installed in the remaining buffer. In addition, staff is recommending a condition of approval that the size of the plant material be upgraded in terms of height at time of planting to mitigate any negative impacts associated with the reduced buffer width. The buffer variance along Summit Boulevard currently supports three mature mahogany trees and 24 inch Ficus hedge that will not have to be upgraded, if the applicant maintains this buffer for the new use.

Therefore, granting of the right-of-way buffer width is unique to this property and the fact it is a redevelopment project.

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

NO. The applicant is proposing to redevelop an existing site to support a new use. In order to accommodate the proposed building the applicant is proposing to demolish the majority of the existing buildings. The redevelopment of a site places constraints on the developer since often it is difficult to accrue adequate land area from adjoining land owners. In this situation the applicant has purchased two lots that can accommodate all property development regulations with the exception of the rights-of-way buffer width. The property owner will bring these existing nonconforming sites into compliance with current regulations when the new use is approved by DRC.

Therefore, the requested variances are not the results of actions by the applicant. The applicant is moving forward in good faith to redevelop this property to support a use that meets current regulations. There are limitations on a property owner when developing an existing site that sometimes restricts or limits them from meeting all current code requirements. The applicants proposal will be a significant improvement to this intersection and help foster redevelopment in this area.

3. GRANTING OF 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 the minimum variances in order to redevelop this property. All county regulations will be satisfied with the exception of the landscape rights-of-way buffer width. The reduced buffer width is minimal and can be mitigated to ensure the general improvements to this lot will significantly improve the overall appearance and way the site functions in terms of ingress/egress, parking, loading, et cetera. The applicant is proposing to install the required plant material in the remaining buffer and staff is recommending the height of the trees to be upgraded at time of planting to mitigate any negative impacts associated with the reduction.

Therefore, the granting of the reduction in the buffer width will not grant the applicant any special privilege.

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

YES. The applicant is proposing to redevelop two parcels of land to support a new business and structure. The redevelopment of existing sites places significant design challenges to the applicant in terms of meeting all current code requirements. In order to encourage redevelopment the property owner needs to be given incentives and flexibility when applying code requirements.

The applicant in this situation is proposing a site layout that meets all current code requirements with the exception of the buffer width. Since the general intent of this code requirement will be met with the granting of the two variances, this project will be able to move forward through the DRC review process. This type of redevelopment along Commercial corridors that support businesses that were constructed from the 1900s to today is an incentive to other business owners to redevelop and renovate their business and invest in their community.

If their variances are denied, the applicant would have to redesign the site. This would require the reduction of the proposed Walgreens store. Many of the stores are a pro-type and established at a certain square footage. To reduce the square footage may make this project not feasible based on the costs associated to accrue the land and develop the site.

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 two requested variances will allow this project to proceed through the DRC review process. The applicant will install the required trees and shrubs that are required by code. As previously stated, the other service stations located on the other two intersections have landscaping that does not comply with current requirements. Therefore, the proposed

landscaping to be installed along both South Military Trail and Summit Boulevard will greatly improve the overall landscape street scape in this area.

6. GRANT 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 comp plan is to encourage high intense commercial uses along Military Trail. The proposed Commercial use complies with the CG-General Commercial zoning designation. The use is permitted provided DRC approval is granted. The goal of the Board of County Commission is to encourage redevelopment in the older eastern communities. This redevelopment will reduce existing nonconformities that currently exist on this site. The intent of the rights-of-way buffer is to provide buffering between the use and right-of-way as well as creating a uniform landscape street scape. This area is in transition. Many businesses are being razed or redeveloped to support new uses. This proposed redevelopment will encourage other property owners to invest in their property.

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

NO. The granting of the requested variances will be beneficial to the surrounding area. Local business and users of the site will benefit from this new use. The Walgreens store provides a needed service to the surrounding residences. The redevelopment of the site will benefit other businesses by increasing property values and encouraging other national chains to invest in this area. The proposed site plan complies with all other property development regulations.

Therefore, the granting of this variance will not be injurious or detrimental to the public welfare.

