

PALM BEACH COUNTY
BOARD OF ADJUSTMENT
MINUTES OF
MEETING OF MAY 20, 1999

100 AUSTRALIAN AVENUE
WEST PALM BEACH, FLORIDA 33406

9:15 A.M. - 10:40 A.M.

BOARD MEMBERS PRESENT:

MS. CHELLE KONYK
MR. STANLEY MISROCH
MR. JOSEPH JACOBS
MR. GLENN WICHINSKY
MR. ROBERT BASEHART
MR. RAYMOND PUZZITIELLO
MR. STEVEN RUBIN

STAFF MEMBERS PRESENT:

MR. DAVID CUFFE
MS. LAURA BEEBE
MR. JON MacGILLIS
MS. JOYCE CAI
MR. RICHARD WALKER

99-00028	Lowell Paxson, as Trustee, of the Paxson family trust to allow a proposed stable to encroach into the required front setback. LOC: 14270 87th Court, approximately .26 miles S. of Hamlin Blvd., and .14 miles E. of Grapeview Blvd. in the Royal Palm Beach Acreage unrecorded subdivision, within the AR zoning district.	6
99-00030	James Ostrom and Marcia Steele, to allow a proposed swimming pool to encroach into the required side interior setback. LOC: 6599 Lawrence Woods Ct. approximately .3 miles N. of Hypoluxo Rd. and 460 ft. W of Lawrence Rd., within the Lawrence Woods PUD, in the RS zoning district (Pet. 83-034)	11
99-00031	Rendel and Dahlia Forbes, to allow an existing non-conforming structure that is to be renovated to encroach into the required front and side interior setbacks and to renovate this non-conforming structure to the maximum 30% allowed pursuant to a variance. LOC: 1033 Congress Avenue approximately 600 ft. N of the NW intersection of Congress Ave. and Westgate Ave., within the Westgate Overlay District, in the CG Zoning district.	15
99-00032	E. Halperin, Agent for Packer Family Limited Partnership, to allow for a 12 month time extension for the variance development order granted on May 21, 1998 to May 21, 2000.	19
99-00033	B.W. Simpkins & F.A. Sheriff and Pedro Bello and Ernesto Bello as Trustees, to allow a reduction in the required width of the right-of-way buffers along Haverhill Rd. and Okeechobee Blvd. LOC: 5028 Okeechobee Blvd. at the SW intersection of Haverhill Rd. & Okeechobee Blvd., in the CG zoning district.	20

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99-00034	Niel H. O'Neal and Juanita K. O'Neal to allow a proposed accessory garage to encroach more than 25% of the distance between property lines (south & east). LOC: 222 Caroline Dr., SE intersection of Caroline Dr. and Wallis Rd., within the Southern Blvd. Pines Plat, in the RM zoning district.	24
99-00035	Brefrant, Inc., to allow an 18 month Time Extension of BofA 98-034 approved on May 21, 1998. LOC: Vacant site, SW corner of Forest Hill Blvd. and SR 7(441), in the MUPD zoning district, Wellington Mall (Pet. 96-040)	28
99-00036	Leonard and Leslie London, to allow an existing pool and a proposed screen enclosure to encroach into the required side interior setback. LOC: 21697 Old Bridge Rd., approximately .28 miles N of Palmetto Park Rd. and .67 miles W of State Rd. 7, within Boca Woods Country Club Phase 2 Subdivision, in the RE zoning district, (Pet. 78-242)	28
99-00037	Randy Oblow, to allow a SFD under construction to encroach into the required front setback. LOC: 16031 East Preakness Dr., approximately .4 miles E. of Seminole Pratt Whitney Rd. and N. of East Preakness Dr. within the Royal Ascott Estates subdivision in the AR zoning district.	32
99-00039	Nelson D. and C. Glorida Obregon, to allow for an existing Type 1B pond to encroach the side interior and corner setbacks. LOC: 5350 Duckweed Rd. NE corner Otter Run and Duckweed Rd., within the Homeland subdivision, in the AR zoning district (DRC 98-025)	36
99-00040	Cornerson Propane, L.P., to allow a proposed building to encroach into the front setback. LOC: 15113 State Rd. 7, approximately 200' S of N. Atlantic Ave on the W side of SR7, in the AGR zoning district. (Pet. 90-025)	39

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99-00042	Luis Vasquez, to allow an existing fence to exceed the permitted height in the front yard. LOC: 11822 61st St. N, approximately .38 miles SW of the intersection of Royal Palm Beach Blvd. and Tangerine Blvd., within the Royal Palm Beach Acreage unrecorded subdivision, in the AR zoning district.	43
99-00029	Gennaro Maratea, to allow an existing solid roof enclosure to encroach into the required side interior setback. LOC: 6297 Breckenridge Circle, immediately S of Lantana Rd. and W of the Florida Turnpike within the Balmoral PUD, Fairfield's Lacuna Plat 5, in the RT zoning district. (Pet. 81-233).	47
99-00041	Wayne & Sheri Dubois, to allow a proposed expansion to an existing building to encroach the required front setback and reduce the right-of-way buffer width. LOC: 8421 S State Road 7, approximately 1.5 miles N of Boynton Beach Blvd., on the W side of SR7, Dubois Packing Plant, in the AGR zoning district.	53
99-00020	E.H. and Marianne B. Vanden Bosch, to allow a proposed garage to encroach into the required front setback. LOC: 776 Jamaican Dr., approximately .3 miles N of Summit Blvd. and .2 miles E of Haverhill, within the Dillman Heights subdivision, in the RM zoning district.	64
99-00027	Randell Enterprises of Palm Beach, Inc., d/b/a Williams Soils and Sod, to allow for a time extension on Condition #1 & 2. LOC: 2580 S. Military Trail, at the SE intersection of Military Trail & Vicliff Road, Williams Soils & Sod, in the CG zoning district.	81

CHAIR PERSON KONYK: I'd like to call to order the May 20, 1999, Board of Adjustment meeting and start with a roll call and declaration of quorum.

MS. MOODY: Mr. Bob Basehart?

MR. BASEHART: Here.

MS. MOODY: Mr. Joseph Jacobs?

MR. JACOBS: Here.

MS. MOODY: Ms. Nancy Cardone?

(No response.)

MS. MOODY: Mr. Raymond Puzzitiello?

MR. PUZZITIELLO: Here.

MS. MOODY: Mr. Glenn Wichinsky?

MR. WICHINSKY: Here.

MS. MOODY: Mr. Stanley Misroch?

(No response.)

MS. MOODY: Steven Rubin?

MR. RUBIN: Here.

MS. MOODY: And Ms. Chelle Konyk?

CHAIR PERSON KONYK: Here.

MS. MOODY: We have a quorum.

CHAIR PERSON KONYK: I have before me proof of publication in the Palm Beach Post on May 2, 1999.

Next item on the agenda is remarks of the Chairman.

For those of you who are not familiar with how the board conducts its business, the agenda is divided into two parts, the consent and the regular agenda. Items on the consent agenda are items that have been recommended for approval by staff, either with or without conditions; the applicant agrees with the conditions; there's no opposition from the public and no board member feels the item warrants a full hearing.

If your item remains on the consent agenda, you're free to leave after we vote on that. If your item is pulled from the consent agenda or is on the regular agenda, it will be -- items on the regular agenda are there because they have been either recommended for denial by staff or the applicant doesn't agree with the conditions or there's opposition from the public or a board member feels the item warrants a full hearing.

Items on the regular agenda will be introduced by the staff. The applicant will have an opportunity to give their presentation. The staff will then give their presentation. The public will be heard from. 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.

Let the record reflect that Mr. Misroch is present.

Next item on the agenda is the approval of the minutes from the meeting -- what was the date of the last meeting?

MS. MOODY: April 15th.

CHAIR PERSON KONYK: April 15, 1999, meeting.

Does anybody have any questions or corrections on the minutes?

(No response.)

CHAIR PERSON KONYK: Seeing none, can we have a motion for approval?

MR. BASEHART: So moved.

CHAIR PERSON KONYK: Motion for --

MR. PUZZITIELLO: Second.

CHAIR PERSON KONYK: -- approval by Mr. Basehart. Second by Mr. Puzzitiello.

All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: Motion carries unanimously.
Remarks of the zoning director.

MR. MacGILLIS: Just one comment. The Unified Land Development Amendments were postponed, and they're not doing to be coming up until July 27th. That affects the quorum and the voting; and it also affects the first item on the consent agenda, which will have to be postponed. So we'll go through that when we go to the agenda.

CHAIR PERSON KONYK: Do you have any changes in the agenda?

MR. MacGILLIS: Yes.

CHAIR PERSON KONYK: Okay.

MR. MacGILLIS: Item number three, BofA 99-09 will be postponed ninety days until August 19, 1999.

We contacted the applicant. They understand. Until the Unified Land Development is amended in July 27, 1999, this item can't go forward. So that will be time certain, then, for August 19, 1999, at nine o'clock, room 441.

The next item for postponement is the last item, BofA 99-38, the Home Depot.

We received a letter from the agent, Peter Van Rens, as of yesterday, requesting this item be postponed to June 17, 1999. The applicant would like additional time to address staff's concerns. And the staff report is for denial. Staff has no problems with the postponement of this one. It's by right.

Those are the only changes.

CHAIR PERSON KONYK: Only changes?

MR. MacGILLIS: Yes.

CHAIR PERSON KONYK: Okay.

So -- and then we have BofA 99-00015, which was withdrawn, correct?

MR. MacGILLIS: Yeah.

CHAIR PERSON KONYK: And post -- request for postponement, BAAA 99-00019. Okay.

So the items on the consent agenda are BofA 99-00028.

Is the applicant present?

MR. PAINE: Yes.

CHAIR PERSON KONYK: Please state your name for the record.

MR. PAINE: James Paine.

CHAIR PERSON KONYK: The staff has recommended three conditions.

Do you agree with and understand those conditions?

MR. PAINE: Yes, we do.

CHAIR PERSON KONYK: Is there any letters on this?

MR. MacGILLIS: Just one letter. No concern.

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

(No response.)

Any board member feel this item warrants a full hearing?

(No response.)

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

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 site is located at 14270 87th Court, approximately .26 miles south of Hamlin Boulevard and .14 miles east of Grapeview Boulevard, in the Royal Palm Beach Acreage unrecorded subdivision, within the AR Zoning District. The subject property was subdivided into three contiguous lots with a total of 5.5 acres in size in the rural residential areas.

The existing stable was originally permitted as a pole barn to the previous property owner on January 6, 1993, (B93000266). The minimum required front setback was indicated as 25 feet in the approved site plan. On March 12, 1993, another building permit (B93005323) was issued to enclose the pole barn. As shown in the recent survey dated 7/7/98, the actual front setback of the existing stables is 73.46 feet as measured from the interior easement line (base building line). Beyond the base building line to the subject front property line is a forty foot road and drainage easement.

The subject property owner purchased the property in 1996 who also owns two adjacent lots, one is a 1.74-acre lot to the west, another is a 40-acre lot north of the subject property. Therefore, approximately 1,335-foot-wide properties on both sides of a dead-ended street (87th court) between the Grapeview Boulevard and the canal to the east along the subject east property line belong to the subject property owner except the 4.33-acre lot on the south side of the street abutting the Grapeview Boulevard.

The proposed stable is located inside of the entire property owned by the subject property owner. No lots or structures owned by the other people is located within 300 feet from the proposed stable.

As previously indicated, the front street (87th Ct. N.) is a dirt road and dead ends to the canal which runs along the subject east property line. Across the street exists mature native vegetation on the adjacent property which is also owned by the subject property owner.

All the above-mentioned conditions and circumstances are considered special to this lot and are not applicable to the other parcel of land, structures or buildings in the same district. Therefore, the requested front setback encroachment will not be detrimental nor impose any negative impacts on the neighboring residents.

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

NO. The special circumstances are not the result of actions of the applicant. As stated previously, the front

setback in rural residential areas varies from 25 feet to 100 feet depending on the lot size and property dimensions. The ULDC provisions recognize that many AR lots in the county do not meet the minimum of ten (10) acre requirements as a result of code amendments over the past 20 years. Therefore, provisions allow setbacks for the specific zoning district.

As previously indicated, the existing stable was permitted with a minimum of 25-foot front setback and actual setbacks 73.46 feet front the interior easement line (base building line). The code subsequently changed, creating a situation where now the new stable can't align properly with the existing stable to allow the two barns and adjoining facilities function together.

Beyond the base building line is 40 feet of road and drainage easement.

In addition, the subject property owner also owns 2 adjoining properties to the west (1.74 acres) and to the north (40 acres) which later lot is the affected area by the variance. Within the 300 feet of the proposed stable, no lots or structures exist owned by other people.

Therefore, the requested variance will have no negative impacts for it complies with the character and current uses in the adjacent areas.

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 the variance will not confer special privileges upon the applicant that would be denied by the comprehensive plan or the code to other parcels of land in the same district. The proposed private stable is a permitted use in the AR zoning district. The comprehensive plan permits rural residential land uses in this district. Other properties in the AR zoning district and the general neighborhood have stables for the care of horses. On the subject 5.5-acre lot, there is a plenty of acreage available for the proper care of the horses that may occupy the stalls of the existing and the proposed stables.

The existing stable was previously permitted in 1993. To align the proposed stable with the existing stable will allow the applicant to function the adjoining facilities together in a more efficient manner for the care of the horses inside both stables. In addition, offsetting the proposed stable would require relocation of fencing and would affect the arrangement of the pastures. Aligning the stables would leave more land available for pastures on the south side of the stable. Therefore, the applicant is requesting a front setback variance to be able to align the proposed stable with the existing one. If the variance is approved, it will be consistent with the varying front setback within the rural residential neighborhood. Therefore, the granting of the variance will not confer special privilege upon the applicant.

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

YES. A literal interpretation and enforcement of the terms and provisions of the Code would deprive the applicant of rights commonly enjoyed by other parcels of land in the same district. The setbacks in the AR rural residential zoning district are established for ten acre parcels and are intended to require the building with 100 foot front setbacks. The setback distances encourage an openness and unobstructed view from the street in the rural residential areas. However, the subject lot is 5.5 acres, about half size of the 10 acres of the minimum required. In addition, due to the various code provisions for setback for non-conforming residential lots which vary within this subdivision as a result of specific lot configurations (acreage and dimensions), the proposed 74 feet front setback will be adequate to ensure the general intent of the code to be satisfied.

Therefore, granting the variance will allow the property owner to reduce the front setback consistent with the other properties in the general area but would not work an undue hardship on the neighboring properties.

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 the minimum variance necessary to allow a reasonable use of the parcel of land. The subject property is not used intensively or excessively. The existing residence setbacks 115 feet from the interior easement line (base building line) and the existing stable setbacks 73.46 feet from the same line. The requested 74-foot front setback for the proposed private stable complies with the character of the surrounding area. In addition, the front street (87th Ct. No.) dead ends to the east where a canal is located and runs along the subject east property line. Across the front street exists mature native vegetation which will mitigate any setback encroachment on the adjoining property directly to the north. As indicated previously, the subject property owner also owns a 40-acre adjoining property to the north which is the most affected area by the requested variance. Also the lot to the west is under the same ownership.

In addition, the applicant indicated in the justification that the current layout does not allow for alternative designs that function properly other than aligning the proposed stable with the existing one.

Considering the above unique situations, granting the requested variance is the minimum and will not adversely impact the surrounding uses.

6. GRANT OF THE VARIANCE WILL BE CONSISTENT WITH THE

PURPOSES, GOALS, OBJECTIVES AND POLICIES OF THE
COMPREHENSIVE PLAN AND THIS CODE:

YES. Granting the requested variance will be consistent with the purposes, goals, and policies of the comprehensive plan and the ULDC.

The intent of maintaining minimum setbacks is to ensure uniformity along the property lines, protect adjacent property owners, and maintain property values. As a result of various ULDC provisions and staff's interpretations on how to apply setbacks for different AR lot sizes in this area, property owners have been permitted varying setbacks. However, the general intent of the minimum setback will be maintained. Considering the existing stable was previously permitted with a front setback of 73.46 feet as well as the varying front setbacks for non-conforming AR lots, granting the requested variance will meet with the general intent of the code.

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

NO. As previously stated, there are several mitigating circumstances which act as buffers for the requested front setback encroachment. 1) 40' road easement (87th Ct.) along the subject front property line, which dead ends to the east where a canal is located and runs along the subject east property line; 2) across the front street exist mature native vegetation; 3) 30' drainage easement and a canal exist along the subject drainage easement and a canal exist along the subject south/rear property lines; In addition, the subject property owner owns not only the three subject contiguous lots, but also the 40-acre lot to the north and 1.74-acre lot to the west. The proposed stable is located inside the entire property. No lots or structures owned by other people is located within 300 feet from the proposed stable.

Therefore, the proposed 74-foot front setback will be compatible with the surrounding are, retain the rural character of the neighborhood and will not negatively impact to the area involved or otherwise detrimental to the public welfare.

ENGINEERING COMMENTS

No comment. Note that the Base Building Line was previously established at the interior easement line of 87th Court North by Waiver dated March 19, 1999. (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)
2. By May 20, 2000, the property owner shall obtain the building permit for the proposed private stable. (DATE:

MONITORING-Bldg)

3. The subject property owner is permitted for boarding for up to four horses not owned by the owner or occupant of the premises. (ON-GOING)

CHAIR PERSON KONYK: Next item on consent is BofA 99-00029.

Is the applicant present?

MR. MARATEA: Here.

MR. MacGILLIS: I did receive -- I believe the next door neighbor on lot forty-eight adjacent to this property is here. Shirley. I'm not sure how to pronounce the last name. She lives on lot forty-eight, the lot to the south of this. And she opposes this.

I believe there's some other people in the audience.

I don't know --

CHAIR PERSON KONYK: Okay. Well, let's do this. There's one condition. Did you understand and agree with those conditions?

MR. MARATEA: Yes.

CHAIR PERSON KONYK: Do you have any letters?

MR. MacGILLIS: Yes. One, two, three, four, five, six, seven -- several of them -- six of them had no concern. And the next door neighbor did oppose it.

CHAIR PERSON KONYK: Is there anyone here to speak on this item?

MS. PUDOLNICK: I oppose. I'm the next door neighbor. The last name is Pudolnick.

CHAIR PERSON KONYK: Okay. Well, this item will have to be pulled from the consent. We'll have to have a full hearing.

Next item on consent -- it will be re-ordered to the first item on the regular agenda -- BofA 99-00030, James Ostrom and Marcia Steele, to allow proposed swimming pool to encroach into the required side interior setback.

Is the applicant present?

MR. OSTROM: Yes.

CHAIR PERSON KONYK: Your name for the record?

MR. OSTROM: James Ostrom.

CHAIR PERSON KONYK: Staff has recommended two conditions.

Do you understand and agree with those conditions?

MR. OSTROM: Yes, we do.

CHAIR PERSON KONYK: Do you have any letters on this one?

MR. MacGILLIS: We had two, one opposed and Evelyn Albanzanz, 4061 Nova Lane. No reason why.

The other one approved it, McIntosh, Jessie and Sharon. That's 6607.

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

(No response.)

CHAIR PERSON KONYK: Any board member feel this item

requires a full hearing?

(No response.)

