

MINUTES
PALM BEACH COUNTY
BOARD OF ADJUSTMENT MEETING
OCTOBER 21, 1999
9:00 A.M. - 11:30 A.M.

ADDRESS
100 AUSTRALIAN AVENUE
WEST PALM BEACH, FLORIDA 33406

APPEARANCES OF BOARD MEMBERS:

GLENN WICHINSKY
JOSEPH JACOBS
ROBERT BASEHART
NANCY CARDONE
STANLEY MISROCH
CHAIR PERSON CHELLE KONYK
STEVEN RUBIN

APPEARANCES OF STAFF:

DAVID CUFFE
LAURA BEEBE, COUNTY ATTORNEY
ALAN SEAMAN
JOYCE CAI
HELEN LAVALLEY
MARK PENNEY
NATALIE WONG

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(Thereupon, the proceedings were called to order and

the following occurred:)

CHAIR PERSON KONYK: Welcome everybody to the October 21, 1999, Board of Adjustment meeting. And I'd like to call the meeting to order.

We'll start the meeting with a roll call and the declaration of quorum.

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 varaince.

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:

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?

(No response.)

MS. MOODY: Mr. Glenn Wichinsky?

MR. WICHINSKY: Here.

MS. MOODY: Mr. Stanley Misroch?

MR. MISROCH: Here.

MS. MOODY: Mr. Steven Rubin?

MR. RUBIN: Here.

MS. MOODY: And Ms. Chelle Konyk?

CHAIR PERSON KONYK: Here.

MS. MOODY: We have a quorum.

CHAIR PERSON KONYK: I have before me proof of publication in the Palm Beach Post on October 3, 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 are 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 the Board has voted on the consent.

If there's opposition from the public or the applicant does not agree with the conditions staff has recommended or a Board member feels the item warrants a full hearing, your item will be reordered to the regular agenda.

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

The item will be introduced by the staff. The applicant will have an opportunity to give their presentation. The staff will then give their presentation. At this point we'll hear from the public. After the public portion of the hearing is closed, the

Board members will have an opportunity to ask questions of the applicant and the staff and then vote on the item.

Next item on the agenda is approval of the minutes. Everybody received a hard copy of the minutes. Does somebody have a motion to approve the minutes --

MR. JACOBS: So moved.

CHAIR PERSON KONYK: -- of the September -- what was the date? I think it was the 18th.

MR. BASEHART: 16th.

CHAIR PERSON KONYK: September 16th.

Motion to approve by Mr. Jacobs.

Second by --

MR. RUBIN: Second.

CHAIR PERSON KONYK: -- Mr. Rubin.

All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: Motion carries unanimously.

Next item is the remarks of the zoning director.

Mr. Seaman is filling in for Jon because he's on vacation?

MR. SEAMAN: That's correct.

CHAIR PERSON KONYK: Do you have any comments?

MR. SEAMAN: Actually, we have our zoning director here. He's going to --

MR. WHITEFORD: Just a couple quick comments. I wanted to apologize for the late delivery of the appeal, which is the last item on agenda regarding access to places of worship.

You should have two items, which we'll discuss at the end of the meeting. One is a report from staff. It's very brief. It's two pages with some attachments. The justification is attached to it from the person appealing the decision, Mr. Dennis Koehler. In addition, Dennis faxed us this morning a second two-page memorandum, which you should also have.

We thought we were going to get this issue resolved.

We thought it was going to be withdrawn as of yesterday. We'll go into that in more detail a little bit later. But I just wanted to bring that to your attention that you will hear that item at the end of the day.

CHAIR PERSON KONYK: Okay. Next item, introduction of staff.

MR. SEAMAN: Yes. Again, my name is Alan Seaman, and I'm relatively new, senior site planner. We also have with us today two interns, Mark Penney and Natalie Wong, who have made field visit analysis and who have actually created the reports for us.

And we have Helen LaValley and Joyce Cai.

CHAIR PERSON KONYK: Okay. Next item is ULDC was amended on September 28, 1999.

Who's going to address those?

Laura? Alan?

MR. SEAMAN: Yes. You have at your disposal there a copy of those changes to item sub part 3 section 4.5.d.5, decision making. And I can read the paragraph to you or simply tell you those portions that were crossed out.

CHAIR PERSON KONYK: Simply tell us those portions that was crossed out.

MR. SEAMAN: The portions that were crossed out read, except that for four affirmative votes shall be necessary in order for any variance to be adopted by the Board of Adjustment. That has been stricken.

CHAIR PERSON KONYK: So now we just need a majority instead of a super majority?

MS. BEEBE: Right.

CHAIR PERSON KONYK: That's it?

MR. SEAMAN: That's it.

CHAIR PERSON KONYK: Next item is the -- are there any changes to the agenda?

MR. SEAMAN: No, madam, there are not.

CHAIR PERSON KONYK: Next item -- first item on the withdrawn is BAAA 99000019.

This isn't the one we were talking about, right?

MS. MOODY: No.

CHAIR PERSON KONYK: Appeal of the zoning director's interpretation to suspend.

So that was withdrawn?

MR. SEAMAN: Well, we need a motion to withdraw. It's been postponed a number of times on previous agendas. The issues have been resolved, and they were related to special permitting.

MR. BASEHART: If the applicant wants to withdraw it, do we have a right not to let him?

MS. BEEBE: Did you receive a letter requesting withdrawal more than five days prior to this hearing?

MR. BASEHART: It would seem to me that all we have to do is recognize that the applicant has withdrawn.

MS. BEEBE: If the zoning director received a letter more than five days prior to the hearing, it's a withdrawal by right, and it's without prejudice.

CHAIR PERSON KONYK: Okay. So we'll let the record reflect that BAAA 99000019 is withdrawn.

BAA 99000084, another withdrawal. Did we receive the --

MR. SEAMAN: No motions needed. It's not --

CHAIR PERSON KONYK: Okay. That one's withdrawn.

Next item is the postponements. BofA 99000075, Chris Macri, agent for Harold and Elizabeth Macri, to allow a proposed SFD to encroach into the required rear setback.

Is this by right?

MR. SEAMAN: This is a second request for postponement. They need to update their survey and resolve issues with staff regarding tree preservation. It needs a motion to be postponed.

CHAIR PERSON KONYK: Okay.

MR. WICHINSKY: So moved.

CHAIR PERSON KONYK: Motion by Mr. Wichinsky.

MR. BASEHART: Second.

CHAIR PERSON KONYK: Second by Mr. Basehart.

BofA 99000075 is postponed.

Is that to a time certain?

MR. RUBIN: Did the public not appear?

CHAIR PERSON KONYK: Did anybody come here for this item?

MR. MACRI: Yeah. I'm the agent, Chris Macri. I postponed because of some requests that Jon MacGillis had for some survey. And the previous postponement wasn't me.

CHAIR PERSON KONYK: I remember that.

MR. MACRI: It was the one neighbor, who I still haven't spoke to and I haven't seen in a month.

CHAIR PERSON KONYK: Is the neighbor present today?

MR. MACRI: I don't believe.

He's been kind of obscure. But we will have that hopefully worked out.

CHAIR PERSON KONYK: Maybe, hopefully, he'll remain obscure.

MR. MACRI: So, anyway, it's postponed again for another month.

CHAIR PERSON KONYK: Okay. Thanks.

That's not by right, so we have -- we have a motion and a second. And there's nobody that objects.

So all those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: Motion carries unanimously.

And that will be postponed to when?

MS. MOODY: November 18th.

CHAIR PERSON KONYK: November 18.

Next item for postponement is BofA 9900076, Betty Resch, as agent for Nanette Sexton, to allow an existing accessory structure to encroach into the required south setback.

Is there anybody from the public to speak on this item?

(No response.)

CHAIR PERSON KONYK: Okay.

MR. SEAMAN: This is a second request for postponement. They need additional time to address the issues of -- regarding abandoning a utility easement. So it needs a motion to postpone.

MR. BASEHART: So moved.

CHAIR PERSON KONYK: Motion by Mr. Basehart.

Second by --

MR. MISROCH: Second.

CHAIR PERSON KONYK: -- Mr. Misroch.

All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: BofA 9900076 is postponed to November 18th.

The next item is BofA 9900077 Christopher Cutro, to allow an increase in the maximum required number of parking spaces allowed in a MUPD.

Is this by right?

MR. SEAMAN: This is being withdrawn.

We received a letter this morning from Chris Cutro, Director of Planning, explaining that they met with Bruce Barber, who's a planner with our department; and the problems with parking location and the amount of parking got resolved. So the variances are no longer needed.

CHAIR PERSON KONYK: Okay. So do we have to have a motion on that?

MR. SEAMAN: To withdraw, do we need a motion?

MS. BEEBE: You have a question you have to decide --

CHAIR PERSON KONYK: We have a motion for withdrawal?

MR. BASEHART: So moved.

MS. BEEBE: You have to decide whether it's with prejudice or without prejudice. With prejudice means they can't bring it back for another year.

MR. BASEHART: I make a motion that we allow this item to be withdrawn without prejudice.