ENGINEERING COMMENT

No Comment (ENG)

ZONING CONDITIONS

1. By January 20, 2000, the applicant shall apply to the Building Department for a building permit for the proposed 15,120 square foot commercial building. The applicant shall provide the Building Division with a copy of the Board of Adjustment Result Letter and copy of the final DRC site plan for this site. (DATE:MONITORING-BLDG PERMIT)
2. Prior to DRC certification of the final site plan the applicant shall ensure the BA conditions are shown on the site plan. (DRC)
3. By May 20, 2000 or issuance of the Certificate of Occupancy for the 15,120 square foot commercial building, the applicant shall upgrade and install the following landscaping along Military Trail and Summit Boulevard.

a) 16 foot tall native canopy trees planted 20 feet on-center. Palms may be substituted for the shade trees only on a ratio of three palms for each shade tree.

b) 36 inch native hedge to be installed 24 inches on-center. The existing mahogany trees and ficus hedge along the western portion of Summit Boulevard right-of-way buffer shall remain. (DATE:MONITORING-LAND:CO)

4. The existing mature mahogany trees along Summit Boulevard shall be preserved and incorporated into the landscape design. (LANDSCAPING-ZONING)

CHAIR PERSON KONYK: Next item is SD-95, Petition of Indian Spring Country Club and Indian Spring Maintenance Association, requesting a variance from the maximum allowable side slopes for storm water detention ponds.

Is the applicant present?

MR. SANDERS: Marvin Sanders, Sanders Planning Group. We understand and agree with the conditions and have Joe Lawrence from Indian Spring Country Club and Jerry Cooper.

Do you understand and agree?

MR. LAWRENCE: Yes, we understand the conditions.

CHAIR PERSON KONYK: Okay.

MR. LAWRENCE: And agree.

CHAIR PERSON KONYK: Could you both give your names for the record, since you both came to the podium.

MR. LAWRENCE: James Lawrence for Indian Spring Country Club.

MR. COOPER: Jerry Cooper. I'm the attorney representing Indian Spring Country Club.

CHAIR PERSON KONYK: So you understand and agree with the conditions.

Any letters?

MR. CUFF: There were twenty-three telephone inquiries for information, expressing no opinion. There were two letters of approval giving no reason, and one letter in opposition giving no reason.

Do you need the names of those?

CHAIR PERSON KONYK: You have them on the record, right?

MR. MacGILLIS: They're part of the record.

CHAIR PERSON KONYK: And they're part of the record. Any member of the public here 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, your item will remain on the consent.

CHAIR PERSON KONYK: I'm going to do the vote on the one that Bob wanted us to do first so that we can get that out of the way.

B of A 99-00050, is someone prepared to make a motion for this item?

MR. MISROCH: So moved.

CHAIR PERSON KONYK: Motion by Mr. Misroch.

MR. RUBIN: Second.

CHAIR PERSON KONYK: Second by Mr. Rubin.

All those in favor?

(Panel indicates aye, except Mr. Basehart)

CHAIR PERSON KONYK: Motion carries unanimously.

MR. BASEHART: With one abstention.

CHAIR PERSON KONYK: With one abstention. Yes.

B of A 99-00050 has been approved.

The next -- I'm going to list the rest of the items on the consent, and we can go from there.

Board of Adjustment time extension 99-00043; Board of Adjustment time extension 99-00044; B of A 99-00046; B of A 99-00048; Board of Adjustment time extension 99-00049; SD-95. Those are the items that are remaining on the consent agenda.

Is someone prepared to make a motion to approve the remaining items on the consent agenda?

MR. BASEHART: I'm making a motion that we approve the items that were just read based on the staff reports and conditions recommended by staff.

CHAIR PERSON KONYK: Motion by Mr. Basehart. Second by --

MR. MISROCH: Second.

CHAIR PERSON KONYK: -- Mr. Misroch.

Any discussion?

(No response.)

CHAIR PERSON KONYK: Okay. All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: Motion carries unanimously.

All right, you're all free to leave except for you. first item on the regular agenda is Board of Adjustment 99-00047. If staff would introduce the item.

MR. MacGILLIS: B of A 99-47, the Petition of Florida Atlantic University Foundation, Inc., to allow a proposed eight-foot privacy wall to exceed the permitted height along the portion of the front yard, south property line, along Summit Boulevard and the side yard west property line along Jog Road. Location is 6301 Summit Boulevard, Northeast intersection of Summit and Jog Road known as the Pine Jog Environmental Education Center in the RS zoning district.