CHAIR PERSON KONYK: Seeing none, your 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 subject lot is located at 6599 Lawrence Woods Ct. within the Lawrence Woods PUD, in the RS Zoning District (Pet. 83-034). The lot has an irregular configuration, bounded by a 39' circular front property line, 117.53' rear property line, 92.52' east side property line and 129.21' west side property line which is situated at approximately 45 degree angle. As stated previously, the existing L-shaped single family residence setbacks 16.7 feet from the subject rear property line. However, due to the existence of the 12' utility easement along the rear property line, it leaves only 4.7-foot-deep rear yard for the proposed swimming pool which apparently is impractical to construct a regular 15'X30' swimming pool in the rear yard. Therefore, the property owners are proposing a swimming pool in the west side yard in order to construct a 10'X30' swimming pool.

The existing six-foot high wooden fence would mitigate certain visual and aural impacts from the subject swimming pool.

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

NO. The unique lot configuration and 12-foot-deep utility easement along the rear property line do exist and restrict the placement of the proposed pool in the rear of the subject property. The property owners have limited design options on site to meet the pool setback requirements while sites a pool on the property to best function with the existing single family residence. Therefore, the property owners are proposing to construct the pool in the side yard in order to promote the quality of life.

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 special privileges upon the property that other parcels in the same zoning district that would be denied.

Swimming pool is a typical recreational amenity in Florida

and is permitted in the zoning district in which the subject lot is situated. Allowing the property owners to construct a pool is in keeping with the residential character of the surrounding neighborhood. As previously indicated, the property owners are restricted to alternative site locations for the pool since the existing utility easement restricts the placement to the rear of the lot. To locate the pool to the west side yard is the only practical choice to 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 of the provisions of the ULDC would deprive the applicants of rights commonly enjoyed by other parcels of land in the same district. The intent of the setback is to ensure a minimum separation, privacy and compatibilities of uses. As indicated earlier, the interior side setback encroachment would affect the adjacent property to the west. The most affected area by the encroachment is the southeast corner of the adjacent residence where inside are a master bathroom and a walk-in closet. The master bedroom and the living room are located further beyond that corner and setbacks are at least 21 feet from the subject swimming pool. In addition, there is an existing 6-foot-high fence along the side property line so that certain visual and aural impacts associated with the proposed pool would be screened and mitigated. Therefore, there is a sufficient separation between the proposed swimming pool and the adjacent property. Allowing the pool to be constructed in the side yard with certain setback encroachment will not impose any adverse impacts on the adjoining property. If the variance is denied, it would work an unnecessary and undue hardship to the property owners.

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. Due to the irregular lot configuration and the 12' utility easement along the rear property line, the property owners are limited in design options and do not have alternative design options that would further reduce the variance request or eliminate the variance. To construct the pool in the west side yard is the only practical choice for the applicants.

On the subject property exists a 6-foot high privacy fence along the side property line. This would mitigate certain visual and aural impacts associated with the proposed swimming pool on the subject property. Furthermore, the majority of the proposed pool would face towards the rear yard of the adjacent property. The separation between the neighboring bedrooms & the living room and the subject swimming pool is at least 21 feet. These would further minimize any negative impacts from the proposed swimming pool.

Therefore, the requested variance is the minimum variance that will allow a reasonable use of 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 request complies with the interests of the ULDC which are to ensure a minimum interior side setback separation between the proposed swimming pool and the adjacent property. As previously indicated, the variance will not have negative impacts on the adjoining property to the west. The proposed swimming pool will be in harmony with the residential character of the neighborhood and will not detract from the area. The existing 6-foot-high fence along the side property line will mitigate the impacts from the proposed pool.

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

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

NO. There would be sufficient separation between the proposed swimming pool and the adjacent living areas to the west. Two of the three bedrooms in the adjacent residence are located in the front of the building. the master bedroom and the living room are located at least 18 feet from the side property line and further stay a minimum of 21 feet away from the proposed swimming pool on the subject property. The majority of the proposed pool would face the rear yard of the neighboring property. In addition, the existing 6-foot-high wooden fence would mitigate the interior side setback encroachment of the proposed swimming pool.

The requirement for minimum separation, privacy and compatibilities of uses as related to the proposed swimming pool would be satisfied. Therefore, granting this variance will not be injurious or otherwise detrimental to the public welfare. Instead, the request is compatible with the surrounding uses of the area and approving of the variance will contribute to the promotion of the applicant's quality of life.

ENGINEERING COMMENTS

1. Lot grading between the pool and the adjacent property line must not obstruct drainage flow from the rear yard to the street within the limits of the lot boundaries. (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)

2. By June 20, 1999, the BA Zoning staff shall ensure the certified site plan has a notation on lot 16 indicating the approved interior side setbacks for the swimming pool
(DATE:MONITORING-ZONING-BA)

CHAIR PERSON KONYK: Next item on consent is BofA 99-00031. Rendel and Dahlia Forbes, to allow an existing nonconforming structure that's to be renovated to encroach into the required front and side interior setback and to renovate this nonconforming structure.

MR. MacGILLIS: There's just two modifications. On page one seventy-three, the box at the top where -- the last variance request showing it's required a front setback of fifty. It should be proposed twenty-eight. The engineering comment, because of the base building line changes what's proposed. And the variance, then, will be for twenty-two feet. Staff still supports this.

The only other change is on page one seventy-eight, in condition number two, the last sentence, where it says (b) install a thirty-six-inch high hedge on the inside of the -- it should read fence instead of wall.

MR. EXLINE: For the record, Jim Exline, principal, Urban Land Consultant.

CHAIR PERSON KONYK: Thank you.

MR. EXLINE: We do agree with the conditions.

CHAIR PERSON KONYK: There's five conditions, and you agree with those five conditions?

MR. EXLINE: Yes.

CHAIR PERSON KONYK: And none of the conditions have changed because of the --

MR. MacGILLIS: No.

CHAIR PERSON KONYK: -- things you pointed out? Is there any letters on this?

MR. MacGILLIS: There were no letters.

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

(No response.)

CHAIR PERSON KONYK: Seeing none -- oh, any board member feel this item warrants a full hearing?

(No response.)

CHAIR PERSON KONYK: Seeing none, this item remains 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. This .76 acre legal nonconforming CG-general commercial lot is located along the west side of Congress Avenue between Westgate Avenue and Okeechobee Blvd. The general auto repair use on the site has existed since 1959 with two of the existing structures were constructed. In 1971 two additions were made to the structures to create the L-shaped building that currently exists along the south portion of the site. The use has been in continued operation since 1959 and is considered a legal nonconforming use. The ULDC currently requires a conditional use A, for general repair in the CG zoning district. This use is grandfathered and can continue to operate provided any renovations and expansions are in compliance with the current regulations for this use as found in Article 6.4.D. 77, repairs and maintenance-general. The applicant was cited in 1995, a year after purchasing the property for illegal repairs and storage outdoors, constructing a canopy without valid building permits. The current property owner would like to bring the site into compliance with the zoning regulations. The granting of the three requested variances which are all related to the existing center portion of the existing building will allow the owner to comply with code.

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

NO. The applicants' client purchased the property in May, 1995 assuming the business was operating consistent with all applicable county regulations. A year after purchasing the property he was cited by Code Enforcement.

He has been in contact with the Zoning Director and staff to explore ways to resolve the outstanding violations and bring the property into compliance. The outdoor repair and storage are the major issues that must be addressed.

In order to relocate the repairs and storage indoors the applicant must raise the roof of the existing building. This will allow the lift that is currently located on the west side of the building to be relocated indoors. This will then allow the canopy that currently covers the lift for protection to be removed, since it was constructed without without a permit. The removal of the outdoor activity and storage will also ensure the RH property to the west of this property is protected and not impacted by noise associated with this activity.

Therefore, the current property owner inherited many of the violations on this property when he purchased it in 1995. He has hired an architect to design plans to renovate the existing building to support the lift that is currently outdoors. The applicant has been working in good faith with the county staff to find a design solution to this situation.

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 use has existed at this location since 1959, one year after the adoption of the first zoning code. At the

time the business was operating according to the regulations in affect. However, over the years the repair activities and storage have moved outside along the west side of the property. The use is grandfathered to operate general repair on this location. However, it is not vested for outdoor repair and storage. In addition, the canopy illegally constructed on the west side of the L-shaped building must be removed. The current property owner inherited these violations and is working toward resolving them. The variances are all related to an existing non-conforming structure. The structure is non-conforming with respect to setbacks. The building is currently legal non-conforming, however, the proposed modifications to raise the roof 4 feet will result in the loss of this status. Any renovations up to 30 percent warrant other on-site non-conformities being brought into compliance with current code.

Therefore, in this particular situation, the applicant is simply raising the existing roof 4 feet on the center portion of the existing building. This will accommodate the lift that is currently located outdoors and assist the property owner in bringing this site into compliance with the original "grand fathered" status of this project.

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 minimal variances that will allow this property to be brought into compliance with the original grandfathered status. The use has existed on this site since 1959 and is legal non-conforming. The property owner is proposing to modify the existing building in order to relocate outdoor repair that currently is being done illegally on the west side of the building. The current property owner inherited this situation when he purchased the property in May 1995. He has been working with the County staff to find a resolution to this situation by applying for variances, renovating the existing building to accommodate the outdoor activity and storage inside and removing illegally constructed canopy for the site. The requested variances will simply allow the roof on this existing legal non-conforming building to be raised 4 feet. If the applicant could apply to the BCC for a conditional use and legalize this use he would have more design options rather than having to seek variance relief. However, as previously stated, a variance cannot be granted for the distance criteria that repairs must be 100 feet from a residentially zoned property.

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 three variances are minor in nature and will allow this use to come into compliance. It will also ensure the current outdoor repair and storage will be moved indoors. The existing building facades or footprint

will not be modified, only the roof will be raised 4 feet.

Therefore, the variances to modify a non-conforming building are minor in nature and will have no visual impact on motorist traveling along Congress Avenue. Staff is recommending a condition that landscaping be installed along Congress Avenue that was required when this use was permitted in 1959 and expanded in 1971. The right-of-way buffer of 5 feet currently exists along Congress Avenue therefore only the trees and hedges need to be installed.

This will greatly improve the overall appearance of this property from Congress avenue. Along the west property line there is currently a five-foot fence and overgrown shrubs. Staff recommends that required native trees be installed along this property line to buffer this use from the residential zoned property to the west.

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

YES. The requested variances will allow this existing legal non-conforming use to continue provided the repairs and storage are moved indoors. It will also encourage the property owner to landscape this use along Congress Avenue and the west property line where the greatest impact to this use is felt by motorists and residents. Staff recommends the landscaping that is required for this site that has died and been removed over the years be reinstalled. Staff is not recommending any on-site landscaping other than the perimeter of this site so not to interfere the existing circulation flow and pavement.

Therefore, the perimeter landscaping is critical.

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 variance will bring this site into compliance with the regulations that were in affect when this project was approved. There is no conditional use on this property, which would be required if someone was establishing this as a new use on this property. However, the use is grandfathered and must not expand beyond the original approval. The previous owner had expanded the use outdoors which is currently in violation with code enforcement. The granting of the three requested variances will allow the property owner to make the necessary modifications to the site and lessen the impact of the use along Congress Avenue and the residential zoned properties to the west.

ENGINEERING COMMENTS

The requirement that the Base building Line for the east side (i.e. front) of the subject property be forty feet beyond the existing right-of-way of Congress Avenue is hereby waived in part.

Said Base Building Line is hereby established at twelve feet west from the existing west right-of-way line, being also twelve feet west from the east property line of the subject property.

Note that the requested setback (as measured from the

established Base Building Line) is 28 feet, not 40 feet as stated in the variance request.

ZONING CONDITIONS

1. By October 20, 1999, the applicant shall apply to the Building Division for a building permit to raise the roof 4 feet for the center portion of the existing L-shaped building on the south portion of the site. The applicant shall provide the Building division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan Exhibit 9 (as found in BA99-31). (DATE: MONITORING-BLDG PERMIT)
2. By October 20, 1999, or issuance of the certificate of completion for the renovation the building on-site, which ever occurs first, install the following perimeter landscaping: East property line (along Congress Avenue) a: Install 14 foot native canopy trees or cabbage palms 30 feet on-center b: Install a 36 inch native high hedge along the outside of the existing chain link fence. If there is not sufficient room to accommodate the hedge on the outside of the fence it may be installed on the side. West property line (adjacent to residential) a: Install 12 foot high native canopy trees or cabbage palms 30 feet on center b: Install a 36 inch high native hedge on the inside of the wall. (DATE:MONITORING-CO-INSPECT)
3. By December 20, 1999, the applicant shall contact the Zoning Division to request a site inspection to determine that the landscaping is installed per condition of approval and all outdoor repair and illegal structures are removed from the site. (DATE:MONITORING-ZONING-BA)
4. This variance for setback applies only to the center portion of the existing L-shaped building that is to be raised 4 feet to accommodate the lifts that are currently located along the west side of the building. (DATE:MONITORING-ONGOING)
5. The renovations to the building shall not exceed \$59,220, pursuant to Article 1.8.D.3 of the ULDC. (BLDG:permit)

CHAIR PERSON KONYK: Next item is Board of Adjustment time extension 99-00032, E. Halperin, Agent for Packer Family Limited Partnership, to allow for a twelve-month time extension for the variance development order granted May 21, 1998.

Is the applicant present?

MS. HALPERIN: Yes. Eleanor Halperin, for the applicant.

CHAIR PERSON KONYK: Do you agree with the three conditions staff has recommended?

MS. HALPERIN: Yes.

CHAIR PERSON KONYK: And you also understand them?

MS. HALPERIN: Yes.

CHAIR PERSON KONYK: There's no letters on this?

MR. MacGILLIS: No. Letters.

CHAIR PERSON KONYK: No public.

Any board member feel that this item does not warrant a time extension?

(No response.)

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

Next item on consent is BofA 99-00033, B.W. Simpkins and F.A. Sheriff and Pedro Bello and Ernesto Bello as Trustees, to allow a reduction in the required width of the right-of-way buffers along Haverhill and Okeechobee.

Is the applicant present?

(No response.)

CHAIR PERSON KONYK: No applicant?

MR. MacGILLIS: We did send a copy of the staff report. He did respond that he agreed with the conditions on the phone.

Condition number two, he requested that be deleted because it doesn't apply because this petition will not be required to go through the DRC committee because it's less than the threshold.

CHAIR PERSON KONYK: So do you agree that that condition be deleted?

MR. MacGILLIS: Yes.

CHAIR PERSON KONYK: Then there's two conditions instead of three?

MR. MacGILLIS: Right.

CHAIR PERSON KONYK: Do you have any letters on this item?

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: And you're sure that the applicant understands and agrees with the conditions?

MR. MacGILLIS: Yes.

CHAIR PERSON KONYK: So this item can remain on consent even though they're not present?

MR. BASEHART: Madam chairman, I just want to question it. I have a business relationship with the -- not the applicants but the person representing them. I, obviously, wasn't involved in this application.

Do I need to abstain from this or --

MS. BEEBE: What sort of business relationship?

MR. BASEHART: Well, I've represented him on zoning petitions.

MS. BEEBE: The person that's representing the applicant?

MR. BASEHART: Right.

I believe the applicant -- the person representing the applicant is with a company called the Barclay Group and --

MS. BEEBE: Did you get any special private gain or loss from the application?

MR. BASEHART: No.

MS. BEEBE: You don't need to.

MR. BASEHART: Okay.

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 1.59 acre site currently supports two structures that the applicant will demolish in order to construct a new 103' by 135' (13,905 sq. ft.) Walgreens.

The site will support 73 parking spaces in addition to stacking along the east property line to accommodate the drive thru window. The site plan meets all code requirements with the exception of the buffer width. The applicant states it was his clients intent to meet all requirements and not apply for variances. However, the ULDC landscape code was amended in October, 1998, to require foundation planting along structures. Since the site had already been planned by Walgreens, but not approved by the County this requirement must be met. The applicant states that Walgreens has made every attempt to shift the site elements in order to comply with code. However, the buffer widths cannot be accommodated and a variance is required. The general intent of the right-of-way buffers will be satisfied. The required plant material that would have been required in the 20 foot wide buffer will be installed; furthermore staff is recommending that size of the plant material be upgraded to mitigate the buffer reductions.

Therefore, there are unique characteristics to this property, existing structures and proposed use of this property that warrant special consideration when reviewing the literal interpretation of this code provision as it applies to this site.

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

NO. The applicant's client has made every attempt to eliminate the need for variances. The site was originally site planned in 1998 to comply with all code requirements.

However, when the landscape code was amended in October 1998 the new requirements had to be applied to this site since DRC certification was not secured to vest the project under prior regulations. The applicant has tried to redesign the site to accommodate the most recent changes to the landscape code, however, due to the specific use requirements in terms of circulation, parking, stacking, the buffer cannot be met.

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 located along Okeechobee Blvd.,

which is a major commercial corridor, have applied for and been granted variances from landscape buffer widths. Many properties located along this corridor were developed 50 or more years ago and are currently non-conforming in terms of lot size, structures in setbacks and site elements (parking, landscape, loading, etc.) There has been a movement over the past five years, since Okeechobee Blvd has been widened, to redevelop these properties and bring them into compliance to the greatest extent possible with current regulations. Many lots are being recombined to create conforming lots and non-conforming uses and structures are being demolished and replaced with permitted uses. The applicant is proposing to demolish the current gas station/tire store uses and structures on this site and the new site layout will be in compliance with current regulations. The board of County Commission encourages the redevelopment of properties located in the eastern portions of the county. The ULDC does not currently have regulations that encourage a property owner to redevelop or infill an existing site.

Therefore, granting this variance to reduce the width of the required right-of-way buffers will not grant 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 proposing to redevelop this site that currently supports a minor non-conforming use. The service station would require a conditional use A in the CG zoning district. This use has existed for many years at this site and is therefore considered minor non-conforming use. The site also supports many non-conformities in terms of code requirements. The proposed redevelopment of this site to a conforming use will also eliminate these terms of code requirements. The proposed redevelopment of this site to a conforming use will also eliminate these existing non-conformities. There is currently no landscaping along the rights-of-way for this gas station or those on the other three intersections. The proposed use, a Walgreens store. The redevelopment of existing sites places unique design constraints on the planner. However, in this particular situation the applicant has purchased enough land area to comply with all code requirements with the exception of the buffer width. The reduced buffer width can be mitigated with the increase in caliber size of the trees and hedge material upon planting. The applicant is also proposing to install landscaping in the parking lot and foundation of the structure which will further improve the visual appearance of this site for users and motorists viewing the site from the right-of-way.

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 is proposing a Walgreen's store that

is permitted in the General Commercial zoning district with development review committee DRC approval. If the variance is approved, the applicant will be required to receive DRC certification. The right-of-way buffer reduction is minor and if granted will not circumvent the intent of the landscape code. The applicant is proposing to install the required plant material in the remaining buffer width. Staff is recommending a condition of approval that the plant material size be upgraded to ensure the general intent of the code is satisfied. The upgrade size on the trees and hedge will allow the applicant to meet the general intent of the right-of-way buffer requirement.