MR. WICHINSKY: I'll second the motion.

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

All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: Motion carries unanimously.

Next item is BofA 9900087, Winston Lee, agent for

Peter Cartier, to allow the following variances. Is this one by right?

MR. SEAMAN: Yes. This is by right. They're working out the issues with staff. It does not need a motion.

CHAIR PERSON KONYK: And this will be for on November 18th?

MR. SEAMAN: That's correct.

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

(No response.)

CHAIR PERSON KONYK: Seeing none, item B of A 9900087 is postponed to November 18th.

Let the record reflect that Nancy Cardone has arrived.

Next item on the agenda are the consent items.

First item on the consent is B of A 9900059, Herford Associates, to allow a reduction in the required side corner setback for an addition to an existing structure.

Is the applicant present?

MS. LOCKHART: Yes.

CHAIR PERSON KONYK: Your name for the record?

MS. LOCKHART: Sara Lockhart with Gee and Jensen.

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

MS. LOCKHART: Yes, we do.

I would like to clarify, though, we had requested that on number four and then also on number six that we extend the time frame from April 15, 2000, to November 15, 2000, which will allow, hopefully, enough time for the county to get in there and perform the road work before we have to pave our parking lot and then landscape.

CHAIR PERSON KONYK: Is that acceptable to staff?

MR. SEAMAN: There are actually some other corrections that need to be read into the record here for this particular issue.

CHAIR PERSON KONYK: Okay.

MR. SEAMAN: If you can turn to page thirteen of your supplemental material, under the Palm Beach County emblem, the palm trees, you'll see where it reads required three thirteen spaces. That should be reduced to from three thirteen to three-oh-four.

Next to required is a proposed. That should be increased from two seventy-six to two hundred and eighty.

And the top of the variance needs to be reduced from thirty-seven down to twenty-four. The six feet indicated should be reduced down to five point five.

And if you go down further in the report where we have the legal ad, the to allow a reduction in the required side corner setback for an addition to the existing structure needs to be stricken. This particular variance was deleted after our legal ad went out.

If you'll also turn to page twenty-three, the conditions three need to be -- I believe this is what Sara was referencing -- from April 15, 2000, to November 15, 2000. Condition four, from April 15, 2000, to November 15, 2000. And condition five, where it reads the parking variance is limited to the reduction of twenty-four spaces for a local of three-oh-four. That three-on-four should be reduced to three-oh-two.

If you will turn to page twenty-four, condition six, again, the date of July 15th should be amended to November

15, 2000.

CHAIR PERSON KONYK: Okay.

MS. LOCKHART: Those are acceptable.

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

(No response.)

CHAIR PERSON KONYK: Are there any letters?

MR. SEAMAN: There is a situation that needs to be brought up, Madam Chairman.

And the situation is that there were fines to be paid for code enforcement issue, which have been done and also a letter to explain that perhaps additional trees on-site that may need to be addressed through code enforcement were, in fact, not cut by the applicant but by Florida Power and Light. That letter was not received. And staff requests that the petition be postponed.

MS. LOCKHART: I object.

CHAIR PERSON KONYK: Can't you make it contingent upon that being received? And, if it's not received, then it's --

MR. SEAMAN: Actually, they were fined for hat racking of the trees on site. Part of the trees were -- we are told were cut by FPL. We had requested a letter from Sara stating that. We did impose a fine on the other trees that were cut. They have paid that. We do not have a letter from FPL stating that they cut the other trees.

MS. LOCKHART: We have paid the fine in accordance with what code enforcement assessed. This discrepancy lies with the zoning division, not with code enforcement.

I have the receipt from where we paid our fine that was levied upon us --

CHAIR PERSON KONYK: I don't think they're disputing that you paid the fine.

MR. BASEHART: Wait a minute.

MS. LOCKHART: But the negotiations occurred with code enforcement. This is an insertion of the zoning division in a code enforcement issue.

MR. BASEHART: There were trees that were hat racked?

MS. LAVALLEY: Yes.

CHAIR PERSON KONYK: And that was a violation. I know it's the county's policy that you don't process or consider applications when there's an outstanding violation or outstanding fines that haven't been paid. But, if the violation was resolved by the code enforcement board finding that there was a violation in fining the applicant and the applicant has paid the fine, then there's nothing outstanding.

MS. LAVALLEY: Technically, they are not in violation.

MR. BASEHART: Well, then why should we postpone it?

MR. SEAMAN: It was simply our feeling that all trees were in violation; but we were suggesting that, if you can provide a letter saying that these trees were cut not by your applicant but by Florida Power and Light, those trees would not be part of the code enforcement issue.

And that was what we gave time to provide that letter to prove that those trees were not cut by --

CHAIR PERSON KONYK: Why can't we just make it another condition?

MS. LOCKHART: I would not want to do that. And I'll explain why.

I've been in touch with Florida Power and Light. It

was a little tough to get through. They've been pretty busy. But the problem that they have is that asphlund has a contract that FP and L pays on a monthly basis. And they're the ones that go out and make the judgment call on trimming.

We are going to be in the system for over six more months. We're go on to the Board of County Commissioners. You're the first stop here. I will continue to work with the staff on this. We're not going anywhere. Albertsons wants to renovate this store. This is a very ugly store in need of rehabilitation in an area that has got a lot of problems as far as economic redevelopment.

We're dedicating right-of-way. We do not have to give this right-of-way up. We're dedicating right-of-way, which means the variance is really by right at this point. I would rather continue to work with staff through the zoning approval process rather than have a condition or Board Adjustment petition that's by right.

MR. BASEHART: The problem I'm having trouble understanding, have the violations been resolved?

MS. BEEBE: I believe the trees that they're talking about have not ever been put in violation. So nothing precludes code enforcement from going back and putting those trees in violation.

MR. BASEHART: But is there an outstanding, unresolved violation?

MR. SEAMAN: No, there's not.

MR. BASEHART: I don't see how we can postpone this based on requiring a letter admitting who did it.

MR. JACOBS: First of all, what was the amount of the fine?

MS. LOCKHART: Four thousand two hundred and fifty dollars.

MR. JACOBS: How many trees did that involve?

MS. LOCKAHRT: Seventeen, I believe.

MR. JACOBS: How many trees are there that may possibly be in violation, depending on who was responsible for the hat racking?

MS. LOCKHART: About seven to ten others.

MR. JACOBS: So you had a four-thousand-dollar fine on seventeen trees, and there are seven to ten other trees that there may or may not be a violation depending on who did the hat racking?

MS. LOCKHART: Right.

MS. BEEBE: Regardless of who did the hat racking --

CHAIR PERSON KONYK: Wait a minute. Wait a minute. Wait a minute. I want to stop this right here.

There is no violation, as of today. As far as I'm concerned, it's not relevant. There's not a violation today. If there was a violation today that hadn't been resolved, I can understand this lengthy discussion about this.

But you're assuming that there might be a violation in the future, and you're going to hold this up today because of that. So I don't know how the Board feels about this.

MR. SEAMAN: Staff withdraws our postponement recommendation.

CHAIR PERSON KONYK: Okay.

So is there any opposition from the public?

We've already established that there's not.

Is there any letters on this item?

MR. SEAMAN: No, there were not.

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

(No response.)

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

MS. LOCKHART: Thank you.

STAFF RECOMMENDATIONS

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

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 5.91 acre commercial parcel is located within the Lake Worth Road Corridor Study area, which is part of the Board of County Commissions (BCC) Countywide Community Revitalization Program. The corridor runs along Lake Worth Road between Military Trail to the west and Congress Avenue to the east. The BCC created the Lake Worth Task Team, comprised of various county agencies that have been working for the past several years to implement improvements to the community. These improvements address the infrastructure, crime, drainage, parks, zoning regulations, etc., in order to improve the quality of life and give incentives to encourage redevelopment in the area. This particular parcel is located at the western end of the corridor and supports a food store and retail use that acts as an anchor to help foster the County's redevelopment goals. The Albertson's store provides residents within this area with a needed service. The property was approved for a large scale shopping center in 1977, (Petition 77-129). The building was constructed in 1978. The applicant is proposing to do modifications to the structure and site which will require the site to meet certain current ULDC requirements. The proposed increase in square footage of both existing structures will require additional parking, upgrading landscaping on-site and compliance with current CG setbacks. The applicant is requesting four variances that will allow the proposed modifications to occur. The modifications will also require the applicant to obtain a Development Order Amendment (DOA) approval from the BCC to amend conditions of approval that limit the overall lot coverage.

The property has unique features that warrant special consideration when applying the current ULDC requirements.