The applicant is applying to allow a proposed fence to exceed the height limitation in the front and side yards. They're proposing an eight-foot fence. The purpose of the eight-foot fence was part of a settlement agreement that was entered in between the applicant and

Palm Beach County as a result of the widening of Jog Road in 1991.

Part of the settlement agreement allocated approximately two hundred and fifteen thousand dollars for the university to install some type of abatement for the noise that was increased as a result of widening the road.

It's taken this long. The university had a noise study done. And the result of that study was that they recommended actually a twelve-foot wall be installed along that property line to mitigate the noise that was associated with the widening of the road.

The university came to staff and was recommending an eight-foot wall. Staff supports that wall. They have agreed to pull the wall back five feet. They were going to put it right up to the edge of the sidewalk. Because of a lot of concerns they were getting from the surrounding neighbors was the fact that the wall would be right up on the road and have this eight-foot barrier. So they have agreed to set it back five feet and install a native hedge in front of it.

I think the impact that this has had on this facility, which is obviously an outdoor education and wild life preserve, and it's surrounded by residential and roads, that the wall is necessary to maintain the integrity of the overall facility.

Staff, on page sixty-five, has outlined the findings of fact that the applicant has clearly met all the requirements of the seven criteria. And on page sixty-six, you can see a -- well, the picture on the bottom there shows the -- along Jog Road where you can see the site is heavily vegetated with native slash pines.

And I think most of the concerns that we got in telephone calls were the appearance of the wall and people's views would be blocked into -- the views that they have now. Another concern a lot of residents had, along the north property line there's a canal; and there's a lot of residential homes that abut onto the canal to look into the back of the facility here. They were concerned that the wall was going to run there. and I indicated to them there was no wall proposed at this time along that. And that addressed a lot of concerns, but I guess the gentleman who's here now is just concerned with installing an eight-foot wall along Jog Road will rebound the noise off the vehicles more towards the properties on the west side of Jog Road.

CHAIR PERSON KONYK: What will the landscape buffer consist of in front of that wall?

MR. MacGILLIS: A native hedge.

CHAIR PERSON KONYK: A native hedge.

MR. MacGILLIS: Yes.

CHAIR PERSON KONYK: Okay. So that could help to alleviate the sound problem, couldn't it?

MS. COLEMAN: Madam Chairman, may I make a comment about the wall?

CHAIR PERSON KONYK: Why don't you just make your presentation.

Anybody that's going to speak on this item needs to stand and be sworn in. So if you're going to speak on this item, you need to be sworn in.

(Thereupon, the audience was sworn by the Court Reporter.)

MS. COLEMAN: Though I'm not a sound engineer and I

would defer to staff, but it is my understanding from our studies that a wall that is put up bounces sound back no farther than the shadow it casts in its height. Therefore, what we're talking about here is bouncing sound back either six feet or eight feet into Jog Road. Needless to say, Jog Road is considerably broader than eight feet because it is a very large four- to six-lane road at this point.

Therefore, I would be very surprised based on our studies if there was any additional sound bounced all the way back over into the residential neighborhood on the other side.

Pine Jog now has more than ten thousand Palm Beach County School children that pass through its site every year in our environmental education programs. We feel that it is very important to those programs to have the integrity of this wall to help us on the other side from the noise that's been generated by Jog Road.

We have amended twelve foot down to eight, and we will be heavily landscaping this with natural vegetation and also coating the wall -- I heard some graffiti concerns -- with the new process they have where it is washable and so it's not going to -- if you could get to it through the vegetation, would not be a major graffiti problem. We are an environmental education center. The last thing we want to do is cause more problems.

We feel rather strongly about the need for this wall for the integrity of the programs --

MR. BASEHART: Could you speak to the issue of the variance? That being, why it's important that the wall be eight feet rather than limited to six.

MS. COLEMAN: Even Department of Transportation standards will tell you that a six-foot wall is not a sound abatement wall. Our studies ask for ten to twelve feet. We feel like we need to compromise down to eight. Those two feet are a considerable more buffer than a six-foot wall.

MR. DOWDY: Well, I know it's going to be a six-foot wall. But the only thing I ask is if it's going to be an eight-foot wall, why can't they set it back a little further. I don't know. I just -- I didn't do a study on how far the noise bounces and all that, but -- I don't know. I've never seen a wall yet that graffiti hasn't covered up. You know, it's hard to hide it.