Therefore, the granting of this landscape buffer reduction will allow the applicant the ability to move forward to redevelop this 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 intent of the comp plan is to ensure that high commercial uses are located along major commercial corridors in the county. In this particular situation the site is located at the southwest intersection of Haverhill Road and Okeechobee Boulevard. Many properties along Okeechobee blvd., have been redeveloped in the past several years thereby eliminating illegal and non-conforming uses/structures. The proposed site plan complies with all code requirements with the exception of the landscape right-of-way buffer widths. The intent of a 20 foot wide landscape buffer along rights-of-way 100 feet in width or greater is to ensure visual continuity along the street. It also ensures adequate planting area to support the required trees and shrubs. The applicant is requesting only a minor reduction in the width of the two rights-of-way buffers and intends to plant all the required landscape material. Staff is recommending a condition of approval that the landscape (trees and shrubs) be increased in size to ensure the intent of the buffer landscaping meets the general intent of the code.

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

NO. The proposed improvements to this site will greatly enhance the overall appearance of this site. It will also bring the site into compliance with current regulations.

The landscape buffer width variance is minimal and with the condition of approval to upgrade the plant material size the general intent of the code will be met and granting the variances will not be injurious to the public welfare.

ENGINEERING COMMENTS

The requirement that the Base Building Lines for the north and east sides of the subject property be forty (40) feet beyond the existing right-of-way lines of Okeechobee Boulevard and Haverhill Road, respectively, is hereby waived. Said Base

Building Lines are hereby established at the existing right-of-way lines, being the existing north and east property lines of the subject property.

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)
2. Prior to DRC certification, the applicant shall ensure the BOFA conditions are shown on the site plan. (DRC:ZONING)
3. Prior to final certificate of occupancy for the Walgreens store or by May 20, 2000, which ever occurs first, the applicant shall upgrade the size of the trees and shrubs along both Haverhill Road and Okeechobee Blvd. as follows:
 - A. Trees shall be upgraded to 20 feet on center, if palms are to be used the applicant shall be required to plant three palms for each shade tree.
 - B. Hedges shall be upgraded to 36 inches in height.

All plant material above shall be number 1 Florida Plant Material and native. (DATE:MONITORING-CO-INSP)

CHAIR PERSON KONYK: Next item on consent is BofA 99-00034, Niel O'Neal and Juanita O'Neal, to allow a proposed accessory garage to encroach more than twenty-five percent of the distance between property lines.

Is the applicant present?

MR. O'NEAL: Yes.

CHAIR PERSON KONYK: Your name, for the record.

MR. O'NEAL: Niel O'Neal.

CHAIR PERSON KONYK: Staff has recommended three conditions.

Do you understand and agree with those conditions?

MR. O'NEAL: Yes, I do.

CHAIR PERSON KONYK: Any letters?

MR. MacGILLIS: Four letters. Two opposing it, do not wish property value to be lowered, from a Mr. Melpern McCarty. And the second letter is also for opposition. I want to keep the residential area -- I do not want a garage at this location.

And the other two are in favor. They had no reason why.

CHAIR PERSON KONYK: Are they significant enough that we need to pull this item?

MR. MacGILLIS: Not in staff's opinion.

CHAIR PERSON KONYK: Okay. Is 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. This .5 acre conforming RS lot is located in an antiquated subdivision. This corner lot abuts a 130 foot wide canal to the east. The lot currently supports a single family residence, detached garage, pool, and shed.

The applicant will demolish the garage to allow for the construction of the new garage that will house the cars he purchased as a hobby. The small shed along the east property line, which does not have a permit, will also be relocated and permitted, according to the applicant. The applicant proposes to construct a garage for his vehicles and submitted a permit to the building division that met the required setbacks. He learned that accessory structures cannot occupy more than 25% of the land area between property lines. The applicant has re-orientated the structure to bring the structure more in conformance with the ULDC code provision, however, in order to have enough storage area for his vehicles a variance is required.

The canal to the east of the lot will mitigate the variance along this property line. While along the south property line, currently exists a nonconforming garage on this property. The garage currently encroaches the rear setback. The applicant will demolish this structure, thereby decreasing a nonconformity on this property. If one considers the length of the wall of the existing structure (26 feet) and the proposed wall of the new garage (40), the additional wall length is only 14 feet.

The proposed garage will meet the established 15 foot setbacks and staff is recommending a condition of approval to install a hedge along the south property line and trees along the west property line to mitigate the impact of the structure has on lot to the south and Caroline Drive to the west.

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

NO. Other lots in the neighborhood have accessory structures to store vehicles and tools. The applicant is proposing to demolish an existing nonconforming garage which is encroaching into the required setbacks. The

proposed garage will comply with setbacks. The variance amount is minimal and if granted will still meet the

general intent of the code. The applicant proposes to store his vehicles he collects as a hobby indoors and out of view from the adjacent properties and streets. This will allow the applicant the best use of his property while at the same time not impacting the neighbors by having vehicles parking outside on the property.

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 Comp Plan and ULDC encourages regulations that provide the best standard of living of individuals while protecting property owners rights and land values. The applicant has a property that supports several non-conforming structures that he is demolishing and replace with a new garage that will allow the vehicles he collects to be stored indoors. The code allows for accessory structures on a residential lot provide they comply with setbacks and height requirement. The ULDC provision the applicant cannot comply with is that an accessory structure shall not occupy more than 25% of the land area between property lines. The general intent of this provision is to discourage a property owner from constructing a structure with a wall that runs along the entire property line. By limiting the accessory structure from not occupying more than 25% you ensure that the remaining 75% of land area is open to allow for air and light to pass between properties. However, in this particular situation the applicant is proposing 30% (5% more than code) and 36% (11% more than code) encroachment. There will still be adequate open space to allow for air and light to pass between properties, therefore, the intent of the code can be complied with by 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. Other properties in PBC have accessory structures that do not comply with this code provision. Many structures constructed prior to 1992, when this code provision was adopted, were permitted to occupy as much of the land area between property lines as they could, provided the setbacks were met. However, this is a new structure and must comply with this code requirement. The applicant states that due to the location of existing structures on the property and access to the garage from Caroline Drive design options are limited to avoid the necessity for a variance. The fact there is a 130' wide LWDD canal to the east the encroachment of this property line will be mitigated. The request to construct the garage wall at 30% along the south property line can also be mitigated with landscape. Staff is recommending a condition of approval to install hedge and/or shade trees along the south and west property line to partially screen the structure from lot 19 to the south and Caroline Drive to the west.

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 currently has a nonconforming garage and shed on the property. Both these structures will be demolished or relocated and replaced with the new garage.

The garage will be used for storage of vehicles the applicant purchases for a hobby. It will ensure a safe shelter for the vehicles and allow the applicant to pursue his hobby indoors and not disturb surrounding residents.

Therefore, the requested variances to allow the walls of a proposed accessory structure to encroach 36% along the south and 30% along the east property line will be minimal and meet the general intent of the code.

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 ULDC code provision is to ensure accessory structures when constructed on residential lots do not extend along the entire length of the property line. The ULDC permits only 25% of the wall to extend along the land area between property lines. This will allow 75% openness for air and light to travel between the properties. However, the applicant is only requesting to deviate from this requirement by the minimal that will allow the garage to be constructed where it is proposed.

The garage is needed to store cars the applicant purchases for a hobby. By keeping the vehicles indoors the visual impact on the neighborhood is reduced.

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

NO. There are other properties in this residential neighborhood that have accessory structures that were permitted or are legal non-conforming that do not comply with this code requirement that was adopted in 1992. The only lot owner affected would be lot 19 to the south. Staff is recommending a condition of approval that trees be installed along this property line and along Caroline Drive to partially screen this accessory structure from lot 19 and the street.

Therefore, considering the minimal amount of the variance and the conditions of approval, recommended by staff, the two variances, if granted, will not be injurious to the surrounding area.

ENGINEERING COMMENTS

No Comment (ENG)

ZONING CONDITIONS

1. By June 20, 1999, the property owner shall provide the Building Division, Intake Section, with a copy of the Board of Adjustment result letter and a copy of the Site Plan in order

for PR998806 to be processed for the accessory shed.
(DATE:MONITORING-BLDG INTAKE)

2. By July 20, 1999, the applicant shall relocate the 8.2 by 8.2 foot, along the east property line, out of the setback and obtain a building permit (DATE:MONITORING-Code Enf/BUILD PERMIT)

3. By August 20, 1999 or issuance of the Certificate of Occupancy, whichever occurs first, for the 60 by 40 foot accessory structure, the applicant shall install a 3 foot high hedge along the south property line to mitigate the variance on lot 19 to the south. Also, the existing hedge along Caroline Drive shall be supplemented with three shade native shade trees planted at 14 feet in height. (DATE:MONITORING-CO-LANDSCAPE)

CHAIR PERSON KONYK: Next item on the consent is Board of Adjustment time extension 99-00035, BreFrank, Inc., to allow an eighteen-month time extension of BofA 98-034 approved on May 21, 1998.

Applicant's present?

MS. LINDSEY: Yes. Jean Lindsey.

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

MS. LINDSEY: Yes, we do.

MR. MacGILLIS: Just a minor modification to number three. Staff would like to add a new sentence to the end of that one, saying, future modifications to the parking configuration and layout shall be consistent with the BofA approval and final DRC certified site plan.

CHAIR PERSON KONYK: Do you understand and agree with that modification?

MS. LINDSEY: Yes, we do?

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

Any member of the public here to speak on this item?
(No response.)

CHAIR PERSON KONYK: Any board member feel this does not warrant a time extension?

(No response.)

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

What happened in May? Everybody in May wants a time extension.

CHAIR PERSON KONYK: Next item on consent BofA 99-00036, Leonard and Leslie London, to allow an existing pool and a proposed screen enclosure to encroach into the required side interior setback.

Applicant present?

MR. STARKEY: Yes.

CHAIR PERSON KONYK: Name for the record.

MR. STARKEY: Lee Starkey representing Mr. and Mrs. London.

CHAIR PERSON KONYK: Two conditions have been

proposed by staff.

Do you understand and agree with those conditions?

MR. STARKEY: 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.

MR. STARKEY: 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 lot is located at the north end of Old Bridge Trail within Phase 2 of the Boca Woods subdivision. The .36 acre lot is within a Planned Unit Development approved in 1983. The lot is located at the end of a cul-de-sac and abuts a golf course to the rear. To the east and west are existing single family residences. The lot supports an existing single family residence, constructed in 1982, by the original developer and swimming pool and patio which were constructed in 1983, (B83003934). The permit for the pool was issued by the PBC Building Division on February 23, 1983 and subsequently issued a certificate of occupancy on July 14, 1983. The pool was not constructed in the approved building permit; as a result the pool does not meet the minimum side setback (along east property line). As a consequence of the pool encroachment the proposed screened enclosure the property owner wishes to construct over the pool cannot be built without a variance.

therefore, there are circumstances that exist that are unique to this lot 13. It is on a cul-de-sac, is pie shaped, abuts a golf course to the rear, supports an existing single family dwelling pool. The applicant applied for a building permit for a screened enclosure only to discover the existing pool was in the side setback. In order to construct the screened enclosure to cover the pool and patio the enclosure has to also be constructed in the side interior setback.

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

NO. The current property owner purchased the property in December 1997. They assumed the existing single family

dwelling and pool was in the side interior setbacks after submitting in December 1998 for a building permit (PR98044181) for the screened enclosure to cover the pool and patio. The building application is on hold by the Building Division until the applicant obtains a variance for the pool and screen enclosure to also encroach the setback. The applicant cannot redesign the enclosure to comply with setbacks since it will not cover the existing pool or deck, if it does not encroach the east side interior setback.

Therefore, the applicant's client is having to correct the existing pool encroachment and apply for a variance for the screened enclosure to correct a situation that was created by the original pool company,

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 subject property is a legal conforming lot similar in size and shape to the other properties in the community. Several of the homes in the community support swimming pools, while the majority of them are screened.

All the lots were designed to abut the golf course to the rear. The views afforded by the openness of the golf course are enjoyed by all residences while sitting around the pool. The applicant has requested a variance that will allow a pool that has encroached the setback for over fifteen years to remain. Also, in order to design a screen enclosure to cover the pool and deck it can only be constructed to encroach the setbacks. The screen enclosure will allow the property owner to enjoy the use of the pool at all times of the year and day. Many residences in PBC have constructed screen enclosures around the pool to protect them from insects, elements and reduce maintenance. The encroachment of the screen enclosure will be 5 feet into the east side interior setback. The property to the east will not be impacted by this encroachment since their existing views of the golf course will not be affected by the construction of a screened enclosure on this lot.

Therefore, granting the variance will not confer upon the applicant special privileges denied to other parcels of land but would rather grant the applicants privileges currently enjoyed by other parcels in the same district.

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 applying for the two variances to legalize an existing pool that was constructed by the original developer and pool contractor. By granting the variances for the two side interior setbacks the applicants will have the right to enjoy their property in a manner that currently is enjoyed by the other residents in the community. By denying the variance would require

the pool to be filled in and their screen enclosure would not be permitted. Under these circumstances the denial would place an undue hardship on the applicants' rights.

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 for the existing pool is the minimum required to bring the pool into conformity with the side setback, which was the result of actions other than those of the applicants. The variance for the screen enclosure will be the minimum required to properly enclose the pool and provide adequate space for yard and pool maintenance.

Therefore, by approving the variance it will allow the applicants a reasonable use of the parcel of land.

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

YES. The pool has existed in its current location for over 15 years. Pools and screen enclosures are very common in this community, therefore the granting of this variance will have no negative impacts on the surrounding properties.

The property owner on lot 12, to the east of this lot, where the encroachments will occur would be the only one affected and has offered no objection to the variance. The existing views onto the golf course from both residences will be maintained even after the granting of the variance. The intent of the side interior setbacks for pools and screen enclosures is to maintain a minimum separation between property lines and structures. The distance of 2.5 feet that will remain after the enclosure is constructed will be adequate to ensure the property owner can maintain the enclosure from his property. It will also allow air and light to travel between the two properties.

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. The configuration of the lot is such that it prevents any visual impacts from the street or the lot 12 to the east. The rear of the subject property abuts several acres of golf course and open space areas which will not be encroached upon or visually impacted by the construction of the enclosure. With respect to the owner of lot 12; he has raised no objections to the variance requests. It is staff's finding that the screen enclosure will not obstruct any views of the golf course to the rear of this lot.

ENGINEERING COMMENT

No Comment.

ZONING CONDITIONS

1. By February 20, 2000, the applicant shall provide the Building Division with a copy of the Board of Adjustment result letter and a copy of the Site Plan, in order for PR98044181, to be reviewed and permitted for the screen enclosure (DATE:MONITORING-BLDG PERMIT)

2. By September 20, 1999, the applicant shall revise the existing building permit, B83003934, by submitting a copy of the current survey and a copy of the Board of Adjustment Result letter, to the Building Division, to reflect the side interior (east property line) variance for the existing swimming pool. (DATE:MONITORING-BLDG INSP)

CHAIR PERSON KONYK: Next item is BofA 99-00037, Randy Oblow, to allow a SFD under construction to encroach into the required front setback.

Applicant present?

MS. OBLow: Yes.

CHAIR PERSON KONYK: Name for the record.

MS. OBLow: Sheree Oblow.

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

MS. OBLow: Yes, we do.

CHAIR PERSON KONYK: Any letters?

MR. MacGILLIS: One letter for approval. No name.

CHAIR PERSON KONYK: Okay. 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 legal non-conforming site, 1.98 acres lot currently supports the construction of a new 3,222 square foot single family residence (B98031862). The lot is located at 16031 East Preakness Dr., approximately .4 miles east of Seminole Pratt Whitney Rd. and N. of East

Preakness Dr. within the Royal Ascott Estates subdivision, in the AR zoning district. The lot is surrounded by mature native vegetation. The property adjacent to the subject front property line is currently vacant and supports mature native vegetation, such as pine trees. The front setback complies with the ULDC requirement as measured from the exterior wall of the main residence. As measured from the front bay window and front covered porch, front setback encroachments occur. As previously indicated, on March 4, 1999, the applicant was granted approval of an Administrative Variance for a requested front setback encroachment measured from the front bay window (AVSI 9900008). The approved variance was 2.92 feet (4.4%) which allowed 62.47 feet front setback as opposed to the required 65.4 feet by the ULDC. This application is requesting a larger variance relief because the proposed front porch extends two more feet into the front property line resulting in two more feet of front setback encroachment. Therefore, a total of five feet of front setback encroachment is requested in this application in order to construct a front porch as originally planned.

There is an existing 30' road and drainage easement along the subject front property line. The required setback is measured from the interior easement line. The proposed front porch is designed to be open on three sides which would impose much less the impacts on the adjacent property than fully-enclosed structures.

Additionally, the applicant hired a professional land clearing company to build a house pad thinking that the job would have been done properly. Since knowing the occurrence of the front setback encroachment, the applicant has proceeded in good faith with the variance requests in order to satisfy the code requirements. As previously indicated, the variance in this application is caused by the improper location of the house pad which was built by a professional company.

The applicant also indicated that the trusses for the front porch have been made, paid for and are on the job.

If the variance is denied, it would place a financial burden onto the applicant to pay for the replacements.

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

NO. The requested front setback encroachment is caused by the incorrect house pad location built by a professional Land Clearing Company hired by the applicant. As indicated by the application in the justification, the applicant wants to have the job done according to the approved plans and assumed that the company he hired is professional and would have performed the job properly.

Therefore, the requested front setback encroachment is not the result of the actions of the applicant.

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 granting of the variance will confer no special privilege on the applicant. The lot is under a construction for a single family detached dwelling which is similar to the other residences in the same district.

The front covered porch where the requested front setback encroachment occurs is permitted in the AR zoning district and is a typical element for a single family vernacular Florida home. Allowing the property owner to construct a front porch is in keeping with the rural residential character of the surrounding neighborhood.

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 intent of the setback is to ensure a minimum separation, privacy and compatibilities of uses. A literal interpretation of the provisions of the ULDC would deprive the property owner of rights commonly enjoyed by other residents in the same district.

As previously indicated, there is a 60-foot-wide dirt road between the subject residence and the adjacent property to the front. Beyond the interior easement line is another 60.47 foot distance to the proposed front porch. The separation between the proposed front covered porch and the most affected property to the south is sufficient. In addition, the existing mature native vegetation on that affected lot provides a mature buffer of native vegetation to mitigate any negative impacts associated with the requested front setback encroachment.

The front porch that the applicant plans to construct is a typical element of vernacular single family residences in Florida and is compatible with uses in the surrounding areas. The porch will be open on three sides which lessens the volume effect as compared to the fully-enclosed structures. About 3 feet out of the 5 feet of the requested encroachment was previously approved under an administrative variance.

Therefore, granting this variance will not only allow the applicant to improve the quality of life by having an outdoor covered seating area as commonly enjoyed by the neighboring residents in the same district but also maintain the subject residence for uniformity along the street. The general intent of the front setback which is to ensure a minimum separation between the subject residence and the adjacent property is also satisfied.

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 request variance is 5 feet. (60.47' vs. the required 65.4') on March 4, 1999, the applicant was granted an administrative variance for the subject residence for a 2.92' front setback encroachment as

measured from the bay window. The additional variance requested in this application is 2.08 feet which is the minimum necessary to allow the applicant to construct an open covered porch as originally planned.

Therefore, the approval of the requested variance is the minimum variance that will allow a reasonable use of the subject property.

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

YES. The goal of the Comprehensive Plan is to encourage residential communities to provide the user with a high quality of life. The ULDC establishes setbacks for the various zoning districts to ensure the general character of the community and compatibility of uses.