The property was site planned and developed pursuant to the previous zoning regulations, ordinance 73-2. These requirements were less restrictive in terms of landscaping along rights-of-way and parking. The proposed modifications to the structures and site landscaping will allow the uses to compete with other similar retail uses in the general vicinity while at the same time meet changing corporate and user demands. The current parking is not fully utilized by the customers and the applicant

has submitted a Special Purpose Parking Demand Study that states the proposed increase in square footage to the structures will not result in a deficiency in the number of used parking spaces. The proposed landscape variance along Military Trail is directly related to proposed right-of-way taking. The landscape variance along Lake Worth Road, which is minimal, is related to the fact the buffer when installed in the early 1980's was in compliance with the landscape code. The code only required a five-foot landscape buffer with trees 40 feet on center and an 18" hedge. The current ULDC requires a 20 foot wide buffer, trees 30 feet on center and a 24 inch hedge. The applicant is proposing to widen the buffer to 14 feet along Lake Worth Road, while along Military Trail there will be no room remaining to install any landscape strip, once the right-of-way dedication occurs. Staff is recommending landscape conditions that will ensure the general intent of the current landscape code is satisfied.

Therefore, there are unique characteristics to this property and its prior development approvals that warrant special consideration when applying the literal interpretations of the code provisions the applicant is requesting variances for in this application.

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

NO. The applicant is proposing to upgrade the property and building that was originally approved in the late 1970s by the BCC to support a large scale shopping center. The structures were constructed in the 1980s, pursuant to the 1973 Zoning Code, which has been superseded by the current ULDC 92-20. The proposed improvements to the structures requires the applicant to comply with certain current code requirements, specifically parking and right-of-way landscaping. The applicant is proposing to modernize the Albertsons store and add 3,500 square feet of additional floor space (liquor store) to the southwest corner of the building. The applicant will comply with current property and site development regulations to the greatest extent possible considering the site is currently built-out.

PARKING VARIANCE: ELIMINATE 24 REQUIRED OFF-STREET
PARKING SPACES:

The reduction of 24 required off-street parking spaces, is justified by the applicant, as parking that is not required by the users of the site. The applicant has submitted a Special Purpose Parking Demand Study, prepared by Pinder Troutman Consulting, Inc. The study was prepared from site surveys performed on December 11, 1998, and December 12, 1998, from 10:00 A.M. to 9:00 P.M. The conclusion drawn from the survey was the existing parking is only currently 50% utilized. The parking demand for the site once the renovations are complete will be 175 spaces, while the site will have a total of 304 spaces.

R/W BUFFER REDUCTION ALONG MILITARY TRAIL FROM 20
FEET REQUIRED BY ULDC TO 0 FEET:

The landscape variance is not self created. Military Trail is to be modified and will result in land from this property being dedicated to the county to re-align the road at the intersection (Military Trail and Lake Worth Road.) The dedication of land area for road improvements will result in the existing 5 foot landscape buffer being eliminated. This will eliminate the existing landscape buffer along Military Trail north of the southern entrance.

R/W BUFFER REDUCTION ALONG LAKE WORTH ROAD FROM 20 FEET REQUIRED BY ULDC TO 14 FEET:

The right-of-way buffer along Lake Worth Road is currently five feet in width, the applicant is proposing to increase it to 14 feet. The ULDC requires when intensity (additional square footage) is added to an existing site that was constructed prior to 1992 that the right-of-way buffers shall be brought up to the current 20 foot requirement. Staff is recommending conditions of approval to ensure the final landscaping in the buffer is upgraded to ensure the general intent of the code is met.

This will allow flexibility to the applicant in terms of satisfying the code while at the same time addressing on-site constraints.

Therefore, the four requested variances are not the results of actions by the applicant. The applicant has an existing site and structures that were constructed pursuant to a code that has since been superseded with the current ULDC. Considering the current ULDC requirements for parking and landscaping have been modified since this site was originally constructed to impose their strict application to this site will result in an undue hardship on the applicant. All four variances can be mitigated with the conditions recommended by staff.

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 Board of County Commission encourages redevelopment of properties located in the eastern communities of Palm Beach County. The eastern area is often referred to the area east of Military Trail. Many of these properties were constructed 20 to 50 years ago and/or are located in neighborhoods that lack upgraded infrastructure (roads, water/sewer, parks, etc), landscaping, uniformity in architecture, etc. The Board of County Commission is encouraging property owners to reinvest in these areas to help re-establish once thriving residential and commercial communities. This project is located east of Military Trail within the Lake Worth Corridor. The Lake Worth Corridor study area has been the focus of redevelopment studies and implementation of new infrastructure by the County for the past several years. An effort has been made to make significant improvements to the corridor and surrounding area to improve the quality of life of the residents while at the same time improve the overall tax base and foster redevelopment/reinvestment. The Albertsons site, which is

the subject of this variance, is an important property, being located at the western perimeter of the corridor. It acts as a terminus to the corridor redevelopment and can help stimulate redevelopment in this area. The commitment of this regional food chain to invest money to renovate the existing building and improve the property sends a strong signal to the community that this business is here to stay. The applicant is requesting variances that are minor in nature and are the result of the proposed improvements that will occur on site. The variance for parking and right-of-way buffer reduction can be justified and mitigated to meet the general intent of the code.

The parking reduction of 24 off-street parking spaces has been justified by the applicant, as parking that will not be utilized by the users of the site. The applicant is requesting the Board to Allow the existing parking on-site to remain as is and no additional spaces be added.

Since the only change to the current site is the additional 3,500 square foot of retail (liquor store) being constructed to the Albertsons store, which would require a total of 18 spaces. To support that applicant's claim that the 24 spaces are not required for this use, they hired a consultant to prepare a parking analysis study. The study states the existing parking currently is under utilized and will exceed the number required once the renovations to the Albertsons are made.

The variances to reduce the width for the right-of-way buffer along Lake Worth Road and eliminate the buffer along Military are justified when reviewed in the context of the dedication. The applicant is required to dedicate land for the re-alignment of Military Trail and the intersection of Lake Worth Road. This will eliminate the existing 5 foot of the right-of-way, north of the southern entrance to the site. The applicant has submitted a landscape plan to address new landscaping along the foundation of the Albertsons store and parking lot along the west side of the building and right-of-way to mitigate the variance. Staff is also recommending conditions to upgrade the landscaping in the parking lot in this area to reduce two additional parking spaces to accommodate additional trees. The right-of-way buffer along Lake Worth Road is the applicant's current proposal to add 3,500 square feet to the Albertsons triggers the rights-of-way buffer to be upgraded to meet current code of 20 feet in width. The applicant's willingness to widen the buffer to 14 feet and install native shade trees in the buffer. Only 14 feet can be provided since any more land area would require loss of parking and possible reconfiguration of the parking lot, which is existing.

Therefore, considering the applicant is dedicating land area to accommodate the re-alignment of Military Trail and the fact the existing Albertson's store will be renovated, no special privilege will be granted to the applicant. Staff is recommending conditions of approval to further mitigate the variance requests and ensure the general intent of the code is satisfied.

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 proposed renovations to the Albertson's store require the applicant to meet certain ULDC provisions. This site was originally site planned and approved under a 1973 Zoning Code, which was less stringent in terms of parking and landscaping requirements. The site complied with code when it was issued a certificate of occupancy for the Albertson's store. The parking and landscaping are currently vested under the 73-2 Zoning Code. However, the applicant is proposing to do improvements to the Albertsons store and add a 3,500 square foot liquor store. The improvements require the parking and landscaping to meet current regulations. This cannot be accomplished since there is no additional land area to accommodate parking and buffers.

Therefore, if the requested variances are denied, the applicant would not be able to renovate the Albertson's store, as proposed. Many of the proposed renovations are required by the Albertson's corporation. In order to keep the store competitive and consistent with changes being made by other large food stores (Winn Dixie and Publix), significant changes are being made to the exterior and interior of the store. This site and the users who shop here are critical to the redevelopment efforts the County is encouraging in the Lake Worth Corridor Study Area. If the applicant is not granted the variances they might consider moving further west where land is vacant and they can construct a new store. Other properties that are located on similar type sites and developed 20 years ago have been given special consideration when applying the literal interpretation of the code. Therefore, this application is consistent with similar variances that have been granted in the past to encourage redevelopment and infill.

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 requesting a parking and landscaping variances, which will allow the proposed renovations to proceed through the public hearing (BCC) and permitting process. The existing parking, according to the applicants Shared Parking Analysis, is only 50% utilized. The minor expansion in square footage (3,500 sq. ft. for liquor store) that is being proposed will not generate an increase demand for parking over what is currently on-site. The proposed additional square footage will not necessarily generate the need for more parking but simply capture users who are already visiting the site. Therefore, the existing parking will meet the future user needs. The existing landscaping along the right-of-way met the code in effect at the time the site was developed in the early 1980s. However, the proposed expansion to the site requires the right-of-way buffers to be upgraded to 20 feet in width. However, Military Trail

is to be realigned along this section of the road that abuts the west property line. This will result in the elimination of the existing buffer, trees and hedges along the existing 5 foot buffer will be removed. Staff is recommending conditions of approval that will ensure the overall site, once redeveloped, meets the general intent of the landscape code, which is to ensure adequate buffer from the rights-of-way as well as vegetative cover within the parking lot. The applicant has submitted a Conceptual Landscape Plan, Exhibit 22, that partially addresses the lack of landscaping along Military Trail once the existing buffer is removed. Staff recommends two additional parking spaces be deleted to accommodate another 10 feet wide interior landscape island.