CHAIR PERSON KONYK: Well, they're going to have a hedge in front of the wall. I imagine they'll let the hedge grow. What kind of hedge?

MR. MacGILLIS: I mean, as long as it's a native hedge, that's all that's down there.

CHAIR PERSON KONYK: I'm asking her.

MR. MacGILLIS: Oh, I'm sorry.

MS. COLEMAN: This is a heavily landscaped site already. If we had to go farther back in, we'll be taking out a great deal of mature trees. And that's not the intent because this is an environmentally sensitive site.

Natural vegetation, natural hedges of various types, as well as that are there, plus what additionally we put in. So they will be growing up.

CHAIR PERSON KONYK: Okay.

MR. BASEHART: The question was, what kind of hedge material are you going to plant on the outside of the wall.

MS. COLEMAN: Well, we were working with staff and the landscaper on that. That has not totally been decided yet. If you've got any suggestions, we'll be glad to take them. But this is -- it will be natural Florida vegetation. It will not be --

CHAIR PERSON KONYK: Well, the point is is that if you plant something on the front of that wall that does not allow somebody to get close to the wall, and there are hedges that could be planted there that would be either so thick that somebody couldn't get through them or it would grow to high that you couldn't see behind them. And, you know, when you're talking native vegetation on something like that, I personally think of something like Wax Myrtle or -- there's a lot of different hedges that could be used. And that would prevent people from getting close enough to the wall to put graffiti on the wall.

Also, I would imagine that if somebody did paint graffiti on the wall you would see to it that it's taken care of. I know that Palm Beach County Sheriff's Department has a zero tolerance policy for graffiti, and they actually go out and paint -- they have people that actually go out and paint graffiti. That's what they do.

And, you know, I think that the graffiti concerns are -- can be resolved. The question I would have of staff is if you have any information concerning what she said about the sound bouncing back only as far as the shadows. Is that something that can be verified?

MR. MacGILLIS: I don't know who on the county --

CHAIR PERSON KONYK: I mean, do you have any information --

MR. MacGILLIS: No, I don't.

CHAIR PERSON KONYK: -- today about that?

MR. MacGILLIS: No.

CHAIR PERSON KONYK: Okay.

MS. COLEMAN: To complete your question on the landscaping, most probably Cocoa Plum, Wax Myrtle, things that are natural to the site. And they tend to be dense and leggy once they grow up.

CHAIR PERSON KONYK: All right.

Does any Board member have any questions of either the applicant or the gentleman that's here to respond to the application?

MR. RUBIN: One question. Was there anything specifically addressed in the agreement between FAU and the County as to what was intended by the noise buffer? Was there anything specifically stated in terms of variances, code, or the wall or a fence?

MS. COLEMAN: All permit fees were waived. It is referred to as a noise abatement wall. Our contention is it's got to be higher than six feet tall to be a noise abatement wall.

MR. MacGILLIS: I don't know specifically.

I believe my understanding is, I went through the settlement agreement. I know there was -- the county agreed to pay the sum of two-hundred-some thousand dollars for the university to conduct the study for some type of abatement that would restore the site to the way it was functioning before the actual road went through.

It stated that any future fees and stuff that were associated with whatever type of abatement they ended up coming to terms with between the county and the university would be -- all fees would be waived by the county.

MR. RUBIN: So this actually was a condemnation?

MR. MacGILLIS: Yes.

MR. RUBIN: So are we in the section of the code which says that the presumption if there's a condemnation that there's a variance?

MR. MacGILLIS: That's correct.

MR. RUBIN: Thank you.

MR. MISROCH: Just one question, again.

MS. COLEMAN: Yes.

MR. MISROCH: You may have mentioned it before, but this noise abatement study was made by whom?

MS. COLEMAN: The university's engineering department.

MR. MISROCH: In house?

MS. COLEMAN: Stanley Dunn. Is that an outside firm or our faculty member Stanley Dunn? Okay. Yes. Our engineering department. We have an engineering department with a great deal of expertise in this area.

CHAIR PERSON KONYK: Okay. Any other questions? (No response.)

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

MR. RUBIN: I move we approve B of A --

CHAIR PERSON KONYK: 99-00047.

MR. RUBIN: Thank you.

-- 99-00047 as submitted, incorporating by reference the staff report and the recommendations of staff.

CHAIR PERSON KONYK: And do we have a second?

MR. MISROCH: Second.