As indicated earlier, granting of the requested variance will allow the applicant to construct a covered front porch for promotion and enjoyment of the quality of life.

The subject residence is also in uniformity with the surrounding rural single family neighborhoods. Therefore, granting the variance will be consistent with both the Comprehensive Plan and the ULDC.

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

NO. The adjacent lot to the front of the subject property is currently vacant and supports mature stands of native vegetation which would mitigate the impacts associated with the requested front setback encroachment. The subject lot is also surrounded by mature native trees on the other sides. Additionally, there is an existing 30' road and drainage easement between the interior easement line and the subject front property line, which provides more separation between two adjacent uses.

Therefore, granting the requested variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

ENGINEERING COMMENTS

No comments (ENG)

ZONING CONDITIONS

1. By June 20, 1999, the applicant shall provide the Building Division with a copy of the Board of Adjustment result letter and a copy of the Site Plan, Exhibit 9, in order for B98031862 to receive a final Certificate of Occupancy.
(DATE:MONITORING-BLDG PERMIT/CO)

2. By July 20, 1999, the applicant shall submit a letter to the Zoning Division requesting the administrative variance AUSI9900008 be administratively abandoned.
(DATE:MONITORING-ZONING/BA)

3. By June 20, 1999, the building permit application (B98031862), shall be amended to reflect the approved front setback. (DATE:MONITORING-BLDG/Permit)

CHAIR PERSON KONYK: Next item on consent is BofA 99-00039, Nelson and Gloria Obregon, to allow for an existing type 1B pond to encroach into the side interior and corner setbacks.

Is the applicant present?

MS. OBREGON: Yes, ma'am.

CHAIR PERSON KONYK: Name for the record?

MS. OBREGON: C. Gloria Obregon.

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

MS. OBREGON: Agreed.

CHAIR PERSON KONYK: Any letters?

MR. MacGILLIS: One letter for approval from Tim Culison.

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

Whoever's speaking out there needs to be quite. We're trying to conduct a meeting here.

Any member of the public here 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 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 five acre lot is located within the homeland subdivision. This is a rural subdivision west of 441 in the AR zoning district. This rural residential subdivision has had to handle on-site drainage problems over the past 20 years. Many of the lots within this subdivision either abut onto a canal or have a pond to help address on-site drainage. This particular lot is pie shaped with streets on three sides,. The lot supports a single family dwelling that is under construction by the applicant. When the application proposed a pond on the

property they were informed that it would require DRC approval for a Type 1B excavation. This type of excavation is accessory to developing a lot in conjunction with a building permit. The pond size, depth and setbacks for a Type 1B are larger than that of a Type 1A. The Type 1A excavation is also in conjunction with a building permit, however, the size of the pond is limited to the minimum fill necessary for a building pad. No fill can be removed from the property under a Type 1A, while up to 10% can be removed for a Type 1B. The pond on this property was excavated with the setbacks for a Type 1A. Therefore, the pond is in the required 30 foot setbacks by 15 feet.

The applicant is requesting two setback variances to allow the pond to remain in the present configuration without costly modifications. A fence will be installed around the entire property to prevent access to the lot or pond.

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

YES. The applicant is constructing a single family dwelling on this lot 62 within the homeland subdivision.

They anticipated excavating a pond to use the fill for the house pad and for adding aesthetic value to the property.

Once they were informed that DRC approval was required for a Type 1B excavation they applied and were granted approval. The site plan was approved with a 30 foot setback. However, the contractor excavated the pond with Type 1A excavation setbacks of 15 feet. The applicant assumed the pond was excavated in accordance with all county requirements. It was not until the first inspection on the house were they informed by the Building inspector that the pond was excavated in the required setbacks. A final certificate of occupancy for the house will not be issued until the applicant resolves the pond setback encroachments. The applicant is requesting two setback variances in order for the pond to remain in the setbacks without costly modification and need to bring in fill to establish the required 30 foot 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. the applicant acted in good faith by obtaining all the necessary approvals for the pond. However, due to a misunderstanding on the part of the contractor, who understood the pond was a Type 1A, the pond was excavated in the setbacks. The applicant obtained the DRC approval for a Type 1B pond. There was enough room to accommodate the required 30 foot setbacks at the time the excavation occurred, however, the contractor had assumed that the pond was similar to other ponds that were excavated in the area, not realizing it was a Type 1B and not a Type 1A excavation. There will be 15 feet between the property line and edge of the pond which will provide adequate land area to allow for access and maintenance of the pond.

Therefore, granting of the variances for the setbacks will not grant a 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. Other property owners who have faced a situation where a contractor or previous owner have excavated a pond in the required setbacks have been granted variances. If the variance is denied the applicant would have to hire a contractor to reconfigure the pond to comply with setbacks. This would also require additional fill being brought onto the lot to fill the pond. The applicant is installing a fence around the property that will limit access to the lot and pond.

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 pond was excavated to provide needed fill for the house pad and raise the finished elevation of the lot to prevent flooding. The pond also adds aesthetic quality to this rural residential lot. All necessary approvals were obtained, however, a misunderstanding led to the pond being excavated in the setbacks. There are 15 foot setbacks existing on the pond which will satisfy the general intent of the code.

Therefore, granting the two setback variances will be the minimum necessary for the applicant to keep the pond in its present location without costly modification. It will also allow the house to receive a final Certificate of Occupancy at the time of the final inspection.

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 ULDC, Article 7.6, Excavation, is to recognize that certain types of excavation are permitted in the county provide the proper approvals are obtained prior to excavation. The applicant did apply and receive approval for the Type 1B Excavation from the DRC, however, the contractor excavated too close to the property lines. The intent of the 30 foot setback establishes a minimum land area between the pond and property line for maneuvering of pedestrians and maintenance vehicles. It also ensures adequate land area to compensate for any future erosion of the pond and its affect on adjacent properties. The 15 foot setbacks that exist will ensure the general intent of the setback provisions will be met.

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

NO. There are many canals and ponds within the homeland subdivision. This pond has a 15 foot setback from the property lines and will be fenced in to prevent access from the street or adjacent properties.

ENGINEERING COMMENTS

No Comment (ENG)

ZONING CONDITIONS

1. By July 20, 1999, The applicant shall provide the Building Division permit section with a copy of the Board of Adjustment result letter in order for B98027408 to receive a final Certificate of Occupancy for the single family dwelling.
(DATE:MONITORING-BLDG PERMIT)
2. By July 20, 1999, the applicant has to apply to DRC to administratively amend the DRC98-25 Site Plan to reflect the 15 foot setbacks approved by the Board of Adjustment.
(DATE:MONITORING-DRC)
3. There shall be no modifications to the pond that will increase the non-conformity with respect to setbacks. (ONGOING)
4. By September 20, 1999, or issuance of the certificate of occupancy for the single family dwelling (B98027408), the applicant shall install a fence around the perimeter of the property to ensure no access is permitted from the street or adjacent property to the pond. (DATE:MONITORING-CO-INSPECT)

CHAIR PERSON KONYK: Next item on the consent is BofA 99-00040, Cornersone Propane, L.P., to allow a proposed building to encroach into the front setback.

Applicant present?

MS. HOWARD: Yes. Michelle Howard, Houston Cuozzo Group, Inc.

CHAIR PERSON KONYK: Staff has recommended three conditions.

Do you understand and agree with those conditions?

MS. HOWARD: Actually, we ask that number two and three be deleted.

MR. MacGILLIS: Staff agrees with that.

CHAIR PERSON KONYK: Staff has recommended one condition.

Do you understand and agree with that condition?

MS. HOWARD: Yes.

CHAIR PERSON KONYK: Any letters?

MR. MacGILLIS: No letters.

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, 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 existing legal non-conforming two acres parcel of land is located immediately west of State Road 7. It currently supports a propane gas distribution use. The FDOT is taking .64 acres of land for the expansion of State Road 7, which will affect the existing buildings and parking on-site. The applicant is proposing to redesign the site to comply with current code requirements after the taking. The proposal is to construct a new one story 1,946 square foot building along the east property line, with three propane tanks located 50 feet west of the building, and then a 50 foot circulation access aisle and a 60 foot side detention area. Since the property depth is being reduced from 524 feet to 369 feet, with the taking, the applicant is limited to design options to eliminate the need for a front setback variance.

Therefore, the 155 feet of right-of-way taking significantly affects the redevelopment of this property and results in the applicants need to apply for a variance.

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

NO. The right-of-way taking for State Road 7 is requiring the applicant to demolish existing buildings and parking that will be located in the right-of-way. The redesign of the site will reduce existing non-conformities and bring the site to the greatest extent possible into compliance with current regulations. The property owner is working in good faith to resolve this matter so as not to delay the taking or affect the operation of the business.

Therefore, the required front setback variance is specifically related to the FDOT taking of land from the property owner for right-of-way expansion and not actions of the applicant.

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 property owners in Palm Beach County have applied and been granted variances when their property is affected by eminent domain taking. The ULDC, Article 1.10 allows a use and site to operate after the taking, however, requires new structures and improvements to meet current regulations. The property owner has limited land

area after the taking to comply with the required 100 foot AGR setback. This is a legal non-conforming lot in terms of acreage and lot width. It does comply with the 300 foot depth requirement. However, the nature of the business requires ample area for circulation of large trucks that are fueling.

Therefore, the granting of this setback variance will meet the general intent of the code and not grant a 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 ULDC, Article 1.10, Eminent Domain Taking, states that it will be assumed that the taking in itself will be justification for variances that are the result of a eminent domain taking. Therefore, the applicant is proposing to redevelop the site, however cannot comply with the setback due to the taking of 155 from the lot depth. To deny the variance would result in the applicant losing existing propane tanks that generates the revenue for this existing business.

Therefore, granting this variance will meet the general intent of the ULDC setback and eminent domain provisions and allow the applicant a reasonable use of the property that remains after the taking.

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 proposed site layout, after the taking, complies with current zoning regulations. Therefore, the property owner is eliminating current non-conformities in addition to giving up 155 feet of depth to this property. The front setback variance is a reasonable request, considering all other regulations will be complied with by the property owner.

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 promote and encourage Agricultural related uses in the AGR land use and zoning category. Although this use is not consistent with the land use or zoning classification it is legal non conforming use. This use has existed on this site for many years. The property owner is being required to redesign because of the 155 feet of taking for the expansion of State Road 7. The ULDC front setback provision is established to maintain uniformity along the front property line. However, along State Road 7, there is no established uniform setback since many older structures are legal non-conforming with respect to setbacks on addition due to right-of-way taking over the years along State Road 7 had made many structures

non-conforming with respect to the front setback.

Therefore, the granting of the variance will allow this use to continue and FDOT the ability to accrue the land necessary for the need of expansion of State Road 7 in this location.

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

NO. The granting of this front setback variance will allow the taking to be finalized and FDOT to move forward with the expansion of State Road 7. The expansion of State Road 7 is a project that is necessary to eliminate

a road that is currently over capacity. It is only one lane in both directions which results in vehicles passing one another into oncoming traffic. This is not a safe situation and with the expansion hopefully will eliminate this situation along this portion of State Road 7. Since there is no consistency in the front setback line along State Road 7 the granting of this request will not be injurious to the surrounding area or public welfare. The fact there is being proposed a 80 ft. wide detention area between the edge of pavement and the east property line, within the ultimate right-of-way, will serve to mitigate these two variances.

ENGINEERING COMMENT

The Base Building Line for the subject property is hereby conformed as being at the ultimate west right-of-way line for SR7 as established by FDOT order of taking, and as shown on the DRC approved site plan (Petition No. 90-25, Exhibit No. 23, approved 5/13/98).

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)
2. Prior to DRC certification the applicant shall ensure the BA conditions shown on the site plan. (DRC-ZONING)
3. The final site plan submitted to DRC for site plan approval shall be consistent with the general layout as shown on Exhibit 9, in the BA99-40 file. (DRC-Zoning)

Next item on the consent is BofA 99-00041, Wayne and Sheri Dubois, to allow a proposed expansion of an existing building to encroach into the required front setback and reduce the right-of-way.

Name for the record?

MS. HOWARD: Michelle Howard, Houston Cuozzo Group.

CHAIR PERSON KONYK: Representing the owners?

MS. HOWARD: Yes.

CHAIR PERSON KONYK: Staff has recommended three conditions.

Do you understand and agree with those conditions?

MS. HOWARD: We ask that two and three be deleted.

MR. MacGILLIS: Staff agrees.

CHAIR PERSON KONYK: Staff has recommended one condition.

Do you understand and agree with those conditions?

MS. HOWARD: Yes, we do.

CHAIR PERSON KONYK: Any letters.

MR. MacGILLIS: Yes. I had one letter opposing it from a Rita Sholtz. Encroachment for required front setback should be acknowledged by Dubois, impacting on highway -- for safety measures. I also -- I believe there's some people in the audience from Melrose PUD that's on the east side of 441 that I believe want to speak to this item.

CHAIR PERSON KONYK: Are there any members of the public here?

MR. WASHINGTON: Yes. Yes, ma'am.

CHAIR PERSON KONYK: Do you oppose this item and want it pulled from the consent agenda?

MR. WASHINGTON: Yes, ma'am.

CHAIR PERSON KONYK: It will be pulled.

Next item on consent is BofA 99-00042 -- that will become the second item on the regular agenda.

MR. WASHINGTON: Thank you.

CHAIR PERSON KONYK: BofA 99-00042, to allow an existing fence to exceed the permitted height in the front yard.

Applicant present?

MR. VASQUEZ: Yes.

CHAIR PERSON KONYK: Name for the record.

MR. VASQUEZ: Luis Vasquez.

CHAIR PERSON KONYK: Staff has recommended two conditions.

Do you understand and agree with those conditions?

MR. VASQUEZ: Yes, ma'am.

THE COURT: Any letters?

MR. MacGILLIS: One letter opposing it from a Frank and Trish Joseph at 28 Besterry's Crescent. I oppose petition to build any fence that exceeds the limited height in the acreage around the property. To allow this to be done will look very odd to all other properties on the street.

There was also several -- okay. I guess that's the only one.

The fence is already existing. It's existing.

CHAIR PERSON KONYK: Is that significant?

MR. MacGILLIS: No.

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, this item will remain on the consent agenda.

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 located at 11822 61st St. No., approximately .38 miles SW of intersection of Royal Palm Beach Blvd. and Tangerine Blvd., within the Royal Palm Beach Acreage un-recorded subdivision, in the AR Zoning district. It is a legal non-conforming 1.32 acre lot in terms of minimum acreage and lot width required pursuant to property development regulations. The subject lot is 164 feet by 348 feet, which is typical in size and uses to other lots in the subdivision.

As stated in the applicant's justification, the chain link fence in the front yard was constructed by the applicant after the subject residence was robbed on February 4, 1999, at the time when the property had no fence in the front yard. Due to the security concern, the applicant installed a 5-foot-high chain link fence in the front yard, without the knowledge that a building permit was required prior to construction and the maximum permitted fence height is 4 feet in the front yard. As a result, the fence exceeds the maximum permitted height by one foot. However, the applicant has a dog which has access to the front yard, therefore, a minimum of 5-foot height is required to keep the dog within the subject property.

Therefore, the applicant is seeking a variance relief to allow the existing 5' fence to remain on the front yard.

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

NO. The applicant was unaware that a building permit was required prior to constructing a fence nor the maximum fence height requirement. The applicant experienced a recent robbery at the subject premise. For security reasons, the applicant needs a 5' fence in the front yard.

The fence also needs to be at the five-foot height so that the applicant's dog would not be able to jump over the fence. If the variance is approved, the applicant will obtain all necessary permits and inspections to legalize the fence.

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 will not confer a special privilege upon the applicant that would be denied by the

Comprehensive Plan or ULDC. The applicant's zoning

district permits the applicant to construct a chain link fence in the front yard. The existing fence is in keeping with the rural character of the surrounding area.

The properties in the same subdivision have chain link fences in the front yard. The subject fence was constructed to be aligned with the adjoining fences on both sides of the subject property. There is a wooden fence to the west while to the east a chain link fence. As previously stated, the applicant was unaware that a permit was required until the Notice of Code Violation from Enforcement was issued. The applicant is willing to obtain all the necessary approvals in order to both legalize and keep the existing front chain link fence at its existing height.

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

YES. A literal interpretation of the Code would deprive the applicant of rights commonly enjoyed by others in the area. As previously stated, the intent of the Code is to ensure clear visibility for vehicles entering and leaving typical residential lots. In addition, maintaining a height limitation allow visibility from the street and does not create a "wall effect". the requested fence is chain link without obstructing views from the road. Therefore, it would not compromise the intent of the code regarding height limitations for fences in the front setback area.

the subject fence is compatible with the similar uses in the neighboring area. Approving this variance will not negatively impact on the surrounding area.

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 approval of the variance request is the minimum necessary for a reasonable use of the property.

The fence is chain link that does not obstruct views or create a visual barrier. The five foot high fence serves to protect the property from trespasses as well as to provide added height to keep the dog within the subject front yard. The dog could jump four feet high, which is the maximum permitted height for a fence in the front yard. The requested variance is one foot which is the minimum necessary for the applicant to ensure privacy and security as well as to keep the dog within the subject property.

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

YES. Granting the variance request will be consistent with the objective of the Comprehensive Plan and ULDC.

As previously stated, fences are permitted in the AR zoning district pursuant to meeting the supplementary regulations of the ULDC. The intent of the Code regarding height limitations of fences was to discourage residential lots from creating a "wall effect" along the street and obstruct views.

The comprehensive plan promotes the rural residential character of the subdivision and ensure compatibility with the rural residential neighborhood.

The requested fence is only a foot higher more than the permitted by Code and is compatible with similar property fences in the surrounding rural residential area. If the variance is approved, it will provide the applicant with increased security as well as ensure the dog to stay within the property, which will be beneficial to the neighboring residents.

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

NO. The surrounding area is a rural residential neighborhood. There are existing fences on both sides of the subject property which align with the subject fence.

The granting of the variance request will not be injurious or detrimental to the public welfare nor will be any negative impacts on the surrounding property owners. On the contrary, the 5' chain link fence in the front yard protects adjacent property owners by keeping the applicant's dog from getting out and wandering the neighborhood.

ENGINEERING COMMENTS

No comment, except to note that the fence is actually to be constructed at the interior easement line, not property line.
(ENG)

ZONING CONDITIONS

1. By August 20, 1999, the property owner shall provide the Building Division with a copy of the Board of Adjustment result letter simultaneously with the building permit application for the existing chain link fence in the front yard.
(DATE:MONITORING-BLDG PERMIT)

2. By August 20, 1999, the property owner shall obtain a building permit for the existing chain link fence in the front yard. (DATE:MONITORING-Bldg. Permit)

CHAIR PERSON KONYK: Let me just repeat what is

remaining on the consent agenda. Then I'll ask for a motion.

BofA 99-0009 has been postponed to the 8/18/99 meeting. And BofA 99-00029 is pulled and will be the first item on the regular agenda. And BofA 99-00041 has been pulled and will be the second item on the regular agenda.

So the items remaining on consent are BofA 99-00028, BofA 99-00030, BofA 99-00031, Board of Adjustment time extension 99-00032, BofA 99-00033, BofA 99-00034, Board of Adjustment time exception 99-00035, BofA, 99-00036, BofA 99-00037, BofA 99-00039, BofA 99-00040, BofA 99-00042.