Therefore, the requested variances are reasonable and warranted. If the variances are granted, the applicant will be able to move forward with the proposed improvements to the site, which will be an asset to the corridor as well as to the users of the site.

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

YES. The intent of the Comp Plan is to encourage intense commercial uses in the C/8 land use classification. This site provides a needed service (grocery store) for residents within a ten mile radius. There are limited large scale grocery stores within this area that supports the residential communities that were developed in the 1900s to present. There are residential properties to the rear and across Lake Worth Road that utilize this store.

The ULDC recognizes vested rights of a property owner who has sites and structures constructed pursuant to a early code that were developed under regulations of a prior Zoning code. The proposed 3,500 square foot addition is triggering the applicant to comply with certain provisions of the ULDC. The right-of-way buffers have been increased from the existing 5 feet to 20 feet in width. The applicant is proposing to meet the general intent of the parking and regulations.

Therefore, the proposed overall improvements to this site will be consistent with the intent of the commercial land use and zoning classification.

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

NO. The Parking Analysis Study, submitted by the applicant, indicates that the existing parking is currently under utilized (only 50% used) and even with the proposed 3,500 square foot additional square footage that is being constructed on this site the parking spaces will meet the future user demand. The right-of-way buffers will be upgraded wherever possible to ensure a minimum buffering is provided between the right-of-way and structure. The proposed setback encroachment along

Military Trail will be mitigated with upgraded landscaping in the proposed 3,500 sq/ft addition.

Therefore, the granting of the requested variances will allow needed improvements be made to these structures and ensure this foot store remains as an import service to this community.

ENGINEERING COMMENT

Note that the parking study referred to is not a "shared parking" analysis based on the same parking spaces serving different uses at different times of day, but is a special purpose parking demand study based on the particular commercial uses currently proposed for the site. (ENG)

ZONING CONDITIONS

1. The property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application for the proposed renovations to the Albertson's. (BLDG PERMIT:BLDG)
2. Prior to DRC certification to the Site Plan, the applicant shall ensure the Board of Adjustment conditions are on the final certified site plan. (ZONING-DRC)
3. By April 15, 2000, the applicant shall apply for a renovation permit for the Albertsons store. (DATE:MONITORING-BLDG PERMIT)
4. By April 15, 2000, the applicant shall install the upgraded landscape in the right-of-way buffers along Military Trail and Lake Worth Road as well as the parking lot as shown on the Conceptual Landscape Plan, Exhibit 22, in the BA File BA99-59).(MONITORING-DATE-LANDS)
5. The parking variance is limited to the reduction of 24 spaces for a total of 304 spaces to be provided on site. Prior to final certificate of completion of the renovations to the Albertsons Store, the required on-site parking shall be confirmed by the Building inspector. (CO-Bldg IN)
6. Prior to July 15, 2000, or issuance of a Certificate of Completion for the proposed renovations to the Albertsons store, the applicant shall contact the Landscape Section to request a final landscape inspection for the site. All required upgraded landscape shall be in accordance with the approved landscape plan and conceptual landscape plan presented to the BA. If the Board of County Commissioners increases the landscape requirements by conditions of approval, they shall take precedent over the Conceptual Landscape Plan, Exhibit 22. The spacing and height of the trees along both Military Trail and Lake Worth Road shall be upgraded to compensate for the reduction in the width of the landscape buffer. (DATE:MONITORING-LAND INSP)
7. Two additional off-street parking spaces that currently abut Military Trail shall be eliminated to allow for a 10 foot wide interior landscape island in the parking lot. The island shall include 3 booted Sabal palms. (LANDSCAPE)

CHAIR PERSON KONYK: Next item on the consent is B of A 9900071, Michael Neff, agent for Town Center at Boca Raton Trust, to allow for a proposed wall sign on southwest facade.

Is the applicant present?

MR. AMATO: Yes.

CHAIR PERSON KONYK: Your name, for the record?

MR. AMATO: My name is Tony Amato, A-m-a-t-o, with Amato/Reed Architects.

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

MR. AMATO: Yes, ma'am. On behalf of May Department Stores and the agent, they do agree with the conditions.

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

(No response.)

CHAIR PERSON KONYK: Are there any letters?

MR. SEAMAN: Yes, Madam Chairman, there are. There are two, and they are disapproval. And, basically, they feel that it's just a visual intrusion.

CHAIR PERSON KONYK: Do we feel that it warrants that this item be pulled from consent?

MR. SEAMAN: No, we do not.

CHAIR PERSON KONYK: Any Board member feel this item should be pulled from consent?

(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.

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 Lord and Taylor Department store is part of the Town Center Mall at Boca Raton located on the South side of Glades Rd., between St. Andrews Blvd. and Butts Rd., within the town Center at Boca Raton subdivision, in the CG Zoning District. (Pet. 77-109). The overall site is 141.6 acres and supports a shopping mall with multiple stores including Lord and Taylor (requesting this variance), Sears, Burdines, Bloomingdales, Saks and Nordstroms.

There are special conditions and circumstances that

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. Unlike the other major stores having peninsula like locations with two or three elevations with signs visible from surrounding roads. The Lord and Taylor Department Store is located in an inside corner of the site with limited exposure to only 1 perimeter road. Therefore, along with the incoming expansion of the subject store, the applicant is proposing to place one large wall sign, 1 awning sign and 2 plaque signs on the new re-oriented front elevation to replace the existing 2 large side wall signs. By doing so, the store sign visibility will be greatly improved to better serve the motorists and pedestrians to identify and locate the store. As stated in the applicant's justification, the store owner is voluntarily agreeing to a staff recommended condition to abandon the side and rear wall signs in order to place a total of 4 wall signs on the front elevation.

The proposed sign area exceeds the maximum allowed sign area for the front elevation by 143 sq. ft. However, as previously indicated, no signs on the side and rear elevation will be permitted in the future by condition No. 3 of approval. Therefore, the total proposed wall sign area is 509 sq. ft. occupying 56% or 409 sq. ft. of the total allowable sign area. In addition, the proposed sign logo is in nation-wide standard style and is important to the subject store recognition to the public. The unique signature script of the Lord and Taylor logo has thin strokes, 4-3/4' wide, which 83% of the polygon sign area is blank space.

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

NO. special circumstances and conditions are not the result of actions of the applicant. The applicant is requesting wall sign area variance to allow for one larger sign on the front facade and 3 smaller signs near the entrance to more effectively identify the subject store for motorists and passengers approaching to the site. Taking into account of the previously-mentioned information, the existing site conditions and constraints, the variance is not the result of the actions of the applicant. Instead, it will allow for full use for the front elevation. The additional square footage will promote safety and public welfare by more effectively identifying the subject store to the motorists along the St. Andrews Blvd. or in the parking lot by the large scale sign on the 2-story elevation as well as to the pedestrians walking along the inner ring road or the entrance by the small scale signs as 1-story elevation.

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 requested variance to increase the sign area on the front facade will better facilitate store identification, visibility and location which will improve

on-site circulation for the users of the site who are looking for the subject store. the proposed signs meet with the general intent of the Sign Code which is to protect the health and safety of persons in Palm beach County. In addition, the ULDC recognizes the importance of signage to success of a business or development while at the same time limiting the number of signs. The proposed signs are to ensure maximum advertisement without creating visual blight to the general community at large.

Therefore, granting the variance shall not confer upon the applicant special privilege(s) denied by the comprehensive plan and this code to other parcels of land, buildings or structures, in the same district.

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 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.

The variance, if denied, would require the subject store owner to reduce the size of the sign significantly.

This would compromise the general intent of the Sign Code which is to identify the use to motorists or pedestrians along St. Andrews Blvd. or on the site. The proposed signage will simply identify the Lord & Taylor Department Store logo which is recognized by the people throughout the nation. The need for the variance on the sign area is justified in order to improve the store visibility and presence for both the motorist and pedestrians. To reduce the size would not serve any purpose other than comply with the strict interpretation of the ULDC Sign Code provisions.

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. As mentioned previously, the requested signs will occupy 17% of the polygon geometric figure outlining the logo. The rest of 83% of the polygon area is blank space. In addition, the Lord & Taylor logo has thin strokes, 4-3/4' wide, which a lower impact as compared with other type such as Block letters used by "SEARS."

As stated in the justification, the store owners are voluntarily reducing the quantity of large wall signs from two to one, which means the side or rear wall signs will not be requested in the future. By doing so, the total sign area of the proposed four wall signs will be reduced by 155 sq. ft. as compared with the existing two wall signs, which will be replaced by the proposed sign. The total proposed wall signs will occupy 56% of the total allowable sign area.

Therefore, the approval of the variance is the

minimum variance that will allow a reasonable use of the parcel of land, building or structure

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

YES. Grant of the variance will be consistent with the purposes, goals, objectives and policies of the comprehensive plan and this code.