CHAIR PERSON KONYK: Motion by Mr. Rubin. Second by Mr. Misroch.

Any discussion?

(No response.)

CHAIR PERSON KONYK: All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: Opposed?

(No response.)

CHAIR PERSON KONYK: Motion carries unanimously.

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 150 acre site is unique in that it supports a native environmental classroom for students and residents of PBC. The site was donated to Florida Atlantic University to be used for environmental training. The site is surrounded by rights-of-way along the west, south and east property lines, while to the north is the LWDD L-5 Canal. Beyond the right-of-ways and canal are primarily single family dwellings on 1 acre lots. The PBC Engineering Department expanded Jog Road, which runs parallel to the west property line, and condemned land. A

Settlement Agreement was reached between the county and the property owner, which provided funds for noise abatement. The applicant is proposing to construct a wall along that portion of Job Road that is adjacent to the west property line, and continue the wall approximately 300 feet along Summit Boulevard. Prior to applying for a building permit for the wall, the applicant will require a front and side setback to allow the wall to exceed the four foot height limitation.

The need for this eight foot high wall is directly related to the expansion of Jog Road and the impacts it has on this use. The applicant could construct a 4 foot and 6 foot wall along Summit Boulevard and Jog Road, however, it would not mitigate the noise associated with the vehicles travelling along these rights-of-way. Also, the proposed wall will tie into an existing fence that extends along the Perim of the property.

Therefore, the granting of this variance is peculiar to this property and use and the direct result of the Jog Road right-of-way expansion in 1991.

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

NO. This use has existed at this location for many years. The applicant would not be requesting to construct an eight-foot fence had Jog Road not been expanded along the western property line. The impact associated with the right-of-way expansion has a direct negative impact on this use. The property is used as an environmental training facility for the university. In order to ensure the outdoor training is not compromised by noise associated with the traffic on Jog Road the eight-foot wall is being constructed.

Therefore, the need for the eight-foot wall on the western and a portion of the southern property line is as a result of the county taking land for right-of-way expansion. The desire of the property owner to maintain the quality of the outdoor educational program and ensure the wildlife is protected the eight-foot wall is being constructed.

3. GRANTING OF 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. Other properties have applied and been granted variances that resulted from condemnation or eminent domain taking of property for right-of-way expansion. Many properties in PBC are requested and /or required to dedicate land area to facilitate PBC road widening program. In this particular situation that property owner entered into a Settlement Agreement after the condemnation proceedings. The agreement provided for funds for the property owner to construct a noise barrier to protect the property. The applicant is finally prepared to construct an eight-foot privacy wall; however, height variances must be granted by the Board of Adjustment. The applicant states the request is a reasonable request since the

increase in the wall height will not negatively impact the residential properties located beyond the rights-of-way and canal that surround the perimeter of this site.

Granting of the two height variances for the proposed CBS wall will not confer any special privilege on this applicant. Staff and the City of Greenacres recommend a condition of approval to landscape the outside of the wall. The property is within the future annexation of the City of Greenacres.

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 property owner was required to provide land in order to accommodate the widening of Jog Road. The applicant was compensated through a Settlement Agreement with PBC with funds to pay for a wall or barrier that would mitigate the noise associated with the road widening on this property. The code allows walls along property lines to be four feet along the front property line (Summit Boulevard) and six feet along the side property lines (Jog Road). The applicant states that an eight-foot wall is needed to properly mitigate the noise generated by vehicles travelling along Jog Road and Summit Boulevard. Also, the extra height will provide additional on-site security to the students who reside and visit the site.

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 the noise studies they had done recommended a 10-12 foot high wall be constructed. However, the applicant is proposing eight feet to ensure compliance with the general intent of the code and be in harmony with the general character of this area.

Therefore, the granting of this variances will allow the applicant additional buffer for mitigation of the noise while providing additional security to the property from people who might climb undetected over a four or six foot wall into the mature under story along the western portion of the site.

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

YES. The general intent of the code provision to limit fences in residential zoning districts to four and six feet in the front and side yards is to ensure the wall is compatible with the neighborhood. Walls at this height can provide the single family property owner with security and privacy for their property and family. However, the use of this property is unique in that it supports an institutional use that is unique to this area. The environmental school is operated by the Florida Atlantic University and is maintained as a natural habitat for

wildlife and vegetation that is located along the inside of the proposed wall. Also, the rights-of-way and canal that exist along the perimeter of this site delineates this as a site that is not typical to the residential lots that are located beyond the rights-of-way.