Those items will remain on the consent agenda, and I would like to have a motion for approval.

MR. BASEHART: Madam Chair, may I make a motion that those -- accept for the two pulled -- the other items and the one postponed, all the other items on consent be approved.

MR. JACOBS: Second.

CHAIR PERSON KONYK: Okay. Motion by Mr. Basehart.

Second by Mr. Jacobs.

Any discussion?

MR. RUBIN: No discussion. Just allow me the opportunity to voice an objection to several of the petitions, but not requesting it be pulled from consent.

CHAIR PERSON KONYK: Okay. I was just waiting for that.

Go ahead.

MR. RUBIN: Oh, all right. For the record, I'll be voting against BofA 99-37, BofA 99-39 and BofA 99-42.

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

CHAIR PERSON KONYK: All those opposed?
(No response.)

CHAIR PERSON KONYK: Okay. Except for BofA 99-00037, 39 and 42, the items pass seven to zero. And 37, 39 and 42, it's six to one.

So those items have been approved, and anybody that was -- had items on the consent agenda is free to leave.

MR. MacGILLIS: Pick your letter up on the way out.

CHAIR PERSON KONYK: First item on the regular agenda is BofA 99-00029.

If the applicant could come forward.

We'll let staff go ahead and introduce the item. Then we'll let you give your presentation.

MR. MacGILLIS: This is BofA 99-29, to allow an existing solid roof enclosure to encroach into the required side interior setback. The location is 6297 Breckenridge Circle, immediately south of Lantana Road and west of the Florida Turnpike, within the Balmoral PUD, Fairfield's Lacuna, plat five, in the RT zoning district.

Petition 81-233.

The -- just to briefly go back to this. The screen enclosure is existing. The property owner purchased this home from the developer while it was under construction, and there was a slab at the back of the property. Which, the slab itself was encroaching into the setback. But a slab doesn't actually have to meet setbacks. The applicant hired a separate screening contractor to build the screen enclosure, which is depicted in the pictures on your back-up material on page one fifty-three and one

fifty-four.

Once the screen enclosure was constructed, a final inspection was performed by the building division inspector who found that -- if you look on page one fifty-one where the small circle is drawn in the site plan, that small corner of the structure is encroaching into the setback. So it's actually less than ten percent of, actually, that length of that wall but actually encroaching into the setback.

And I think the problem happened because they put the screen enclosure on top of the existing slab that was there. And, because of the angle of this lot, which is kind of unusual because it's referred to as a staggered zero, two of the walls of the house fall on the opposite property line.

And the angle of the property line when somebody -- the surveyor and the screening company went out there to measure it, they -- obviously, they didn't measure it correctly.

So the current owner got a notice from the building division that the final inspection had not passed, and a hundred and sixty-day notice was sent out that he had to correct this. Short of tearing the screen enclosure down or taking that corner off, which would probably destroy the integrity of the structure, he's requesting a side interior setback.

Staff is recommending approval of this request. We feel the applicant has met the seven criteria with the conditions of approval. The structure meets the seven criteria.

CHAIR PERSON KONYK: There was one condition that was recommended for approval on this item?

MR. MacGILLIS: Yes.

CHAIR PERSON KONYK: Okay. Would you like to give us your presentation.

MR. MARATEA: He said it all.

CHAIR PERSON KONYK: He said it all.

MR. MARATEA: The house is not a straight-back house. There's an indentation. The patio was built within those lines. I wasn't there. I just found out through the mail.

Once the patio was in, it seems everybody just followed that outline, which is in conformity with the house. The house sits in it. They just built it right into that corner. It wasn't a question of moving it because part of the house can't be moved.

CHAIR PERSON KONYK: Right.

MR. MARATEA: They built it where it was the proper place to build the patio. And everything that followed evidently was an oversight on someone's part, certainly not mine. So I don't know what else to do.

CHAIR PERSON KONYK: I need to swear anybody in that's going to speak on this item. So we'll assume that everything you've said up to this point is the truth.

MR. MARATEA: I hope so.

CHAIR PERSON KONYK: Anybody that's going to speak on this item -- if you're going to repeat each other, you both don't need to speak. So you might want to appoint one of you to be the spokesperson.

Just raise your right hand. And the applicant needs to raise his right hand. And the court reporter will swear you in.

(Thereupon, the audience was duly sworn by the Court

Reporter.)

CHAIR PERSON KONYK: Okay. Thank you.
If the neighbor would like to come forward.
Give us your name for the record.

CHAIR PERSON KONYK: My name is Shirley Padulnick.

I

live directly next door. I do not want to have any animosity with my neighbors, and I realize that this has been a little bit of a ticklish situation.

Our houses are very very -- have very narrow passageways there. I have an entrance to my house that comes along the side of the house. That difference with the encroachment makes a difference to the appearance of my home. And I feel that this will impact on the future sale of my home. Having this even little bit of an encroachment there is not an attractive part for my particular home.

And I do feel that it should have been corrected and picked up by the builder and developer early on, and it wasn't. It just kept compounding. I didn't know about this until the people moved in, and they did tell me about it, and I appreciate that.

But I do think that I will ask you to please not grant this because it does impact upon my home with the appearance and with the future sale.

CHAIR PERSON KONYK: The slab is going to be there regardless, though, right?

MR. MacGILLIS: Right.

MS. PADULNICK: I don't mind the slab so much. It's just the jutting out of the porch.

MR. BASEHART: Isn't this screen enclosure on the same side -- well, it's on your zero side, right? It's on the side of your property that there are --

MS. PADULNICK: Yes, it is.

MR. BASEHART: -- no windows or doors on that side of your house?

MS. PADULNICK: That is true, except my main entrance is there.

CHAIR PERSON KONYK: Any board members have any questions of staff or the applicant?

MR. RUBIN: Madam chair?

Just of staff or if the applicant knows, when the screen company applied for the permit, did the permit reflect or the proposed plans reflect that they had to have modified that corner of the screen enclosure to meet that setback? Or was it submitted as built?

MR. MacGILLIS: Submitted as built. We actually went in to do the final inspection, and they indicated -- because it's either a separation or a setback in this type of housing type. So I think when they actually went out there, it actually looked like they would have met the setback on the survey. But it actually was going to be a separation between the units.

So it's kind of like work the separation or setback, whichever is greater.

MR. PUZZITIELLO: Due to the scheme of that back property?

MR. MacGILLIS: Right. And that wall is eight feet in length on side, the screen enclosure. And it's approximately two feet off that eight-foot length of wall that actually encroaches one and a half foot into the setback.

MR. BASEHART: So, basically, if this variance is

denied, they'll have to chop, like, an eight-inch -- or two-foot triangle off the corner of the roof and that's it?

CHAIR PERSON KONYK: Any other questions?

(No response.)

MR. BASEHART: Madam Chairman, I'd like to make a motion for approval BA 99-00029 based on the analysis in the staff report and the staff recommendation.

I believe that, you know, this isn't the entire length of the screen enclosure wall that needs the variance. What we're talking about is simply a corner at the back. And I think that's absolutely insignificant, and will have no -- has no affect on adjacent properties.

And that's the basis of my motion.

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

Do we have a second?

MR. JACOBS: I'll second that.

CHAIR PERSON KONYK: Second by Mr. Jacobs.

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. You have been granted your variance.

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 lot 47 is located within Balmoral PUD which was approved by the board of County Commission in 1981. The overall PUD supports 217 acres, 451 dwelling units and a 130 acre golf course. The development is located south of Lantana Road and west of the Florida's Turnpike. this lot is located within Tract E, which is a 10.56 acres in size and approved for 53 staggered zero lot lines. The lot supports a 2,526 square foot dwelling and a 156 square foot (19.2 by 8.2 sq/ft) screen roofed enclosure. The applicant purchased the property in June, 1998 and contracted a screen contractor to install a screen enclosure over the existing concrete patio along the southwest corner of the unit. The contractor applied for and was issued a building permit (B98013437). the final inspection for the enclosure failed on 6/4/98 when the building inspector discovered the minor setback encroachment of 1.4 feet along a portion of the 8 foot wall that runs parallel to the lot line.

the fact this lot is irregular in shape and supports a dwelling that is staggered zero could have led to the

setback error. On a typical lot, where the lot is rectangular, the setbacks can be easily applied in the field. However, in this case the contractor accidentally allowed a small portion of the wall to encroach the setback. The problem arose when the enclosure was placed on the existing patio. The patio slab does not have to meet setbacks. However, once the enclosure was installed over the existing slab a small portion encroached the setback.

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

NO. The applicant hired a contractor, Screenco North, Inc. to design, permit and construct a screened roof enclosure over the existing patio on the rear of the dwelling. The applicant assumed the enclosure would be correctly constructed according to the permit. The applicant received a 150 day notice letter from the Building Division on 11/1/98 informing him the screen enclosure had failed the final inspection on 6/4/98 because it encroached the setback which has not yet been resolved. The applicant contacted the county to determine what action could be taken, since the enclosure was already existing. The applicant was informed that the structure would have to be modified by cutting it back or seek variance relief. The applicant cannot modify the enclosure without compromising the overall integrity of the structure. therefore, the applicant is applying for a minor 1.4 foot setback variance.

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. When an applicant can clearly demonstrate that the situation leading to the need for the variance, site constraints and there are no other realistic design options are available then the granting of the variance will not grant a special privilege to that individual. The 19.2 by 8.2 (150sq/ft) enclosure is existing. The applicant would like to comply with the county's requirement that a final inspection be performed prior to issuance of a certificate of occupancy. The encroachment is minor and will not create a negative impact on lot 48 to the south.

Therefore, the granting of this variance will not grant the applicant any special privileges.

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 seeking this minor 1.4 foot variance in order for this existing screen enclosure to remain in the setbacks without costly modifications. The majority of the enclosure complies with the setback portion (2 feet of the 8 foot screen wall) that encroaches

the setback. To deny this variance application would place a significant hardship on the applicant. The cost associated with the renovation to make the screen enclosure comply with setbacks would have to be paid by the contractor or file an action against the contractor.

Also, to modify that small portion of the enclosure would effect the overall appearance and possibly structure integrity.

Therefore, applying the literal intent of the setback requirement would require costly modifications to the enclosure.

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 1.4 foot variance will allow the existing structure to remain. It will also allow the applicant to schedule a final inspection and obtain a certificate of occupancy. Since the unit of the lot to the south has a blank wall facing this encroachment no adverse effects will be associated with the variance, if granted.

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 setbacks in residential development is to ensure consistency in the built form as it relates to property lines and other structures. The Tract E is approved to support staggered zero lot line dwelling which permits two walls of the unit to touch the property line.

Therefore, someone on the street looking back along these units would not be able to see this minor encroachment, since the wall of the unit obstructs views of the rear yard. There is still ample room (8 feet) of open space between the enclosure and the unit on lot 48 to the south.

Therefore, granting of this variance will comply with the general intent of the side interior setbacks.

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

NO. The only unit that would be affected by this minor encroachment is the property owner on Lot 48 to the south. As previously stated, a 1.4 foot encroachment is not visible to the eye. There will still be 8 feet or more of open space between the units. there is a solid wall on the unit lot 48, since this is where the zero portion of the house touches the property line.

ENGINEERING COMMENTS

no comment (ENG)

ZONING CONDITIONS

1. By June 20, 1999, the applicant shall provide the Building Division, inspection section, with a copy of the Board of

Adjustment result letter and a copy of the Site Plan, in order for B98013437, solid roof enclosure, permit to be scheduled for a final inspection for certificate of occupancy.
(DATE:MONITORING-BLDG INSPEC)

CHAIR PERSON KONYK: BofA 99-00041.
Applicant?

CHAIR PERSON KONYK: While we're waiting for the applicant, could the staff introduce the item.

While we're waiting for the staff, any member of the public that's here to speak on this item, could you please stand, raise your right hand -- applicant as well -- and get sworn in.

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

MR. MacGILLIS: This is Board of Adjustment 99-41, the petition of Wayne and Sheri Dubois, to allow a proposed expansion to an existing building to encroach into the required front setback and reduce the right-of-way buffer width along State Road 7. The location is 8421 South State Road 7, approximately one point five miles north of Boynton Beach Boulevard on the west side of State Road 7 in the AGR zoning district. Found on page two eighteen of your backup material.

CHAIR PERSON KONYK: Do you want to proceed with your presentation by giving us your name for the record.

MS. HOWARD: My name is Michelle Howard with Houston, Cuzzo Group. And I am the agent for the applicant.

CHAIR PERSON KONYK: Okay.

MS. HOWARD: This property is being effected by the right-of-way taking for State Road 7. FDOT will be taking a hundred and fifty-eight feet of their property frontage. In this taking it includes several trailers that are used for the operation of the packing house and the loading area that's used to load the trucks with the packing material.

This application is to test the viability of the cure plan of this particular cure plan and may affect the damages that are paid by FDOT. The cure plan is to replace the existing operation that's there. They're not expanding the operation at all, and it's to allow for the operation to continue. That's all I have to say.

CHAIR PERSON KONYK: What is the -- what is your variance? What is the variance what you're requesting?

MS. HOWARD: The variance is for the front setback.

We are requesting -- the required setback is a hundred feet, and we are requesting a variance of ninety-two feet.

CHAIR PERSON KONYK: So you're requesting that the front Setback be eight feet?

MS. HOWARD: Yes.

CHAIR PERSON KONYK: You're requesting that you do not have to provide a twenty-foot-wide landscape buffer?

MS. HOWARD: Yes.

CHAIR PERSON KONYK: You have nothing further --

MR. BASEHART: You've got eight feet. You can't provide twenty.

CHAIR PERSON KONYK: Right. Exactly.

MS. HOWARD: We did provide the buffer where we could. The existing building lines up with that eight foot. And then the expansion to allow for the rerouting of the conveyer belts within the structure is along that eight feet also. And that's why we were requiring that foot.

CHAIR PERSON KONYK: So your entire problem has been created because of the widening of State Road 7?

MS. HOWARD: Yes.

MR. BASEHART: Question. If the variance is -- if the nonconformance to the requirements of the code is created by the right-of-way taking by FDOT, then would not this be a valid nonconforming situation rather than something that would -- is the purpose of the variance to legitimize -- to provide protection in the case of destruction?

MS. HOWARD: No. We're actually adding on to the building --

MR. BASEHART: Okay.

MS. HOWARD: -- to reroute the conveyer belt. And the variance is for the addition of the building, not the existing building.

MR. BASEHART: Okay.

MR. PUZZITIELLO: Part of your building is in the land taking that you're going to replace?

MS. HOWARD: Yes.

If I can show you the cure plan?

Let me start -- this here is the existing building and the loading that goes to that existing building. The conveyer belts all work in a way that brings the produce from here to the loading dock. Once those loading docks are taken away from the tapping, they have to reroute those loading docks to bring them so that they can load from the west side of the building instead of the east side of the building.

That's what the cure plan basically does is we added on this portion of the building so that those conveyer belts can route this way, and they'll load from this side.

MR. PUZZITIELLO: The truck loading docks will be hidden from the street behind the building.

CHAIR PERSON KONYK: If the opposition would like to come forward.

Are you through with your presentation?

MS. HOWARD: Yes.

CHAIR PERSON KONYK: Okay. Let's hear from the opposition now.

Your name for the record?

MR. WASHINGTON: Keith Washington.

We live across the street from this project. Melrose Park development. Actually, we haven't had much time to -- our legal people haven't even had a chance to look at this. And we really would like just some extension on this so we can, you know, check it out, if possible, at all. We have twenty-some petitions here opposing this already just because of the buffer zone alone.

We were told that there was going to be a buffer zone, and now we're told there's not going to be a buffer zone.

CHAIR PERSON KONYK: Do you want to postpone this?

I mean, there was a notice up there in time, wasn't there? This was properly noticed --

MR. MacGILLIS: Right.

CHAIR PERSON KONYK: -- and the adjacent homeowners were notified, et cetera?

MR. MacGILLIS: I believe that's how this gentleman heard about it.

MR. WASHINGTON: We just found out about it without -- four homeowners were only notified about this, two of which received notice. The other two have not, one which is a land owner. There's no home on the property. The other person has just moved in there.

CHAIR PERSON KONYK: The yellow signs were up, though, weren't they?

MR. WASHINGTON: One yellow sign.

The problem we have there is that we also have another development going behind our development which involves a lot of yellow signs. And this is -- I think, what happened is it got mixed in with this other stuff. And we just assumed that it had gone into this other problem that we have in the back of our development.

And when we walked by and we looked at it, there was a sign there. But there was only one sign. I realize that's probably adequate, is what they need. But we're just asking for a little bit more time here just so our legal people can look at this; and we can, you know, see if everything's all right.

CHAIR PERSON KONYK: Was it properly noticed, Jon?

MR. MacGILLIS: Yes.

CHAIR PERSON KONYK: We just can't -- you know, I mean, if it's properly noticed and the people that needed to be notified are notified, then it's at the pleasure of the applicant. And if they don't want it postponed, then we're going to go forward with it today because everybody that needed to be notified was notified.

MR. MacGILLIS: Correct.

CHAIR PERSON KONYK: And the signs were proper -- properly placed?

MR. MacGILLIS: Staff provided them to the applicant.

MS. HOWARD: Yes. They were posted.

MR. BASEHART: Are you interested in postponing?

MS. HOWARD: We'd rather go forward with this application.

CHAIR PERSON KONYK: Okay. Do you have any reasons for your objection other than --

MR. WASHINGTON: Well, the buffer zone and the setback. We don't feel that this building is set back near far enough. Because what's going to be pulling in there are not just cars, they're eighteen-wheelers, twenty-four hours a day.

CHAIR PERSON KONYK: They were pulling in there before this, though.

MR. WASHINGTON: Yeah. But the setback where they have this new building, they're supposedly, you know, taking part of this building and moving it around for the conveyor belt. We still don't feel that that's going to be -- I think they should have to move this whole building. Our whole community feels that they should have to move this whole building back far enough.

You don't understand. That's a very complex thing they're talking about here.

MR. PUZZITIELLO: Do you realize right now you see

the trucks from the road. With their new plan, you're not going to see the trucks --

MR. WASHINGTON: Well, we can't really see the trucks from the road because there is a big buffer zone in there now. There's a hedge that's twenty -- probably fifteen feet high, so we don't see it.

MR. JACOBS: How many homes are there in your development?

MR. WASHINGTON: Probably somewhere around sixty.

MR. JACOBS: Sixty homes?

MR. WASHINGTON: Yes, sir.

This was just at the last minute. I just ran around in the last two days trying -- you know, we weren't really aware of this except four of our neighbors at the end of my street --

CHAIR PERSON KONYK: Well, the point is is that even though --

MR. WASHINGTON: I realize that.

CHAIR PERSON KONYK: I want you to understand this because I don't want you to feel like we're being unfair to you.

The way the Board of Adjustment looks at a variance is there's seven criteria that have to be met by the applicant. If the applicant is able to meet those seven criteria, then they're going to probably get the variance. And whether or not your homeowners oppose it, they have to have reasons opposing that are based on the seven criteria, not just because they don't think it's a good idea or whatever.

Unfortunately, this situation was definitely not self created. It was created by the taking of the road. And everybody knew that that road was going to be taken for many many years, including the people who bought homes in your neighborhood.