The Comprehensive Plan's goal to protect the public safety and welfare will not be compromised by the granting of the variance proposals. The ULDC Sign Code encourages property owner(s) to develop signage programs that provide adequate recognition of the development or the business. The goal of the proposed signage program is to provide for clear identification for both the motorists and pedestrians approaching the use. In addition, the requested four signs are not out of scale with the front elevation where they are located, if considered as a whole. The proposed variance, if granted, will meet with both the applicant's and the users' needs.

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

NO. The grant of the variance will not be injurious to the area involved or otherwise detrimental to the public welfare. The total new sign area, if approved with a variance, will be less than what exists at the two current signs on the building. The proposed signs will benefit both the motorists and the passengers for providing better store identification and clearer visibility as well as assisting the vehicles to maneuver the site. In addition, the subject store is within shopping malls with similar retail stores. The proposed signs are compatible with the surrounding usage and will not have any adverse impacts.

ENGINEERING COMMENTS

No comments (ENG)

ZONING CONDITIONS

1. By July 21, 2000, the property owner shall provide the Building Division with a copy of the Board of Adjustment Result letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application. (BLDG PERMIT: BLDG)
2. By September 21, 2000, the property owner shall obtain building permit for the approved wall signs for Lord & Taylor Department Store. (DATE:MONITORING-BLDG. PERMIT)
3. No wall signs are allowed on an elevations for Lord & Taylor Department Store except the approved wall signs on South West elevation by Board of Adjustment (see file BA-99-071). (BLDG:ON-GOING)
4. The Lord & Taylor wall signs shall be limited to the following (see exhibit No. 23 in BA99-071 file for sign

locations): (BLDG PERMIT-ON-GOING)

1. One 493 sq. ft. Front Wall sign;
2. One 8 sq. ft. Canopy Sign;
3. Two 4 sq. ft. Plaque Signs.

B of A 9900072, Land Design South as agent for Kenco Communities, to allow a proposed SFD unit to exceed the required lot coverage.

Is the applicant present?

MR. SEAMAN: Madam Chairman, I need to reject that.

B of A 99-72, 99-73, 99-74 have been joined together as one request. And staff revised the recommendation for approval for all lots based upon modifications to the original application.

This was a lot coverage variance issue.

CHAIR PERSON KONYK: So is there twelve conditions, or is there only four?

MR. SEAMAN: Four.

CHAIR PERSON KONYK: Because they're the same four conditions for each one?

MR. SEAMAN: Correct.

CHAIR PERSON KONYK: Does it have a new number, or is it still the three numbers?

MR. SEAMAN: It's still the three numbers.

CHAIR PERSON KONYK: Okay. So B of A 9900073, 74 and -- which is the other one?

MS. LAVALLEY: 72.

CHAIR PERSON KONYK: 72. Sorry.

Your name, for the record?

MR. LALONIC: Joe Lalonic with Land Sign South.

CHAIR PERSON KONYK: They have recommended four conditions. Do you understand and agree with those conditions?

MR. LALONIC: We do.

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

(No response.)

CHAIR PERSON KONYK: Are there any letters?

MR. SEAMAN: Yes, there are fourteen, Madam Chairman. Thirteen are in approval and one is in disapproval.

CHAIR PERSON KONYK: Doesn't warrant it being pulled, obviously?

Any member of the Board feel this item warrants a full hearing?

(No Response.)

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

STAFF RECOMMENDATION:

Staff revised recommendation to approval with conditions for all requested lots, as amended.

Staff met with the applicant to specifically address those lots staff did not support approving a lot coverage variance. After considering the facts and the applicant agreeing to reduce the amount of the variance, staff modified the recommendation to approval on all lots. With the proposed modification and recommended conditions of approval the variance request, if granted, will meet the general intent of the code.

FINDINGS OF FACT:

1. All the lots, with increase in lot coverage, abut open space to the rear, which reduces any negative impact associated with the increased lot coverage.
2. The lots with the 44.3% lot coverage have signed contracts to purchase. Therefore, the unit cannot be easily modified.
3. A "model" was approved by the County on one of the lots that exceeded the 40% lot coverage. Many perspective buyers have seen this model and like its layout and features. This model is being used on the majority of the lots in this variance application.
4. The applicant has submitted eleven letters from property owners within this subdivision supporting the larger single family dwelling units in this subdivision.
5. The lots, subject to this variance application, will be located adjacent to each other. Therefore, the impact of this minor increase in lot coverage will not be noticeable by the existing/future residents from the street.

ENGINEERING COMMENTS

No Comment (ENG)

ZONING CONDITIONS

1. By June 21, 2000, the property owner shall provide the Building Division with a copy of the Board of Adjustment Result letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application. (BLDG PERMIT: BLDG)
2. By August 21, 2000, the property owner shall obtain a building permit for at least one of the lots with approved lot coverage in order to vest this variance approval and avoid the need for time extension to the Development Order. (DATE:MONITORING-BLDG. PERMIT)
3. The approved variances on Lot Coverage are limited to the following (ONGOING):

Lot 1: 42.0%	Lot 12: 42.0%	Lot 13: 42.0%
Lot 14: 44.3%	Lot 25: 44.3%	Lot 26: 42.0%
Lot 27: 42.0%	Lot 28: 41.4%	
4. By November 21, 1999, the applicant shall administratively amend the certified site plan for Pod J of the Wycliff Golf and County Club PUD to reflect the approved variances and conditions for approval for lots 1, 12, 13, 14, 25, 26, 27 and 28. (DATE:

MONITORING-ZONING-DRC)

STAFF RECOMMENDATIONS

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

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 site is located approximately .6 miles W. of U.S. 441 and 55' S. of Lake Worth Rd., with Pod "J" of Wycliffe Golf and Country Club PUD, in the RTS Zoning District (Pet 86-104A). There are a total of 37 lots in Pod J of which 11 lots are currently vacant to be constructed or sold. Among the 11 undeveloped lots, 8 lots are requested for lot coverage variance, which includes the subject lot 1&2. Lot 28, which has been constructed (B97027423) and issued a final C.O. in 1998, has a lot coverage of 41.4% and is also requested for a lot coverage.

According to the applicant, 2 models are provided by the developer, one is Monticello model (4,710 sq. ft.) and the other is Bellingham (4,250 sq. ft.) No contracts have been signed or executed for Lot 1, 2, 12, 13, 26 and 27. Lot 14 and 26 have a signed contract to purchase with "Monticello Model." At this time the developer does not know which floor plan the future buyers may choose for lot 12, 13, 26 and 27. According to the staff's study on the required lot coverages and building square footage for Monticello and Bellingham models (see the list in the Variance Summary), staff concludes that the requested lot coverage of 44% for lot 1, 2, 12, 13, 14, 25, 26 & 27 will add 440, 425, 450, 455 and 480 sq. ft. to each lot and is considered significant in terms of the fact that the applicant is requesting a substantial increase in lot coverage for the proposed single family residences, without justification. The requested 4% of lot coverage is excessive and is not justified or warranted as a minimal variance. The conditions and circumstances are not unique. The requested lot coverage of 44% for lot 1, 2, 12, 13, 14, 25, 26 & 27 is considered significant in terms of the fact that the applicant is requesting a substantial increase in lot coverage for the proposed single family residences, without justification. Currently, there are no signed or executed contracts for both lots and should either of the models be constructed, the lot coverage for lot 1 ranges 37.3% to 41.3% and for lot 2, 35.4% and 39.3%, lot 12 ranges from 38.7% to 42.9%; for lot 13, 40/5 to 44.3% and for lot 14 is 41.9% since it has a contract for "Monticello Model." Should either of the models be constructed, the lot coverage for lot 25, 26 & 27 will range from 40% to 43.3%. Based on the staff evaluation, there is no need for lot coverage variance for lot 2. For lot 1, 12, 13 & 14, the requested 4% of lot coverage is excessive and is not justified as the minimal variance. The situation for the additional 4% of lot coverage is self created and could have been avoided.

Should either of the models be constructed, the lot coverage for lot 25, 26 & 27 will range from 40% to 43.3%. Even though lot 25 is contracted with Monticello Model, the developer should have addressed the purchaser on the issue of the maximum-allowed lot coverage as 40%. The building floor plan should also have been selected or sold according to the development regulation.

Based on the staff evaluation, the requested 4% of lot coverage is excessive and is not justified as the minimal variance. The situation for the additional 4% of lot coverage is self created and could have been avoided.

FOR LOT 28

YES. Lot 28 was constructed with a lot coverage of 41.4%, which was inadvertently approved by our plan reviewer. The residence on this lot has been issued a final C.O. in 1998. Since the property owners were made aware of this situation, they have proceeded in good faith to apply for this application in order to satisfy with the code.

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

YES. Special circumstances and conditions are the result of actions of the applicant for the requested 44% lot coverage for lot 1&2 and 12, 13 and 14 in Pod J.