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

YES. The applicant had a noise study done to determine what could be constructed to mitigate the impacts associated with the noise from the traffic on Jog Road. The study concluded a 10 to 12 foot wall was needed. However, the applicant compromised with an eight-foot wall in order to ensure it does not impact the surrounding community while at the same time providing buffering and security to the property.

Therefore, the surrounding property owners will not be affected by the proposed eight-foot wall along the western property line adjacent to Jog Road and along a portion of the south property line adjacent to Summit Boulevard.

ENGINEERING COMMENTS

No Comment (ENG)

ZONING COMMENTS

The City of Greenacres has requested the Board of Adjustment to place a condition on this approval that the outside of the wall be buffered with landscaping. This site is in the future annexation of the city.

ZONING CONDITIONS

1. By January 20, 2000, the applicant shall provide the Building Division with a copy of the Board of Adjustment Result letter and Site Plan, delineating the location of the eight-foot CBS wall along the west portion of the south property line, simultaneously when applying for a permit for the wall permit. (DATE:MONITORING-BLDG PERMIT)
2. The variance to increase the proposed wall height shall apply only along that portion of the western and southern property line as shown on Exhibit 9 & 10 in the BA99-47 file in the Zoning Division. (ONGOING)
3. By January 20, 2000, or issuance of a building permit for the wall, the property owner shall obtain all necessary utility releases in order for the proposed eight-foot wall to be located along the western and southern property line. (DATE:MONITORING-BLDG PERMIT)
4. The wall shall be set back from the property line by five feet to allow for shrubs to be installed to mitigate the impact of the proposed eight-foot wall.
5. Prior to Certificate of Completion for the wall, the applicant shall install 36" native shrubs along the outside of

the wall.

CHAIR PERSON KONYK: Next item that we have to take care of is the absences for the May 1999 meeting. Since the Board of Adjustment meets once a month and it's crucial that we have a full board, it's important that all of our members attend the meeting. So at each meeting we're provided by Mary with an attendance sheet and the Board determines that if the absence will be excused or unexcused. And I believe it's three unexcused absences and your commissioner has to appoint someone else.

So we had one absence, which was Ms. Nancy Cardone. And she was away on business, I imagine. So if anybody is prepared to make a motion on this.

MR. BASEHART: I'll make a motion that we grant an excused absence.

CHAIR PERSON KONYK: Motion by Mr. Basehart.

MR. MISROCH: Second.

CHAIR PERSON KONYK: Second by Mr. Misroch.

All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: Opposed?

(No response.)

CHAIR PERSON KONYK: You're unanimously approved of an excused absence.

Mary, I don't know. You've probably given her a list of all the meetings so that she can maybe X them out on her calendar so she can be prepared to be here.

One of the problems that we have, Nancy, is that a quorum is four members. But, because of the way the code is written at this time, it says that you have to have a vote of at least four positives for a variance to pass. So if you only have four members present, you need a unanimous decision; and that's very difficult to obtain. So we want to have the full board here. So that's why it's so important for you to attend.

Anything else?

MS. BEEBE: The ULDC changes are going back before the Board of County Commissioners in July. So, hopefully, they'll approve it this time.

CHAIR PERSON KONYK: Okay.

And that would mean that we wouldn't need the unanimous --

MS. BEEBE: Right.

CHAIR PERSON KONYK: Okay. Anything else?

(No response.)

CHAIR PERSON KONYK: Motion to adjourn?

MR. BASEHART: So moved.

MR. MISROCH: Second.

CHAIR PERSON KONYK: Mr. Basehart. Second by Mr. Misroch.

All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: Opposed.

You can leave.

(Thereupon, the proceedings were concluded at 9:33
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 foregoing Proceedings were
taken before me at the time and place stated herein; and that
this transcript of said hearing, numbered 1 through 32
inclusive, constitutes a true and correct transcript of said
hearing.

I FURTHER CERTIFY that I am neither related to nor
employed by any counsel or party to the cause pending, nor
interested in the event thereof.

IN WITNESS WHEREOF, I have hereunto affixed my hand
and official seal this 21st day of June, 1999.

RACHELE L. CIBULA, NOTARY PUBLIC