So, unfortunately, the operation was there long before you-all were there. So now that you've moved there, you can't expect them to recreate a totally new operation to accommodate the sixty homeowners or the six

thousand homeowners. The plant was there. It was operational. FDOT had plans to take the road. Any one of your homeowners could have found that information very simply.

The only thing that's changed is now that they are asking for a variance. That's the only thing that ten years ago you wouldn't have been able to find out was going to happen. So I understand your concerns, and I understand the reasons why you don't want things to change. But, unfortunately, unless we buy every piece of property that surrounds us, we have to understand that things may not always be exactly as they were when we purchased our homes.

MR. PUZZITIELLO: The building that they're asking for the variance for is the addition -- the building is allowed to stay exactly where it is. We can't make them move the building. And that is not part of this request.

The request is only the proposed addition to reconfigure their equipment from the land that's been taken.

MR. WASHINGTON: See, we never even -- I've never even seen this --

CHAIR PERSON KONYK: Right.

MR. WASHINGTON: -- so I really -- I just -- from word of mouth of other people --

CHAIR PERSON KONYK: Okay. In the long run, what they're going to do is probably going to benefit you more than if they kept the operation loading from the front of the building. It's probably going to be less intrusive.

MR. WASHINGTON: Well, in that aspect, probably; but we've also heard that they also have another packing plant in Delray. There's a Dubois Growers and a Dubois Farms.

We've been told that if that goes through, that they're going to close down the plant in Delray and make this into the one exclusive. I understand.

CHAIR PERSON KONYK: I know. And I'm sorry.

MR. WASHINGTON: I know.

CHAIR PERSON KONYK: Maybe they'll sell the plant. Maybe they'll keep the one in Delray open, and maybe you-all can buy it. But, unfortunately, it was there before you were there.

MR. WASHINGTON: Right.

CHAIR PERSON KONYK: And if it was a new plant that was going to be built and they were asking for a variance and it was a whole new thing coming into your neighborhood and they couldn't meet the seven criteria, it's not that we're going --

MR. WASHINGTON: That's why we were trying to get an extension for legal help --

CHAIR PERSON KONYK: The extension won't make a difference because if they met the seven criteria this month, they're going to meet it next month as well. And, usually, when the staff recommends approval, it means they've met the seven criteria.

The seven criteria is pretty easy to understand. I don't know if anybody's given you a copy of a packet that shows what the process is. But you can get one of those, and you can see that the seven criteria is very specific and not everybody can meet the seven criteria.

For them to have been recommended for approval by staff, that means they clearly met it. So even if we got you a time extension, I don't think it's going to change anything.

MR. WASHINGTON: Okay.

But I do have one more question --

CHAIR PERSON KONYK: Sure.

MR. WASHINGTON: -- that somebody asked.

We were told that, also, the labor camp force was going to be expanded by three times what it is now. and they were going to put in permits for a new labor camps.

Is that -- I've heard that there are no more permits --

CHAIR PERSON KONYK: I don't know about --

MR. WASHINGTON: -- available for new labor camps.

CHAIR PERSON KONYK: That wouldn't have anything to do with us. I mean, maybe the applicant could answer the question for you, if she's aware, if they're going to -- I mean, it has nothing to do with this. It's strictly informational.

MS. HOWARD: As far as I know, they're not planning on expanding the labor camp. They are going to have farm workers' quarters, which is allowed by the code. and they're basically replacing what was there with better structures.

MR. BASEHART: The situation, if you look at the plan --

MR. WASHINGTON: Which we haven't seen.

MR. BASEHART: The packing house has been there for

many years. It's actually closer to your properties now than it's going to be because the whole reason for this is because, in the right-of-way taking, some of the building is being sliced off, actually the loading area. So they need to replace that, and they're extending the existing -- well, they're extending the building to the south.

MR. WASHINGTON: To the south? Like I say, I've never seen it.

MR. BASEHART: To the south.

But the bottom line is, when this is all over, the actual loading docks and building area that will be -- that you'll be facing will be farther away from you than they are now. It's being necessitated by the -- by the right-of-way taking. So the difference between what you see now and between what will happen is, number one, the loading docks will be on the other side of the new extension, which means that you won't be looking at the trucks loading and being stored there. And, secondly, actual building area is going to be farther away from you than it is now. And the distance -- the difference will be filled in by additional lanes of State Road 7.

MR. WASHINGTON: But there is no required buffer zone in the front of this packing house?

CHAIR PERSON KONYK: Well, there is a required buffer zone, but --

MR. WASHINGTON: But there's no room?

CHAIR PERSON KONYK: -- because of the taking of 441, they don't have the room. And the building is already existing. Now, if they were probably coming forward to build this building, they probably wouldn't be allowed to build it. But the building is existing.

Now, maybe the applicant has a copy of the site plan that they could provide you with, and maybe after the meeting she could meet with you outside and kind of give you some information so you can allay the fears of your homeowners. Because I think that this is going -- unfortunately, I think this is going to be a better situation. The unfortunate taking of the road is going to be a better situation for your homeowners because of the redesign of this plant. You're not going to have the loading going on in front of you.

MR. WASHINGTON: I agree with you on that. I think our main concern was -- which I'm sure doesn't apply to this -- is migrant population increasing because we live there now and we know what it's like. There's a very big spread there on the side of the road where they -- I don't want to say walk. They stagger around there. And the shortening of this, because of the widening of the road, which I understand you can't stop anyways, we feel that it's going to present a real problem --

CHAIR PERSON KONYK: Unfortunately, the labor camps were there before Melrose Park, and that's really an issue you need to take up with the Sheriff's Department and just put some pressure on them to take care of the situation.

If you have people that are intoxicated is what I think you're implying --

MR. WASHINGTON: Yes.

CHAIR PERSON KONYK: -- on 441, I mean, they can be arrested. So I would work with the Sheriff's Department and call Captain Gauger, who's the area captain for that area, and meet with him. Get him out there.

MR. WASHINGTON: Okay. Thank you very much for your

time.

CHAIR PERSON KONYK: So you can meet with him outside after the meeting, maybe provide him with a site plan, just to play nice.

MS. HOWARD: We'll do that.

CHAIR PERSON KONYK: Anybody else have any further questions on this item?

MR. MacGILLIS: Page three-twenty, that first finding, it should read the applicant has demonstrated compliance instead of has not.

CHAIR PERSON KONYK: So there's a correction on the --

MR. MacGILLIS: Right.

The only thing I'd like to stress on this particular petition too that hasn't been brought up to be on the record. On page three-twenty-three, under number four, in that box, the Unified Land Development, quote, clearly recognizes, through the eminent domain proceedings, the impact this has on a property owner. There's a provision in the code that clearly states that it is presumed to be sufficient evidence, the right-of-way taking, to meet the seven criteria itself.

Therefore, technically, somebody doesn't even have to go through this basing it on it. But I think this property clearly goes even beyond the right-of-way taking to show that the use is consistent with the AGR land use and zoning, and it's a needed service in that area to serve the farm industry. And the fact the setbacks -- the new building is going to be consistent with the existing building that's left after the right-of-way taking.

The landscape buffer, those portions that they can meet, where the new parking lot and stuff is going to be, will be met. And the fact that in between the proposed right-of-way expansion and the front property line, there's an eighty-five-foot retention area that's going to give that -- it won't have plants in it, but it will have a visual landscape sodded the area that will decrease the impact of this building sitting right on the setback line.

So with that, it's partly why staff is recommending approval.

CHAIR PERSON KONYK: Any other members of the public want to speak on this item?

(No response.)

CHAIR PERSON KONYK: Any board member prepared to make a motion on this item?

MR. PUZZITIELLO: I'd like to make a motion that we approve number BofA 99-00041. It clearly meets the seven criteria. And I believe it should be passed with the staff report as part of the record. I also would just like to suggest that maybe you meet with the homeowner and maybe present them with some plans and some drawings, which is probably going to resolve a lot of your headaches --

MS. HOWARD: I will do that.

MR. PUZZITIELLO: -- with them.

MR. BASEHART: I'll second that motion.

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

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.
Your variance has been granted.

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 44 acre parcel of land is located immediately east of State Road 7 in the AGR land use designation and zoning classification. It supports a vegetable farm and packing plant. The FDOT is proposing to expand State Road 7 and take 158 feet by 662 feet (2.40 acres) of land area.

The right-of-way taking along State Road 7 will have a significant impact on this site that has been in operation since 1955. Many accessory building, parking and loading will be eliminated or have to be relocated. The applicant's client has prepared a site plan that reflects the site layout after the taking. The most significant impact on the site is the removal of the loading along the east side of the packing plant. Since the 17,000 square foot packing plant has a conveyor belt that brings the vegetables from the point of delivery to the loading area.

with the elimination of the loading in the current location the conveyor belt must be re-engineered to ensure the same levels and standards of processing are met. This will require the construction of a 5,400 square foot addition to the south end of the existing building and the relocation of the loading to the west of this building. The conveyor belt will be extended through the new building. In order for the conveyor belt to operated the applicant states the new building must align with the existing building. The existing building will have a 8 foot front setback after the taking, the applicant is requesting a variance from the 100 foot front setback to 8 feet for a 92 foot variance, in order for the new building to align with the existing building. There will be 80 foot wide detention area on beyond the east property line and edge of right-of-way, that will mitigate the reduced setback resulting from the taking along State Road 7. The request to eliminate the 20 foot right-of-way buffer along State Road 7 between the proposed 5,400 square foot processing building and east property line is directly related to the setback variance. Since the new building will be located in the area typically reserved for the buffer. However, there are unique circumstances specific to this use and the taking that warrant special consideration. There will be an 80 foot retention area beyond the east property line that will mitigate the lack of a right-of-way landscape buffer. Furthermore, the provision in Article 1.10, eminent domain taking, states that taking shall be presumed to be sufficient evidence to

demonstrate hardship.

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

NO. This is not a self created hardship. The applicant's client has owned and operated this vegetable farm and packing plant since 1955. The buildings are currently in compliance with the required front setback of 100 feet. However, after the eminent domain proceedings the property owner will lose 158 feet of land currently being used to support accessory buildings, parking, loading and landscaping. the existing 17,000 square foot packing plant has a conveyor belt system that runs through the building in order for vegetables to be transferred from delivery to packaging and loading. The final product is loaded on trucks and shipped to all parts of the country.

Currently the loading area is located between the east side of the building and State Road 7. However, after the taking this loading will be eliminated and relocated on-site. The applicant is proposing to construct a new 5,400 square foot building to the south of this packing plant. It will align with the same 8 foot setback that the existing building will have after the taking. The loading will be located to the west of the proposed building. The applicant is also required to remove other accessory buildings that are located in the taking in addition to parking and loading.

The modifications to this site are not the result of actions by the applicant. The applicant is being required to modify the site in order to accommodate the State Road 7 expansion while at the same time ensuring no disruption occurs at this packaging plant.

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 158 feet of right-of-way taking along State Road 7 is placing an undue hardship on the applicant. This agricultural and packaging business has operated in this location since 1955. Until the taking the site was in compliance with the regulation in effect at the time the use was established and buildings permitted. However, with the taking many structures, parking and loading will have to be demolished and/or relocated on-site. Many other properties in Palm Beach County are similarly affected by takings for road way expansion. The ULDC has specific language to recognize that these uses may continue to operate provided minimum regulations are adhered to by the property owner. It is the intent of the code to ensure that the use and site functions at a minimum level after the taking. Many properties along State Road 7 are facing a similar hardships, as the current property owner, with respect to the affect it has on their business. The granting of the two requested variances are the minimum to allow the proposed modifications to the site to occur and the State Road 7 to be expanded.

Therefore, the granting of the two variances will not grant a special privilege on the applicant. Article 1.10, states that the taking shall be presumed to be justification for variances resulting from a taking.

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 has been operating this packing plant on this property since 1955. The use provides a needed service to farmers in the western agricultural community. The ability of the conveyor system to function is critical to the continuation of this business. With the right-of-way taking along State Road 7 many modifications must be made to the site which include demolishing, relocating and constructing new buildings, parking and loading. The most significant impact that the applicant's client faces is the fact the existing conveyor belt that moves the produce through the building from delivery to loading must be re-engineered now that the loading area has been eliminated and relocated on-site. The proposal is to construct a new 5,400 square foot building to the south of the existing building and locate the loading to the west of it. The conveyor belt system will be realigned to run through this building. Therefore, the existing and proposed building will have to align to ensure the conveyor system works properly. The existing building will have a 8 foot setback along State Road 7 after the taking. This building will be considered legal non-conforming and be permitted to remain at 8 foot 7 after the taking. This building will be considered legal non-conforming and be permitted to remain at 8 foot setback. However, the proposed 5,400 square foot processing building must comply with the 100 foot front setback for the AGR zoning district. The applicant is requesting the Board of Adjustment to grant a 92 foot setback variance in order that the two buildings can be consistent in terms of the front setback. The variance to eliminate the 20 foot landscape right-of-way buffer between the proposed building and State Road 7 (east property line) is directly related to the setback variance. There will be no room to accommodate the right-of-way buffer in this area. The FDOT is requiring an easement inside the east property line to allow for maintenance of the detention area that is located east of the front property line.

Therefore, a literal interpretation of the setback and landscape code provision will cause a significant hardship on the applicant who is working closely with FDOT to dedicate land while ensuring the business on this property continues to function. The general intent of both these code requirements can be met by the 80 foot wide detention area that will be located east of the front 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 applicant has redesigned the site to relocated buildings, parking and located elsewhere on the site. However, the proposed building that is subject of this front setback variance must be located where it is being shown on the revised site plan. In order for the existing conveyor belt that moves the vegetables through the packing plant from the area of delivery to loading the new building must align with the existing building. The existing building will have a 8 foot front setback after the taking. the applicant is requesting the proposed building be permitted the same 8 foot front setback.

Therefore, the granting of these two variances will allow the applicant to make the necessary modifications to the site layout while at the same time FDOT will be able to move forward with the taking and the expansion of State Road 7. This expansion is a major project for FDOT and involves many properties along state Road 7, therefore, the ability to acquire land while still allowing the property owner a reasonable use of the remaining portion of the site is critical.

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 this variances will be consistent with the goals and objectives of the Comp Plan and ULDC. The Comp Plan designates this property as AGR. The property supports a vegetable packing plant that has been in operation for over 40 years. It provides a needed service to the agriculture industry in the western community. Farm produce is brought to this site and packaged and shipped to various parts of the country. In order for the property owner to accommodate the FDOT right-of-way expansion of State Road 7, modifications have to be made to the site layout. The applicant is cooperating with FDOT by demolishing and relocating structures, infrastructure, parking and loading out of the taking area. The final site layout will be in conformance to the greatest extent with current regulations. However, the applicant is requesting two variances that are minor in nature considering the impact it is having on the property owner. The intent of the ULDC, Article 1.10 eminent domain, is to recognize that properties affected by a taking should be given special consideration when applying the literal terms of the ULDC property and site regulations. It allows a use to exist and expand after the taking provided certain provisions are adhered to by the property owner. It also states that new construction must comply with current regulations. However, in this particular situation it is not possible to comply with the literal terms of the established AGR front setback which is 100 feet. In order for the existing business to operate a new processing building must be constructed to the south of the existing building. the existing conveyor belt used in transporting the produce will be extended into this structure and allow for the final product to be delivered to the new location of the loading area.

Therefore, the granting to the variance to reduce the

front setback and eliminate that portion of the 20 foot right-of-way buffer adjacent to the new building is a reasonable request. It will allow this business that is important agricultural business in the western community to continue to operate and provide a needed service to the farmers.

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

NO. The granting of these two variances will allow the taking to be finalized and FDOT to move forward with the expansion of state road 7. The expansion of State Road 7 is a project that is necessary to eliminate a road that is currently over capacity and furthermore it is only one lane in both directions which results in vehicles passing one another into oncoming traffic. This is not a safe situation and with the expansion hopefully this situation will be eliminated along this portion of State Road 7. Since there is no consistency in terms of the front setback line or right-of-way buffering along State Road 7 in this area the granting of this request will not be injurious to the surrounding area or public welfare. The fact there is proposed a 80 foot wide detention area between the edge of pavement and the east property line, within the ultimate right-of-way, will serve to mitigate these two variances.

ENGINEERING COMMENTS

The requirement that the Base Building Line for the east side of the subject property be forty (40) feet beyond the west right-of-way of SR7 is hereby waived. Said Base Building Line is hereby established at the west right-of-way line fore SR7 as established by the current FDOT order of taking for the east 158 feet of the subject property.

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)
2. Prior to DRC certification the applicant shall ensure the BA conditions shown on the site plan. (DRC-Zoning)
3. The final site plan submitted to DRC for site plan approval shall be consistent with the general layout as shown on Exhibit 9, in the BA99-41 file. (DRC-Zoning)

CHAIR PERSON KONYK: Next item on the regular agenda is BofA 99-00020. E. H. and Marianne Vanden Bosch, to allow a proposed garage to encroach into the required

front setback.

Applicant? Name for the record.

MR. KALEITA: I'm Bruce Kaleita. I'm a land use and environmental lawyer in West Palm Beach, for the Vanden Bosches.

CHAIR PERSON KONYK: Okay. And is there any member of the public that's going to speak on this item?

(No response.)

CHAIR PERSON KONYK: If the court reporter would swear in the applicant.

(Thereupon, the audience members were sworn in by the court reporter.)

CHAIR PERSON KONYK: If the staff would introduce the item.

MS. CAI: E. H. and Marianne B. Vanden Bosch, to allow a proposed garage to encroach into the required front setback. The property is located at 776 Jamaican Drive. Approximately three miles north of Summit Boulevard and point two miles east of Haverhill Road, within the Dillman Heights subdivision in the RM zoning district.

CHAIR PERSON KONYK: Thank you.

If you'd like to make your presentation.

MR. KALEITA: Yes. Thank you.

For the record, I'm Bruce Kaleita. I'm a land use and environmental lawyer in West Palm Beach.

Allow me to give you some history. This was before you on a previous occasion. On that occasion, the board, after some considerable debate, concluded that a garage smaller than what the applicant had proposed would be feasible on the site and approved a variance, which from the front yard setback which is less than what it was sought at that time.

We are back before you today with great humility knowing that it is unusual for the applicant to come back. And allow me to say that when Mr. Vanden Bosch called me and consulted me about this, a acquainted him with the general rule that applications that have already been heard by the board are decided already and that if they are to be reconsidered, they must be different. So, wisely, Mr. Vanden Bosch has submitted, represented by my office, an amended application to you today. And, if I can, I would like to hand out some graphics and explain the basis for this application.

This is a reduced version of a graphic that we will place up on the board. I apologize for the size, but eight and a half by eleven is a somewhat limited format.

The picture shows a drawing by John Avercamp, a registered professional engineer, of the twenty-two-foot-wide garage which was approved in the previous variance application.

The task that I sent Mr. Avercamp to -- and he is, by the way, authorized by Chapter 511 of the Florida statutes to design homes; and he does, in fact, design homes. I said, John, would you please draw me the garage that was approved in the previous Board of Adjustment hearing. And he said, okay.

And when he got done drawing it, called me up. And he said, Bruce, I don't know if this garage works. And I said, well, tell me why, John. And he said, well, you can't walk between the cars to get out of a car in it because there's not enough room if you put two Buick Skylarks side by side, standard American vehicles, in this

car (sic), you literally can't get out of the car.