Lot 1&2 and 12 & 13 are currently vacant and have no signed or executed contracts to purchase. No specific building floor plan is known by the developer at this time. Lot 14 has a signed contract to purchase with "Monticello Model", however, the lot coverage will be 41.9% if calculated with Monticello Model as opposed to the requested 44% in this application. 70% of the Pod have been developed within 40% of the required lot coverage, which have similar lot conditions to the subject lots. The situation for the additional 4% of lot coverage is self created and should have been avoided.

FOR LOT 25, 26 & 27

YES. Special circumstances and conditions are the result of actions of the applicant for the requested 44% lot coverage for lot 25, 26 & 27 in Pod J.

Lot 26 and 27 are currently vacant and have no signed or executed contracts to purchase. No specific building floor plan is known by the developer at this time. Lot 25 has a signed contract to purchase with Monticello Model, and selected. The building floor plan according to the development regulation.

In addition, 70% of the Pod has been developed within 40% of the required lot coverage, which have similar lot conditions to the subject lots. The situation for the additional 4% of lot coverage is self created and should

have been avoided.

FOR LOT 28

NO. Special circumstances and conditions are not the result of actions of the applicant for the requested 41.4% lot coverage for lot 28.

The applicant has completely constructed a 4,710 sq. ft. Monticello Model unit with a building permit and a final CO for the subject lot 28. Inadvertently, our plan reviewer approved this lot with 41.4% of lot coverage exceeding 40% of the maximum allowed. The applicant is seeking a variance to rectify this situation for the existing residence on the subject lot. The event leading to this variance is not the actions of the applicant. Rather, the applicant has proceeded in good faith to apply this application in order to satisfy the code.

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. Granting the variance shall confer upon the applicant special privilege(s) denied by the comprehensive plan and this code to other parcels of land, buildings or structures, in the same district.

The intent of the lot coverage regulation is to ensure a balance between indoor and outdoor area on the lot. Furthermore, open space requirement restrict lot coverage to ensure proper land is reserved for passive outdoor living, landscaping and parking areas. In this case, approval of the variance request will greatly impact the adjacent property owner's, due to the fact that 70% of the Pod have been developed and complied with the required 40% lot coverage. The proposed 4% increase in lot coverage will add additional 455 sq. ft. to Lot 1 and 480 sq. ft. to Lot 2 and 440 sq. ft. to lot 12 and 425 sq. ft. to lot 13 and 450 sq. ft. to lot 14. Said increase will be visually or physically detected. As a result, the proposed, single family residences with the requested 4% increase in lot coverage for the subject lots will not be in keeping with surrounding neighborhood and will not enhance the property owners' use of the lot while satisfying the general intent of the code.

FOR LOT 25, 26 & 27

YES. Granting the variance shall confer upon the applicant special privilege(s) denied by the comprehensive plan and this code to other parcels of land, buildings or structures, in the same district.

The intent of the lot coverage regulation is to ensure a balance between indoor and outdoor area on the lot. Furthermore, open space requirement restrict lot coverage to ensure proper land is reserved for passive outdoor living, landscaping and parking areas. In this

case, approval of the variance request will greatly impact the adjacent property owner's, due to the fact that 70% of the Pod have been developed and complied with the required 40% lot coverage. The proposed 4% increase in lot coverage will add additional 425 sq. ft. to lot 25, 26 & As a result, the proposed single family residences with the requested 4% increase in lot coverage for the subject lots will not be in keeping with surrounding neighborhood and will not enhance the property owners' use of the lot while satisfy the general intent of the code.

FOR LOT 28

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

160 sq. ft. was added to lot 28 as a result of the increase of 1.4% in lot coverage. Due to the fact that the lot 28 abuts to an existing golf course and lake along the rear property line and it meets with setback requirements, the 1.4% increase in lot coverage is minimal, the visual impact remain the same and does not affect the adjacent property owners and the neighborhood.

In addition, the open space along the rear property line mitigates the impact associated with this variance. If the requested variance is granted to lot 28, the existing single family residence is still in keeping with surrounding neighborhood while enhancing the property owners' use of the lot, which is commonly enjoyed by the other residents in the same area.

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. For the requested 44% of lot coverage in this application, a literal interpretation and enforcement of the terms and provisions of this code will not deprive the applicant of rights commonly enjoyed by other parcels of land in the same district, and would work an unnecessary and undue hardship. However, staff recommend denial on this application due to the fact that the maximum of 40% of lot coverage for lot coverage for the subject lots will allow the future owners reasonable use of the lands. For lot 14, the developer should have addressed the purchaser on the issue of the development regulation. According to the applicant, the Monticello model is the largest model for sale in the current market. 3 lots in Pod J have been developed with this model which are Lot 16 with 34% lot coverage (B99004060), lot 17 with 31% of lot coverage (B97003786) and lot 28 with 41.4% of lot coverage (B9702743). No need for the requested 4% increase in lot coverage has been justified or warranted by the applicant.

Therefore, limiting the lot coverage to the originally required 40% for the subject lots will detract from the residential ambience since the increase in lot coverage will be visually or physically noticeable by the residents

in the development.

FOR LOT 25, 26 & 27

NO. for the requested 44% of lot coverage in this application, a literal interpretation and enforcement of the terms and provisions of this code will not deprive the applicant of rights commonly enjoyed by other parcels of land in the same district, and would work an unnecessary and undue hardship. Staff recommend denial on lot 25, 26 & 27 in this application due to the fact that the maximum of 40% of lot coverage for the subject lots will allow the future owners reasonable use of the lands. For lot 25, the developer should have made the purchaser aware of the 40% maximum-allowed lot coverage and selected the building floor plan to comply with the development regulation. According to the applicant, the Monticello Model is the largest model for sale in the current market. 3 lots in Pod J have been developed with this model which are lot 16 with 34% lot coverage (B99004060), lot 17 with 31% of lot coverage (B97003786) and lot 28 with 14.4% of lot coverage (B9902743). No need for the requested 4% increase in lot coverage has been justified or warranted by the applicant. Therefore, limiting the lot coverage to the originally required 40% for the subject lots will detract from the residential ambience since the increase in lot coverage will be visually or physically noticeable by the residents in the development.

FOR LOT 28

YES. A literal interpretation and enforcement of the terms and provisions of the code will deprive the applicant of rights commonly enjoyed by other parcels of land in the same area. As previously mentioned, lot 28 was constructed with the 4,710 sq. ft. Monticello Model unit with 41.4% lot coverage approved by out plan reviewer inadvertently. However, except the 1.4% increase of the lot coverage, all other property development regulations are adhered to, including setback requirements. Therefore, granting this variance will not detract from the residential ambience since the increase in lot coverage are not visually or physically noticeable by the residents in the development. Also the existing golf and lake along the subject rear property line mitigates the increase in lot coverage.

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

NO. the approval of variance of 4% increase in lot coverage for lot 1&2 in this application is not the minimum variance that will allow a reasonable use of the parcel of land, building or structure.

As indicated previously, lot 1, 2, 12 and 13 are currently vacant without signed or executed contracts to purchase at this time. No specific floor plans are known and provided by the applicant. According to the applicant, the Monticello model is the largest model for

sale by the developer in the current market. The maximum lot coverage will be 41.3% for lot 1 and 39.3% for lot 2 providing both lots go with the Monticello model. Providing each subject lot goes for the Bellingham or Monticello, the lot coverage for lot 12 ranges from 38.7% to 42.9%; for lot 13, 40% to 44.3% and for lot 14 is 41.9% since it has a contract for the Monticello Model. Therefore, the requested 4% increase in lot coverage is not considered as minimal by staff nor justified by the applicant as the minimal variance.

FOR LOT 25, 26 & 27

NO. The approval of variance of 4% increase in lot coverage for lot 25, 26 & 27 in this application is not the minimum variance that will allow a reasonable use of the parcel of land, building or structure.

As indicated previously, lot 25 has a signed contract to purchase with Monticello Model while lot 26 and 27 are currently vacant without signed or executed contracts to purchase at this time. No specific floor plans for lot 26 & 27 are known and provided by the applicant. Providing each subject lot goes either with the Bellingham or Monticello Model, the lot coverage for these 3 lots will range from 40% to 44.3%. Therefore, the requested 4% increase in lot coverage is not considered as minimal by staff nor justified by the applicant as the minimal variance.

FOR LOT 28

YES. the approval of this variance is the minimum variance that would allow a reasonable use of the subject lot. As previously mentioned, the lot coverage increase is minimal and a balance between the indoor-outdoor quality of life is the same. In addition, lot 28 abuts to an existing golf and lake along the rear property line. Therefore, the 1.4% lot coverage increase for the subject single family residence is not visually detected and does not impact the adjacent neighbors since the existing structure meets the required building setback requirements.

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

NO. Grant of the requested variance will not be consistent with the purposes, goals, objectives and policies of the comprehensive plan and this code.

The purpose and intent of the Code is to preserve the quality of life and aesthetics of the residential development. Furthermore, the objective of lot coverage regulations is to provide a balance between the indoor-outdoor quality of life. The lot coverage increase by 4% will be visually or physically detected and will impose great impact on the surrounding neighborhood. The intent of the code will not be consistent by allowing a few remaining lots to exceed the required lot coverage

within a primarily developed residential area.

FOR LOT 25, 26 & 27

NO. Grant of the requested variance will not be consistent with the purposes, goals, objectives and policies of the comprehensive plan and this code.

The purpose and intent of the Code is to preserve the quality of life and aesthetics of the residential development. Furthermore, the objective of lot coverage regulations is to provide a balance between the indoor-outdoor quality of life. The lot coverage increase by 4% will be visually or physically detected and will impose great impact on the surrounding neighborhood. The intent of the code will not be consistent by allowing a few remaining lots to exceed the required lot coverage within a primarily developed residential area.

FOR LOT 28

YES. Granting this variance will be consistent with the intent of the code and Comprehensive Plan. The purpose and intent of the Code is to preserve the quality of life and aesthetics of the residential development. Furthermore, the objective of lot coverage regulations is to provide a balance between the indoor-outdoor quality of life. The lot coverage increase is not visually detected. The goals and objectives of the Code will be met since there is an existing golf course and lake abutting the rear of the subject property and the single family residence meets all the other property development regulations.

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

YES. The approval of the requested 4% lot coverage variance will be injurious or detrimental to the surrounding area. The additional building square footage of 455 for lot 1 and 480 for lot 2, 440 for lot 12, 425 for lot 13 and 450 for lot 14 as a result of 4% increase in lot coverage will impose a negative impact on the adjacent properties since 70% of the Pod were constructed within 40% lot coverage, which has the similar lot condition to the subject lots.

FOR LOT 25, 26 & 27

YES. The approval of the requested 4% lot coverage variance will be injurious or detrimental to the surrounding area. the additional building square footage of 425 for lot 25, 26 & 27 as a result of 4% increase in lot coverage will impose a negative impact on the adjacent properties since 70% of the Pod were constructed within 40% lot coverage, which has the similar lot condition o the subject lots.

FOR LOT 28

NO. the approval of this variance will not be

injurious or detrimental to the surrounding area. The granting of this variance will not have a negative impact on the adjacent properties because the building setback requirements are met and there is an existing golf course and lake abutting to the rear of the property. Therefore, the 1.4% increase in lot coverage is not visually detected. Furthermore, it enhances the aesthetics of the subject property and maintain property values in the surrounding neighborhood.

ENGINEERING COMMENT(S)

No Comment. (ENG)

ZONING CONDITION(S)

NONE. Staff is recommending denial on this application. Staff would request the opportunity to recommend conditions, if the Board chooses to approve this request. (ZONING)

CHAIR PERSON KONYK: B of A 9900079 --

MR. SEAMAN: 78.

CHAIR PERSON KONYK: Oh, I'm sorry.

B of A 9900078. B of A 9900078.

Excuse me. We're conducting a meeting here. You can take your conversation outside.

B of A 9900078, Edgar and Tammy Benes, to allow a proposed room addition to an SFD to encroach into the required front setback.

Is the applicant present?

(No response.)

CHAIR PERSON KONYK: Is the applicant present on this one? B of A 9900078.

(No response.)

CHAIR PERSON KONYK: No?

MR. SEAMAN: No, I guess not.

CHAIR PERSON KONYK: Okay. Does anybody know if they agree with the four conditions?

MR. PENNEY: They told me they did, yes.

CHAIR PERSON KONYK: Okay. So you have it on record that the applicant does understand and agree with the four conditions.

MR. PENNEY: Verbally.

CHAIR PERSON KONYK: Okay. Are there any members of the public to speak on this item?

(No response.)

CHAIR PERSON KONYK: Does anybody know why the applicant is not here? Did not understand they were supposed to be here?

MR. PENNEY: I faxed them a letter saying they were to show up at nine o'clock for the hearing.

CHAIR PERSON KONYK: Okay.

Any letters on this?

MR. SEAMAN: No, Madam Chairman, there are not.

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

(No response.)

CHAIR PERSON KONYK: Can we leave this on the consent with them not being here?

MS. BEEBE: (Nods head.)

CHAIR PERSON KONYK: Okay. Item B of A 9900078 remains on the consent.

MR. RUBIN: I don't know why we shouldn't just postpone it. Don't you think we should at least require an applicant to be present?

CHAIR PERSON KONYK: I think that --

MR. RUBIN: Not that I'm questioning the veracity --

CHAIR PERSON KONYK: I agree with you.

MR. RUBIN: -- of what you've heard. But it's a little different when the applicant is here --

CHAIR PERSON KONYK: Right.

MR. RUBIN: -- to agree to the conditions as opposed to them not being --

CHAIR PERSON KONYK: Right. I agree with that too. The only thing is that maybe we can add another condition that they give us a letter in writing that they agree and understand the conditions, you know, rather than bog down the agenda next month.

Does anybody have a problem with that?

MR. RUBIN: I guess the question is: Do we want to allow people who are on the consent agenda to not appear?

CHAIR PERSON KONYK: Well, I think that this is probably an individual, rather than an organization representing someone. And maybe they're not as savvy and they don't understand that their supposed to be here? So maybe in this one instance, we can give them a reprieve. But ask staff in the future to make sure that, if the applicant has some reason that they can't be here, that we have something in writing that says they understand and agree with the conditions?

And also -- I'm sorry. What's your first name?

MR. PENNEY: Mark.

CHAIR PERSON KONYK: Mark is an intern, right?

MR. SEAMAN: That's correct, yes.

CHAIR PERSON KONYK: And maybe we could understand that maybe the the message hadn't been carried across as it should have been.

MR. RUBIN: I think he did a good job.

MR. PENNEY: I faxed them letters. I talked to them twice on the phone. It's my understanding they'd be here today. Perhaps, they were caught up in traffic. I don't know.

CHAIR PERSON KONYK: Well, and the thing is is that usually -- like, if it was somebody that we're normally seeing in front of the Board, they'd know to call us and let us know that there was a problem. They may not know how the call.

CHAIR PERSON KONYK: So I would just -- rather than postpone it, do you want to --

MR. RUBIN: I'll make a motion. You can do whatever you want.

CHAIR PERSON KONYK: Okay. Why don't you do that.

MR. RUBIN: I'm make a motion that we either -- we can either, A, leave it to the end of the agenda today and

then deal with it and see if they show up.

CHAIR PERSON KONYK: Okay.

MR. RUBIN: Maybe that's the motion to change the B of A 99-78 on the agenda from this consent agenda to the end of the regular agenda --

CHAIR PERSON KONYK: Okay.

MR. RUBIN: -- and address it at that time.

CHAIR PERSON KONYK: Okay. We have a second?

MR. JACOBS: Yeah. I'll second that.

CHAIR PERSON KONYK: Second by Mr. Jacobs.

MR. BASEHART: I'd like to say, you know, I agree with that action. I think the applicant is bound to understand that being on the consent agenda is dependent on, first of all, none of the Board members having a concern.

CHAIR PERSON KONYK: Right.

MR. BASEHART: Any Board member could pull an item.

And, secondly, if a member of the public that was formerly not recognized as somebody that opposed the item came to the meeting, it would be pulled off. There's no guarantee you're going to stay on the consent agenda.

So I think they need to be here.

CHAIR PERSON KONYK: Right. I agree with you.

But none of those things happened, either. So, if they had happened, the item would have been pulled; and the item would have been postponed to the following month.

But, I agree, if everybody's in agreement, we'll reorder it to the end of the regular agenda.

So we have a motion and a second.

All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: Motion carries unanimously.

So this is reordered.

MR. SEAMAN: We're calling the applicant right now.

CHAIR PERSON KONYK: Okay.

Next item is Board of Adjustment time extension 9900079, Neil O'Neal and Juanita O'Neal to allow for a six-month time extension for conditions two and three.

CHAIR PERSON KONYK: Applicant present?

MR. O'NEAL: Yes.

CHAIR PERSON KONYK: Your name, for the record?

MR. O'NEAL: Neil O'Neal.

CHAIR PERSON KONYK: The staff has recommended three

conditions. Do you understand and agree with those conditions?

MR. O'NEAL: Yes.

CHAIR PERSON KONYK: There's no noticing on this. So we have no letters --

MR. SEAMAN: No, we don't.

CHAIR PERSON KONYK: -- and no opposition, correct?

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

(No response.)

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

MR. O'NEAL: Thank you.

ZONING CONDITIONS

1. By June 20, 1999, the applicant shall provide the Building Division, intake section, with a copy of the Board of Adjustment Result letter and 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 relocated the 8.2 by 8.2 foot, along the east property line, out of the setback and obtain a building permit (DATE:MONITORING-Code Inf/BUILD PERMIT)
3. By August 20, or issuance of the certificate of Occupancy 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)

ENGINEERING COMMENT

No comment (ENG)

SUMMARY OF JUSTIFICATION

The applicant is requesting a 6 month time extension on condition #2 and #3 in order to obtain additional time to secure a building permit for the accessory shed identified in condition #2 and to install a wood fence instead of a hedge along the south property line, as required by condition #3. The applicant has obtained and constructed (B99015816) the 2,400 sq. ft. accessory structure that was the subject of the original variance request. Staff recommended several conditions of approval to ensure the proposed structure that would not comply with the ULDC was mitigated, with the hedge along the south property line. Also that the illegal accessory structure along the east property line was removed or relocated and permitted.