I said, okay. What else is happening? He said, well, there's not enough room between the car and the wall to disembark from the vehicle once you pull it in.

I took Mr. Avercamps drawing and I had it full-sized, blown up to this. And, as you can see from examining the garage that government designs, which was presented, by the way, in the last hearing as being a standard garage in the building industry. I submit to you, at times when my earning power was -- the problem with the garage that government designed is that, literally, there is no room in it. And were someone to pull a car into this garage and attempt to disembark from the vehicle, you would actually only have one foot four inches in between the two cars in the garage in which to get out of a car or enter a car.

I've been gaining weight over the years. I submit, while those of us, while we were younger, might actually be able to squeeze into a vehicle in such a small space.

As we age, we find it impossible to do.

CHAIR PERSON KONYK: Let me just ask you something.

Are you showing both cars exiting at the same time?

MR. KALEITA: They're in the garage.

CHAIR PERSON KONYK: Uh-huh.

MR. KALEITA: You can see from the drawing that you have that they're both parked side by side in the garage in the space -- the least amount of space they could possibly occupy given the surrounds that are around the garage door. They're literally right up next to that surround --

CHAIR PERSON KONYK: Okay.

MR. KALEITA: -- in the garage. They will bash into this surround which supports the garage door, were they to attempt to get closer to the wall. And so, as a consequence, they end up being probably closer than this to each other in the garage because they literally would hit the wall trying to back out if they were to be farther apart.

The other problem Mr. Avercamp put in that is there was insufficient room for a human of average dimensions to pass by even the side of these vehicles to enter the vehicle from the side.

Well, that made me think, gosh, we may have something to say to the board about that previous variance, which is that it -- it doesn't work. And here, right away -- and I'm going to apologize for the humor, but the comment that came to mind to me was that this has got something in common with the federal government's redesign of the toilet. I know that those in the building industry will recall that we used to have toilets in America that actually flushed. But back in the late 1980s, the federal government undertook the job of redesigning the American toilet with the consequence that, today, the American toilet does not flush and what enters it sometimes has difficulty leaving. That made me start referring to this as the nonflushing garage and that, similarly, what gets into this garage may have trouble getting out.

So I said, John -- Mr. Avercamp, sir, can you design me a garage that is the least -- the least size but will work on this property in light of the constraints that are created by the twenty-two-foot width? He said, yes. And may I speak louder as I pass these out. This is Exhibit B

for everybody. This is the private sector garage which does work. And I also have an exhibit-size version of this. I don't want to belabor this point. I certainly don't want to take too long. But what is unique about this garage is that a person can get out of the car after pulling into it. And, in particular, it is, instead of being twenty-two feet wide, it was twenty-eight feet wide.

And the benefit that it furnishes is that a person can literally get out of a car door in one of these vehicles in the middle of the garage. Now, two cars can't open their doors at the same time. But one car does have enough room to open the door and let somebody in and out.

I know we haven't all studied this on a daily basis.

But I took a look at my car door. It's literally this thick. So a little room more than one foot forward is going to be needed because the garage door itself is going to take up more than -- it's going to take up six or seven inches just to open it.

MR. PUZZITIELLO: What size is your garage door?

MR. KALEITA: The garage door?

MR. PUZZITIELLO: Uh-huh.

MR. KALEITA: It's an eighteen-foot-wide opening. But it clearly could be a little wider to enable the ease of entry and exit.

MR. PUZZITIELLO: Standard garage doors are sixteen feet wide. Standard cars are six feet wide. Any builder's house we find in this -- any production home builder is twenty-two-foot-wide garage is all people by today. That's all that's being built.

MR. KALEITA: Well, Ray, I went back and checked the rental house that I had before I built my current house.

And I also checked my current house. My garage in my current house is twenty-seven feet wide.

MR. PUZZITIELLO: How big is your garage door?

MR. KALEITA: I believe it's eighteen feet. It's a big garage door because I got a wider garage.

I went back to my old rental house, which is still up for sale; and I measured that garage. It's not twenty-two feet. It's wider. And that gave my wife and I, during the days when we were renting and building our home, enough room in the garage to store lawn mowers and garbage cans and things like that.

And making a slightly wider garage for this gentleman aids him in other matters as well in that he lives in this high-crime neighborhood. Mr. Vanden Bosch only earns a modest amount of income. And this is an old, antiquated subdivision whose lots are only seventeen one hundredths of an acre in size. And so he literally has no place to put these things other than in a garage.

He has had his cars vandalized repeatedly. He's had batteries stolen out of both of his cars. He's had his garbage cans run over. He's here because he literally has a hardship unique to his neighborhood, which is that he can't protect his own property unless it's enclosed. He is afraid of being broken into. But, sadly, his earnings are not sufficient to move away.

I want to admit, there was a time about twenty years ago when my income was commensurate to that of Mr. Vanden Bosch. And I lived not too far away from this neighborhood. And I want to tell you, I know the neighborhood. It's a tough one. And I said to him, why can't you move out? His answer is, I'm close to

retirement; and I can't afford it. It's a high-crime area.

He's here to suggest that this variance application has merit, that you wouldn't have approved the previous variance if you did not agree that there was some merit to his position. He's asking for a larger garage so that he can actually get into and out of a vehicle. And I believe that if you decided to grant a variance, the question is what variance. And if we can get a bigger garage, I think this gentleman's going to be happy. And, for the record, in the previous application, there were no letters of opposition; and there were letters from the neighborhood supporting Mr. Vanden Bosch. And there is nobody here to today opposing this.

One more thought -- in fact, two more thoughts. This neighborhood's lots are so small that the streets literally fill up with cars. And you can see that in these pictures. And, in fact, there are cars in front of most of the houses. And I would submit this is going to get some cars off the street, and I would like the board to consider those for a minute.

And, as you do, I would like to point out -- and I know that staff will take hombridge to me saying this. But a variance to permit a greater invasion of the front yard setback was previously granted by the board to a property that is literally right around the corner from his house. And I have a picture showing that, if that fact is in dispute. Now, staff will say --

CHAIR PERSON KONYK: Just a minute, I just want the record to reflect that we accepted your photographs into the record; and I want you to understand that these become part of the process. We won't be able to give these back to you. You understand that, correct?

MR. KALEITA: Sure do. I'm not waiting to get them back right here, anyway.

But I might point out that the courts have determined that it is relevant if the county has granted previous variances to similarly-situated properties in the same neighborhood. In the case of Dade County versus Florida Mining and Materials Corp., the courts decided way back in 1978 that the grant of previous variances to others that are greater than the variance that is at stake in the instant case is, indeed, relevant and should be considered. And if anybody wants a copy of that case, I have it here.

But, basically, I'm here because these people can't afford to build a garage that they can't store their cars in. And I believe that if you grant a bigger garage, then you will enable people like Mr. Vanden Bosch, who has lived in this home for twenty-six --

MR. VANDEN BOSCH: Twenty-nine.

MR. KALEITA: Twenty-nine years to remain in the neighborhood he has spent his entire adult life in. And to help it stay viable, he is one of the few that has been there that long. So I submit, if you approve the idea of a garage, can we please get one a little bigger that works.

CHAIR PERSON KONYK: Okay. Thank you.
We'll hear from the staff now.

MS. CAI: Before I make a report, I'm handling out something.

CHAIR PERSON KONYK: Okay.

This is the same as this one, just a smaller copy; but you can see clearly.

Also I took -- I went to the neighborhood and took a picture of all the thirty-one adjacent residences along that Jamaican Drive, just to give you an idea of what the neighborhood looks.

CHAIR PERSON KONYK: Pictures of what?

MS. CAI: Of all the buildings along that road on both side of Jamaican Drive. So you can get an idea of how the neighborhood look like.

CHAIR PERSON KONYK: Okay. Thanks.

MS. CAI: You can pass it around.

And these are also --

CHAIR PERSON KONYK: Wait a minute. For the record, we're accepting your thirty-one photographs and your drawing.

MS. CAI: This is another one that I did some research to see was the regular size for the two-car garage. And this is from -- it's a Sixth Edition of the Architectural Graphics Standard. And it's from the American Institute of Architects, ARA. So it's from a good source.

MR. PUZZITIELLO: What does it show?

MS. CAI: It shows the regular two-car garage is twenty feet ten inches wide by twenty-one feet ten inches deep.

MR. PUZZITIELLO: That's inside dimensions?

MS. CAI: No. That's the outside. So I'm going to show you around so you can take a look at it.

CHAIR PERSON KONYK: The last think that she gave us is accepted into the record.

What is it from? The Architectural Standards --

MS. CAI: The Architectural Standard Graphics.

MR. KALEITA: Do you have a spare copy of that? I did give you a copy of everything I gave.

MS. CAI: I'm going to give a copy after because I just had one to show around.

CHAIR PERSON KONYK: We'll give you ours. We'll let you see it.

MS. CAI: I'll give you a copy.

So maybe I will stand here to make --

CHAIR PERSON KONYK: You really need to stand at the podium.

CHAIR PERSON KONYK: You haven't been sworn in, have you? We'll need to swear you in, for the record.

(Thereupon, Ms. Cai was sworn in by the court

reporter.)

MR. RUBIN: Maybe while she's presenting, we'll make a quick photocopy of what she had and give to the applicant.

CHAIR PERSON KONYK: Sure.

MS. CAI: For the staff report, there has been no special circumstances or conditions that are peculiar to this lot. As you can see, this is the regular rectangular-shaped lot. And it supports a eighteen-hundred-square-foot, one-story, single family residence. Similar to the other adjacent residences which have an open front carport attached to the house, this one has no special uniqueness or hardship for the proposed garage because the more encroachment for this application.

And on both side of the Jamaican Drive, there is no enclosed garage which do not comply with the required

front setback. Furthermore, in 1998 the property owner was granted a variance for the front setback encroachment for the proposed garage. At that time, they apply for twenty-eight feet wide and twenty-five feet deep of garage. And the board modified the case and to reduce the variance to five feet versus the thirteen feet based on the two major concerns.

The first one is it was that the twenty-eight feet of two garage exceeds the standard size of twenty-two feet.

And the second is to go beyond that twenty-two feet wide garage was not justified by the applicant. Accordingly, the board approved that original application but with reduction of eight feet. Staff recommended denial citing the applicant did not justify the seven criteria to be granted a variance relief.

Since then, the applicant did not provide any new information regarding the property structure hardship or uniqueness which can warrant of this approval of this increased variance. Staff reviewed this application and still citing the seven criteria has been not satisfied. I recommend a denial.

As you can see on these pictures, I did a little graphics to show you. These are light blue area to indicate the area of encroachment which is away from the twenty-five feet to the property line. So any structure within this light blue area has setback encroachment. And these orange shaded lines was previously approved from last time in 1998 was the five-foot setback encroachment.

And this time they came back, again, to request six feet more additional setback encroachment. As you can see, it's indicated as the blue shaded line.

So the total encroachment for the these application is eleven feet.

CHAIR PERSON KONYK: Okay.

MS. CAI: One more thing I want to point out is, I have also make a copy of this area map, which taken on May 1995. And I indicate all the adjacent residences in dark black. And this yellow is the subject property, and the red color indicates the proposed garage with encroachment. So, as you can see, the proposed garage is not compatible with the neighborhood. The majority of the houses set back at least thirty to thirty-one feet from the property line. And most of them has open garage -- I mean, open carport attached to the front or they may just eliminate or enclose it, but without any setback encroachment. So that's why the staff reviewed the case and thought that was not compatible with the neighborhood and they recommend denial.

CHAIR PERSON KONYK: Okay. Thank you.

Jon, can you refresh my memory? When this came before us the first time, staff also recommended denial?

MR. MacGILLIS: That's correct.

CHAIR PERSON KONYK: And then the board -- somebody made a motion for approval but modified it to a smaller garage. It wasn't an unanimous --

MR. MacGILLIS: No. The minutes are in the back. I believe it was --

CHAIR PERSON KONYK: It was unanimous.

So we approved the standard-sized garage rather than the -- now you want to go back to what you originally requested?

MR. KALEITA: No. This is a different application

than want was originally submitted.

CHAIR PERSON KONYK: Okay.

MR. KALEITA: The original application was for a thirteen-foot reduction from the front yard setback. This is for an eleven-foot reduction.

CHAIR PERSON KONYK: But you still want to go bigger than what we had originally agreed on?

MR. KALEITA: That's right. I thought I made that evident.

CHAIR PERSON KONYK: You did. I just am reiterating it.

MR. KALEITA: In rebuttal. I would like to point out that there is literally on the preprinted version of American Institute of Architects Form, there is no dimension of twenty-one foot -- of twenty foot ten inches. That is a sketched, added dimension placed upon the drawing by staff. If you add up the dimensions that are components, on that drawing they exceed substantially the twenty-foot, ten-inch-dimension. I added up two foot six and six foot eight, two foot six, six foot eight and two foot six. And that's almost -- that's in excess of twenty-two feet. So the twenty-foot, ten-inch dimension that's been placed upon this drawing has been added by staff.

CHAIR PERSON KONYK: The original variance approved what size garage? What did the original variance that they receives, what size garage did it approve?

MS. CAI: Twenty-two feet wide.

CHAIR PERSON KONYK: Okay, a twenty-two-foot garage.

You'll acknowledge that, that that should be twenty-two feet, not twenty feet ten inches?

MR. KALIETA: Well, no. I would submit that the evidence from AIA claiming that it's twenty foot ten inches is the -- take a look at the picture that you have. This is a sketched, added dimension staff has placed upon this drawing.

CHAIR PERSON KONYK: So it's twenty-two feet?

MR. KALIETA: Well, I don't know. Let's add up these numbers and see what it comes to.

MR. BASEHART: Actually, it's more like twenty-- almost twenty-five. It says, recommended nine foot opening. So that would be eighteen for two cars, and then two foot six in between cars and two feet six between the cars and the wall. So you're adding seven and a half feet onto eighteen is what their -- is what they say is recommended.

MR. KALEITA: I believe the number is --

MR. BASEHART: You're looking at twenty-five and a half, twenty-six is what they're recommending.

MR. KALEITA: I believe the number is higher, and that's why John drew it the way he did.

CHAIR PERSON KONYK: Just a minute.

MR. PUZZITIELLO: Twenty foot ten inches.

CHAIR PERSON KONYK: It is twenty-foot-ten.

MR. PUZZITIELLO: You add up the math along the thing, the inside is twenty-foot-ten. And what we gave you is the twenty-two-foot outside, assuming eight-inch block walls on both sides, which you're actually -- you're only going to be eight-inch block on the street side. So worst case, you're going to have twenty-two foot eight inside -- or twenty foot eight inside.

CHAIR PERSON KONYK: Okay. twenty foot eight. Ray

is saying it's twenty foot eight.

MR. PUZZITIELLO: No. What we gave them would be worst case twenty foot eight is probably going to be twenty-one foot four.

CHAIR PERSON KONYK: So you're saying the numbers add up to twenty-one four.

MR. PUZZITIELLO: What we gave them.

CHAIR PERSON KONYK: Right.

MR. PUZZITIELLO: This adds up to twenty ten.

CHAIR PERSON KONYK: Twenty ten.

MR. KALEITA: Ray, I question that mathematics.

CHAIR PERSON KONYK: Can you explain to us how it adds up to twenty ten so we can at least get this resolved. I really wish this hadn't even been introduced. But now that it has, we'll resolve this. Do the math for me. Do the math for me.

MR. PUZZITIELLO: You have twenty foot ten inside dimension.

CHAIR PERSON KONYK: How do you arrive at that number?

MR. PUZZITIELLO: Two cars at six foot eight.

CHAIR PERSON KONYK: Okay.

MR. PUZZITIELLO: And you have three spaces at two foot six.

CHAIR PERSON KONYK: So add that up. Two cars at six foot eight and three spaces at two point six. What does that come to?

MR. PUZZITIELLO: Twenty foot ten.

CHAIR PERSON KONYK: I just want him to acknowledge -- the applicant to acknowledge that it comes to twenty foot ten inches.

MR. KALIETA: I submit to you that I have an engineer's drawing saying that's it not an acceptable dimension.

CHAIR PERSON KONYK: I know that. I want to know what this drawing is adding up to.

MR. KALIETA: I object to this drawing on the grounds that it's hearsay. There is nobody here from AIA.

CHAIR PERSON KONYK: We're not even using this drawing. This drawing has nothing to do with it as far as I'm concerned.

MR. PUZZITIELLO: The standard every architect uses in the industry.

MR. KALEITA: Ray, I would not -- I custom-designed a house. And my garage is twenty-six feet --

CHAIR PERSON KONYK: This isn't a custom-designed house. Are you comparing this house to your home?

MR. KALEITA: I certainly am.

CHAIR PERSON KONYK: Okay.

MR. KALEITA: I'm saying that I have a garage on my house, and I could not park my two cars in the garage of this width.

CHAIR PERSON KONYK: Do you have anything else in your rebuttal to add?

MR. KALEITA: Yes, I do.

CHAIR PERSON KONYK: Okay.

MR. KALEITA: It is not true that the board is bound by any previous decision. This is a different application. And my view is -- could you please not interrupt me, Ms. Konyk. Thank you.

My view is that, because we're here to ask you to modify a previous decision that you granted, the issue of

whether the variance should be granted has already been decided --

CHAIR PERSON KONYK: This has nothing to do with this variance. What you're bringing up now, we're not telling you we denied it because another variance was denied or granted. This has nothing to do. So if you would speak to the variance, I would appreciate it. Speak to this variance. That case law has nothing to do with this variance.

MR. KALIETA: You're furnishing me a wonderful opportunity to exercise self-control.

CHAIR PERSON KONYK: Good. Good. Do that.

MR. KALIETA: Thank you so much.

This applicant cannot place these cars in the garage that zoning approved the variance for. We submit that the drawings we've shown you illustrate a larger garage is needed. It's if the board's reluctant to go to the full size, we would request you consider something less than -- something less than we've asked for or greater than what was issued.

There are no neighborhood opponents here today. Nobody from this neighborhood cares about this application. In fact, the only letters you have are letters of support.

This neighborhood is literally one of the oldest in the county. The lots are so tiny that we're lucky that people are still willing to reside in these homes. It's rapidly being overrun by criminals. I submit to you this gentleman needs your help. We wants to stay in the home he's lived in for almost thirty years.

CHAIR PERSON KONYK: Does anybody else want to speak on this item?

MR. JACOBS: I have a question. The original variance was granted in 1998; is that correct

MR. KALEITA: Yes, sir.

MR. JACOBS: Why didn't your client go forward with construction based on the original variance?

MR. KALEITA: Because he knew that he could not use this garage for the intended purpose because his cars wouldn't fit, and he would have no room to put is trash cans or lawn mowers in. And the only reason he wants to store these things in the garage is because he's had his cars repeatedly broken into, and he's had his lawn mowers stolen twice. He's had batteries stolen then from inside the fronts of his cars. And he really doesn't want to move and probably can't afford to move.

And he's just asking -- remember, all we're really asking for today is a few more feet. And we wouldn't have to ask for it if we had not been asked by the board to have a side entry garage. If the board said, well, all right, Kalieta, let's let you have a front entry garage.

Then this applicant could actually construct the garage on this site of sufficient width to get in and out of. But, because the board asked him to construct a side-entry garage, he is now limited in getting sufficient width to be able to get in and out of his own cars.

So you do have some options that are available to you. You can say, well, all right, we'll let him have a front-entry garage. And that way he can be as wide as he wants, but he's not going to violate of setbacks. That's a choice that's available to you today.

But to send him packing when he's living in such a

heavily impacted area with a lot of criminal activity and a lot of individuals of foreign origin who are stealing things from him, I don't think that's warranted here.

And I am also reminded of one other thing. Last year, the county amended its land use plan to include a policy that it will study heavily impacted urban areas to determine whether a relaxation of development regulations is warranted in those areas. This is one of the areas up for consideration. I submit that we need to be a bit more flexible in these old neighborhoods with type lots and that you have been flexible in the past in other petitions. And this gentleman wants to leave here today knowing that he will be safe in the future.

CHAIR PERSON KONYK: Anymore comments from the board or questions from the board?

MR. WICHINSKY: Madam Chair, I have a question for the county attorney.

Laura, can you reaffirm to the board our understanding that other applications and other rulings do not create any precedental affect in our decision-making on other applications.

MS. BEEBE: Administrative res judicata would normally apply in this case if there was no new evidence or circumstances surrounding the application. So this essentially is a new application. You're not bound by the previous ruling.

MR. WICHINSKY: And other applications of other homeowners of similar types, each variance request is judged on its own merits?

MS. BEEBE: One of seven criteria are that the variance shall not confer special privileges. So, if there were other garages that were permitted in the same area, you could consider that as whether he would be granted a special privilege are not.

I have not read this case. I can read it real quickly, if you want me to.

CHAIR PERSON KONYK: No. What has our position been?

MS. BEEBE: I don't know what your position of the board has been.

CHAIR PERSON KONYK: Well, it's always been our understanding that other people who have gotten variances that are similar to the one that's before us today --

MS. BEEBE: You're not bound by it.

CHAIR PERSON KONYK: -- we've never been bound by those. It's always each individual variance stands on its own merit. And I think that's clearly addressed in the seven criteria.

MR. KALEITA: While she reads it, if I would summarize that case for the board. The case says that the Court rules that the fact other variances of the same time have been granted in the neighborhood should be considered. There is a collision there between that decision and the current language of the code which rules the other way. And I submit to you that the power of that court, I think, is such that the board should consider the Florida law in deciding whether or not there's some evidence that this variance is justified by the grant of similar ones in the past.

The other one I'm referring to was a variance that reduced the front setback substantially further than the request that's before you today. So we're not asking for the same relief. We're asking for less relief.

CHAIR PERSON KONYK: Any other comments from the board?

MR. BASEHART: Yeah. I just -- I remember when this application originally went through. As I recall, I think the result was sort of like the board split, maybe. I think that, in fact, back when the original variance was considered, the staff was recommending denial; and the board ended up feeling that variance was justified in order to provide the relief to the property owner, but decided to give him -- twenty-two feet, was it -- rather than what was being asked as sort of a compromise.

I remember the issue. I believe that, you know, I felt then that the entire variance was justified. And I do remember another variance or two that we've considered in the area, and I'm familiar with the neighborhood. The fact is that it is a neighborhood in decline. There are a lot of crime problems in the area, and I'm familiar with it. I've got clients that have commercial properties on the perimeter of this neighborhood that have had all kinds of problems with vandalism and break-ins and other type of crime.

I think the issue here is, in an effort to try to preserve and maybe turn the neighborhood around, what is the lesser of the two evils, granting relief from the normal setback requirements to enable them to have a garage facility that will reduce the potential that he's going to suffer crime losses or is the setback more important? I think in this case that trying to do something to improve the neighborhood is the more important issue.

I notice from the pictures that the staff took -- I think everybody's looked at them, the eight-by-tens, most of the houses along the street don't look -- they're not being maintained. There's a lot of deterioration, lack of maintenance, no landscaping. You see that people have all kinds of things piled up in their yard or in their carports, filled with lawn mowers and bicycles and washing machines and all kinds of other things which are exposed to the view of the street, makes them, you know, subject to vandalism and also doesn't look very well.

If a sufficient-sized garage were provided to put those kinds of things indoors, out of view, not only would they be safe, but, actually, it will enhance the appearance of the neighborhood.

And, you know, based on that kind of consideration and my feelings in that regard, I'd like to make a motion that we approved this variance. I believe that, you know, this is an issue of neighborhood preservation, enhancing neighborhood appearance, reduction of crime. And I think those factors, when applied to the seven criteria, would enable this petition to meet the criteria. And I'm making my motion for approval on that basis.

MR. JACOBS: I'll second that motion. I think, given the nature of the neighborhood, that the requested variance is probably warranted.

CHAIR PERSON KONYK: Let's poll the board.
We have a motion and a second.

MS. MOODY: Mr. Basehart?

MR. BASEHART: Yes.

MS. MOODY: Mr. Jacobs?

MR. JACOBS: Yes.

MS. MOODY: Mr. Puzzitiello?

MR. PUZZITIELLO: Yes.

MS. MOODY: Mr. Wichinsky?

MR. WICHINSKY: No.

MS. MOODY: Mr. Rubin?

MR. RUBIN: No.

MS. MOODY: Mr. Misroch?

MR. MISROCH: Yes.

MS. MOODY: And Ms. Konyk?

CHAIR PERSON KONYK: No.

Motion carries four to three.

MS. BEEBE: It can be considered relevant. It isn't that you're bound by it.

CHAIR PERSON KONYK: Was there conditions?

Did you reserve the right to add conditions?

MS. CAI: Reserving the right to add conditions.

MR. BASEHART: Before you leave, I'd like to listen to -- you know --

CHAIR PERSON KONYK: Yeah. The staff reserves the right to add conditions. So we neglected to ask them.

MS. CAI: There are three conditions. The two are the same as the original, which the first is, the property owner shall provide the building division with a copy of the BofA result letter and a copy of the site plan presented to the board simultaneously with the building permit application.

MR. KALIETA: I'm sorry. I didn't understand that.

MR. MacGILLIS: When you get the result letter that you'll get this morning -- or you'll get it tomorrow. We'll mail it to you -- you have to take that to the building division when you're applying for your building permit, with a copy of the site plan that was presented at this hearing.

CHAIR PERSON KONYK: Wait a minute. Do we need to rescinded the last motion before we can do this?

The county attorney said we did.

MR. MacGILLIS: Oh, we do?

MS. BEEBE: That one's already been approved without --

CHAIR PERSON KONYK: So we need to rescind the last motion. How do we do that?

MS. BEEBE: You can make a motion for reconsideration. It would have to be by somebody who voted for approval.

MR. BASEHART: Well, since I made the original motion, I'd like to make a motion to reconsider the -- in my original motion to add conditions.

CHAIR PERSON KONYK: To add the three conditions.

MR. BASEHART: Right.

CHAIR PERSON KONYK: And you have to let the applicant hear the conditions. And then do we vote again?

MR. JACOBS: I second that.

CHAIR PERSON KONYK: Motion by Mr. Basehart for reconsideration. Second by Mr. Jacobs.

Do we have to vote on this?

All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: The motion carries unanimously.

MR. KALIETA: If I could inquire of Ms. Cai, what's the third condition?

MS. CAI: I'm going to read the second and now third. The second condition is the subject property -- the subject proposed garage shall remain a side-loaded garage.

The third one is, the property owner shall install a thirty-six-high native hedge at a maximum of twenty-four-inches on center along the proposed garage side wall adjacent to the Jamaican Drive.

MR. KALEITA: We agree to the conditions.

MR. BASEHART: I'd like to make a motion to approve -- probably should get the number in BofA 99-00020 on with the same logic and justification that my original motion was made on with the three conditions that were recommended by staff.

MR. JACOBS: I'll second that.

MS. CAI: I'm sorry. The third one, that has to be prior to CO.

MR. BASEHART: Right. Add that as well.

MR. KALIETA: That's agreed.

CHAIR PERSON KONYK: Motion by Mr. Basehart.

MR. JACOBS: Second.

CHAIR PERSON KONYK: Second by Mr. Jacobs.

All those in favor.

(Four panel members indicate aye.)

CHAIR PERSON KONYK: Opposed?

(Three panel members indicate nay.)

CHAIR PERSON KONYK: Is it the same? Four to three?

Motion carries four to three.

MR. KALIETA: 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:

NO. The subject lot is located .25 miles north of Summit Blvd. and .1 mile east of Haverhill Road, in the RM (residential Medium Density) zoning district. The lot is conforming in terms of width, length, and area (72' x 101'). The lot is part of a plat known as Dillman Heights, and is lot #31. The subject lot supports an 1800 square foot single family residence. Attached to the front of the subject single family residence is a 220-square-foot side-loading carport.

there are no special circumstances or conditions existing that are peculiar to this lot. The lot is typical to other lots in this same subdivision with respect to size, dimensions and structures. The dwelling is typical in character, layout and size to other single family dwellings along the street. In addition, many of the other single family dwellings have a front and side-loading carport attached to the dwelling to shelter their vehicles, similar to the applicant's existing carport.

The applicant was granted a variance in 1998 for a 20' front setback to allow a proposed garage to be constructed

at a standard size of 22' by 22' for a two-car garage. The applicant is requesting a greater variance to allow the garage to be constructed with the originally-proposed size of 28' by 25', which was modified by the board of Adjustment. The board did not support the applicant's original request finding that it to be excessive size when comparing with the standard size two car garage, it was not the minimum variance to make a reasonable use of this property (see minutes)

The applicant did not submit with this current application supporting information or documents, such as floor plan, for the proposed garage to justify or support the request for a larger garage and greater setback than previously approved by the Board.

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

YES. the applicants purchased the property in 1971. This is an antiquated subdivision with many of the dwellings having been constructed in the 1950s, supporting front and side loading open carports on the front of the houses. In the previous application (BA98-052) the applicant stated in the justification that the proposed garage addition was necessary since their automobiles had been broken into on several occasions. The Board of Adjustment approved a 5-foot variance that was previously approved to 11 feet.

As stated by the applicant in the justification, the amount of the garage space furnished by the approved variance (BA98-052) will not be sufficient size to accommodate a usable garage and therefore not worth constructing.

Based on the staff's research, the typical standard size for two-car garage is 21' by 21' based on the 6th edition of Architectural Graphic Standards by Charles George Ramsey and Harold Reese Sleeper. The applicant has not provided staff with a floor plan of the proposed garage to indicate the relationship between the garage and the interior layout to help justify the need of a larger garage size than the previously approved by the Board of Adjustment.

If approved, this application would allow the proposed garage to encroach 11 feet into the required 25-foot front setback. This would not be in keeping with the character of appearance of the existing structures on this street.

The variance was approved on a standardized garage rather the originally-proposed. the Board stated clearly in their motion that, a variance greater than 5 feet was not justified. The applicant has not provided new information or requested increase in the front setback variance.

Based on the staff's findings, special circumstances and conditions are the result of the applicant.

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:

YES. Other properties in the surrounding area have a carport that are utilized for protecting their automobiles, similar to the applicant's. There is nothing unusual about the subject lot or single family dwelling in terms of size or layout. Staff had recommended denial of the BA98-052, finding that granting of the setback variances would not meet with the general intent of the front setback requirement. The current request to allow a greater front setback encroachment for the proposed garage, than the standard garage, does not meet the variance criteria. If this variance is granted, it would be a special privilege and shall confer upon the applicant special privileges.

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. A literal interpretation and enforcement of the Code would not deprive the applicant of rights commonly enjoyed by other property owners in the same subdivision.

the applicant was previously granted a 5-foot variance by the Board of Adjustment in 1998 to allow the proposed 22-foot wide garage to encroach into the required front setback. This current request is to allow a proposed 28-foot-wide garage to encroach 11 feet into the required front setback. The request for the Board to approve the greater variance is not justified considering the applicant was aware that the variance was approved for the standard 22' by 22' and considering no new documentation was submitted with this application justifying this request. Granting of the variance will not meet the intent of the property development regulations, which are to ensure uniformity of construction, protect adjacent property owners, and maintain property values within the neighborhood. In fact, the granting of this variance will allow this property to have a garage in the front yard unlike any other property on this street. It will not be consistent or in keeping with the character of the existing dwellings that currently and typically support open, front and side-loading carports on the front of the dwelling.

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. As previously mentioned, there are alternative design options available to the applicant which would not require greater variance relief than previously permitted by BA98-052. The subject single family dwelling is setback 42 feet from the front property line. The applicant could construct a garage which is 22' in width and 22' in depth and still meet the approved front setback of 20 feet.

As noted by Chairman Konyk, at the July 16, 1998 hearing, by giving 5-foot setback variance, the board was giving enough flexibility to be able to construct a garage that would other wise not be permitted. The applicant could

also not be granted any variance and have to construct only a one-car garage.

The current requested variance is the result of self created hardship and a desire by the applicant to construct a garage exceeds the granted variance and the intent of the front setback. It is not minimal variance that will allow a reasonable use of the parcel of land and building.

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

NO. Granting of the variance will not be consistent with the intent of the code or the comprehensive plan. The proposed garage would be obtrusive since all the homes in the area meet the front setback of 25 feet and typically support open front and side-loading carports that were constructed at the time the houses were built. The proposed 2-car garage located at a 14 foot front setback would not be in keeping with the character of the neighborhood. The purpose of the setback requirements is to maintain consistency in appearance along the street. Therefore, the proposed encroachment into the front setback would not meet the intent of the Unified Land Development Code. This would be the only dwelling on this street to have an enclosed two-car garage encroaching into the front yard setback.

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

YES. the proposed garage would negatively impact other properties on this street since all the other houses are set back 25 feet from the front property line. As previously mentioned, the requested variance is not warranted and will be injurious to the surrounding area.

Staff recognizes a garage is a typical feature of a single family residence, however, through careful redesign, both the applicant's client's needs and the setback regulation could have been met. This would have avoided the need for any variance and ensured architectural compatibility and consistent front setbacks along this residential street.

ENGINEERING COMMENTS

No Comments (ENG)

ZONING CONDITIONS

NONE. Staff is recommending denial on this application, however, staff reserves the right to recommend conditions, should the board choose to approve this request. (ZONING)

CHAIR PERSON KONYK: Board of Adjustment time extension 99-00027, Randell Enterprises of Palm Beach, doing business as Williams Soils and Sods, to allow for a time extension of conditions one and two.

Hi, Dennis.

MR. KOEHLER: Good morning, Madam Chair.

CHAIR PERSON KONYK: How are you today?

MR. KOEHLER: I'm just fine. Thank you. It's always enjoyable to watch the board in action.

CHAIR PERSON KONYK: It's very nice to see you today.

MR. KOEHLER: Hopefully, on this matter, it will be my last appearance.

CHAIR PERSON KONYK: I certainly hope so.

MR. KOEHLER: Very briefly, a time extension has been requested.

CHAIR PERSON KONYK: I guess you should give your name for the record.

MR. KOEHLER: Sure. Dennis Koehler. Attorney with offices in West Palm Beach, representing Williams Soils and Sod, otherwise known as Randell Enterprises.

I'm here today on the time extension request which was recommended for approval by staff. I'm sure the board has looked at page seventy-one of your agenda. Jon MacGILLIS prepared a brief summary of the justification.

My last appearance here was on March 18th, in which you generously granted an amended condition number eight.

And a number of things have happened since then. I'll be very brief.

On March 24th, the site plan was approved. And that, by the way, is the reason for the time extension. On the day before that, the existing stuccoed wall -- this is the CBS wall that gave rise to the variance request -- the exterior was stuccoed and completed as required.

On March 25th, the trees were ordered. The landscape materials, they have to go through a period, apparently, of preparation before they can be installed, actually.

On April 1st, the CBS planter application was submitted to the county building department.

On April 5th, the topographic site work was completed by the surveyor. That's for the engineer who's doing the various area improvements.

On April 28th, the county issued the permit to construct that concrete planter.

On May 12th, the planter was actually constructed. I looked at it last Friday. It's all ready to be filled with dirt and plants. And now, looking ahead, we expect that by the 26th of May.

Next week the paving and drainage plans will be submitted to the county engineering department on June 3rd. Believe that the county -- the county should issue the permits. I'm sorry the paving and drainage plans are going to be submitted on the 26th of May. On the 3rd of June is when we expect the landscape improvements that are the subject of this time extension request to be installed.

Staff is recommending that we be given an extension to June 21 to complete this work. We hope to have it done almost three weeks earlier than that. Looking ahead, there is -- primarily, we expect the engineering department to issue the permit for the various

improvements probably in mid July, which we know is after the code enforcement deadline. But that's another board's concern.

By the 1st of September, finally, all of the improvements to the site that the code enforcement board has required will be completed. So we hope the board will grant the request until the 21st of June to complete the landscape buffer along the east property line. We fully expect that work to be done in the first week of June rather than toward the end of June. That's my presentation.

CHAIR PERSON KONYK: So didn't we say anything about this the last time he was here so he wouldn't have to come back for a time extension? I guess we didn't.

MR. MacGILLIS: He thought he could have it done by then. ULDC he has apply for extension he's not going to meet. You can't --

CHAIR PERSON KONYK: We discussed it but we're unable to do --

MR. BASEHART: He's always the eternal optimist.

MR. MacGILLIS: We went out to the site and took a couple of pictures that Mr. Koehler stated the retaining wall for the plants is up. I just have one concern. I wanted it on the record that I will be sending a landscape inspector out there because I've noticed they have shown a lot of debris, like, the concrete stucco in that planter.

I noticed left in the planters a lot of wood and dead grass and stuff thrown in there. I want it on the record that you're client knows they're supposed to clear, fill, put in --

MR. KOEHLER: That stuff was not in there last Friday when I was over there.

MR. MacGILLIS: I went out there yesterday around two o'clock. You've got to clean the planter area.

MR. WICHINSKY: Madam Chair, I'd make a motion to approve BATE 99-00027 as recommended by staff.

MR. BASEHART: Second.

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

Any discussion?

(No response.)

CHAIR PERSON KONYK: All those in favor, aye?

(Panel indicates aye.)

CHAIR PERSON KONYK: Opposed?

(No response.)

CHAIR PERSON KONYK: Seeing none, motion carries unanimously.

Fortunately, we have no absences. We have no absences to approve from the last meeting. So seeing none, we can have a motion to adjourn, right?

MR. WICHINSKY: I have a brief comment. I just wanted to let the board and the staff know that Harold was presented with a certificate of appreciation, and he extended his thanks, and his appreciation for the boards congeniality with him over the years and with staff.

CHAIR PERSON KONYK: How is Harold feeling?

MR. WICHINSKY: He's coming along.

CHAIR PERSON KONYK: I would extend to him my best wishes.

Motion for adjournment?

MR. PUZZITIELLO: Secnd.

MR. JACOBS: Second.

CHAIR PERSON KONYK: Second by Mr. Jacobs.
All those in favor aye?
(Panel indicates aye.)
(Thereupon, the proceedings were concluded at
ten-thirty-nine 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; that I
administered unto the witnesses their oath to testify the truth,
the whole truth, and nothing but the truth; that they were there
and then orally examined and testified as herein set forth; and
that this transcript of said proceedings, numbered 1 through 83
inclusive, constitutes a true and correct transcript of said
proceedings.

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 _____ day of June, 1999.

RACHELE L. CIBULA, NOTARY PUBLIC