The applicant states the accessory structure identified in condition #2 has been relocated and a building permit has been applied for, however, has not yet been issued (PR99031232) The applicant is requesting permission to install a 6 foot fence along the south property line instead of a hedge, as required by the condition #3 of approval. The applicant is preparing the fence application, which required utility releases prior to the application being accepted by the P.B. County Building Division. The applicant states they will be submitting the fence application the 3rd week in September.

STAFF RECOMMENDATION

Staff recommends a maximum 6 month time extension for Condition #2 and #3 of BA99-034, consistent with Section 5.7.H.2 of the ULDC, to provide additional time for the petitioner to implement the approved variances and comply with conditions. The

applicant is moving forward to obtain all necessary permits and comply with all conditions of approval. The additional 6 month time extension will provide the applicant the necessary time to ensure the site is in compliance with the intent of the Board of Adjustment approval.

The property owner shall comply with all conditions of approval of Board of Adjustment BA99-034, unless modified herein:

ZONING CONDITIONS

1. By June 20, 1999, the applicant shall provide the Building Division, Intake Section, with a copy of the Board of Adjustment Result letter and Site Plan in order for PR998806 to be processed for the accessory shed. (DATE:MONITORING-BLDG INTAKE) COMPLETED 6/99

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)

IS HEREBY AMENDED TO READ:

by January 20, 2000, 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 Eng/BUILD PERMIT)

3. By August j20, or issuance of the Certificate of Occupancy 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)

IS HEREBY AMENDED TO READ:

By February 20, 2000, or issuance of the Certificate of Occupancy for the 60 by 40 foot accessory structure, the applicant shall install a minimum 5 foot fence 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)

ENGINEERING COMMENT:

No comment (ENG)

CHAIR PERSON KONYK: Next item on the consent is B of A 9900080, Tim and Bobbie Martin to allow an existing

screened enclosure to encroach into the required side and rear setback.

Is the applicant present?

MR. MARTIN: Yes.

CHAIR PERSON KONYK: Your name?

MR. MARTIN: My name is Tim Martin.

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

MR. MARTIN: Yes, ma'am.

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

(No response.)

CHAIR PERSON KONYK: Are there any letters?

MR. SEAMAN: Yes, Madam Chairman, there are two with disapproval. And one is basically that, during construction, people went across their property. And the other is that they felt that they had to remove their carport. They should not be entitled to the variance.

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

(No response.)

CHAIR PERSON KONYK: Seeing none, B of A 9900080 will remain on the consent.

STAFF RECOMMENDATIONS

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

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 7,700 square foot lot is located within the Erie Terrace Subdivision, which is located immediately east of Forest Hill Boulevard and Military Trail. This subdivision has unimproved shell rock streets and is on septic and well. This lot is located at 1672 Erie Terrace and it currently has a single family residence and garage under construction. The rectangular lot is typical to other lots within this subdivision. It complies with all property development regulations in terms of size, depth, width and setbacks. The unique feature of this lot, which results in the need for setback variance, is the fact the house and garage had to be placed further back on the lot in order accommodate the septic and absorption bed in the front yard. This septic takes up a 10 by 25 foot area in the front yard. The required 25 foot setback for the RM-multi-family zoned lot had to be increased to 35 and 44 feet for the house and garage in order to accommodate the septic. This reduces the usable backyard to 17 feet behind the residence and 10 feet behind the garage. The applicant was granted in 1998 (BA98-064) rear setback variances for the proposed swimming pool and screen enclosure. The applicant has constructed a 20 by 12 foot swimming pool and screen enclosure behind the residence. The size of the pool was limited by the size of the usable rear yard, a typical residential pool is 15 by 30. The

swimming pool was constructed and was issued a Certificate of Completion, however, the screen enclosure has not since it encroaches the rear and side setback. A contractor error has placed the enclosure on the existing slab that encroaches the rear setback (which is permitted by code, since slab is less than a structure) to ensure adequate circulation around the pool by the residents. However, by doing so, the enclosure is not in the setbacks and must be either relocated or obtain the requested variances. The property owner has expressed his concerns with placing the screen enclosure on the coping of the pool to meet the setback requirements. This will result in a possible unsafe situation for a swimmer who might need to exit the pool along the north or east side. The applicant is requesting the Board grant the variances in order for the enclosure to remain without costly modifications that will result in an unsafe situation. There is a 5 foot utility easement that runs parallel to the rear lot line that the existing pool and screen enclosure will not encroach. Also, to the rear and side of the enclosure is an existing 5 foot solid wood fence the applicant has recently installed. There are also plantings between the enclosure and fence that will mitigate any negative impacts associated with these minor setback encroachments.

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

NO. This is not a self created hardship. The applicant has proceeded in good faith to obtain all necessary approvals and permits prior to constructing the pool or hiring a contractor to erect the screen enclosure. The applicant has received finals on the newly constructed single family dwelling, pool and fence, however the screen enclosure cannot be issued a certificate of completion. The screen contractor assumed that the existing slab was not in the setbacks and, therefore, placed the enclosure on it in such a fashion to ensure at least three feet of walkway between the pool coping and enclosure. However, the slab was in the rear setback and now the full erected enclosure is with the rear and side interior setbacks.

The applicant was aware the rear lot had constraints in terms of accommodating a pool and screen enclosure. In August 1998 the applicant applied to the Board of Adjustment for rear setback variances for the proposed pool and screen enclosure. The Board granted the request subject to 3 conditions. The applicant moved forward in good faith by applying and obtaining all necessary county permits and approvals. However, due to an error by the screen contractor the screen enclosure was placed in the rear and side interior setback. The screen contractor explained to staff that to comply with code the enclosure would have had to have been attached to the coping of the pool. The contractor indicated to staff that the enclosure could be taken down and modified to comply with the previous approved variance and side interior setback, however, the required location of the enclosure would result in an unsafe situation. Since the enclosure would be placed along the coping and restrict anyone from entering or leaving the pool along the east and north

side. The property owner is concerned that this is unsafe. The proposed location allows for pedestrian access and circulation around the entire pool.

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

NO. The applicant is requesting the minimum variances in order to allow the existing screen enclosure to remain without costly modifications and the creation of an unsafe situation, if the applicable setbacks are applied. The applicant obtained a rear variance in 1998 for the pool and enclosure. It was assumed that the approved variances would allow the property owner the ability to construct a pool and enclosure. The pool was constructed consistent with the variance approval and building permit. However, the screen enclosure was erected on the existing pool concrete deck, which was in the setback. The screen contractor assumed the concrete deck was meeting setbacks and therefore placed the enclosure on it in such a manner to ensure at least three feet of walkway along the east and north side of the pool.

However, when the final inspection was conducted by the Building inspector the property owner was informed it failed since it was in the rear and side interior setbacks. The property owner and contractor met with Zoning staff to discuss the intent of the original variance (BA98-064) approval and how the current setback issue could be addressed. The property owner and contractor expressed their concerns with removing the screen enclosure and reinstalling it to comply with setbacks. Since in order to meet the required rear and side interior setbacks would result in no room for pedestrian circulation around the north or east side of the pool. The property owner stated it was never his intent to have this type of situation, however, since the pool is already constructed has only two options to correct the encroachment. Obtain a variance for the setbacks or attach the enclosure to the coping of the pool.

Other applicants have been granted similar variances based on unique hardship and demonstration that the general intent of the code can be applied with if the variance is granted. The applicant has proceeded in good faith to comply with all code and permit requirements. The current setback encroachment was unforeseen. The 5 foot easement to the rear along with the solid wood fence and landscaping will all help to mitigate the encroachment. There is also a vacant lot to the east and the lot to the north has the dwelling unit situated on the opposite property line thereby providing ample separation and open spaces between these structures.

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. As stated in number 3 above, other applicants have been granted similar variances when they have demonstrated compliance with the variance criteria. The applicant is requesting the minimum variances in order for the existing screen enclosure to remain in the setbacks without costly modifications. Also, to locate the enclosure at this time would require it to be attached to the pool coping. This would result in an unsafe situation for bathers having to leave the pool along the north or east side of the pool. The applicant is concerned, especially for small children who will be using the pool that might need to use either side of the pool. Considering the fact the property owner has already constructed a solid wood fence along both the north and east property line and planted shrubs between it and the enclosure the granting of the variance will meet the intent of the code.

No special privilege will be granted to this property owner, if the variance is granted. The applicant has demonstrated that this lot is unique in that even though it meets the minimum size, depth, and width, the fact it is on septic and well creates the need for these two setback variances.

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. As previously stated, the property owner recently constructed a single family dwelling, attached garage, pool and screen enclosure on this lot. The applicant has resided on this street for many years and is now occupying the house. The applicant obtained all necessary approvals and permits prior to constructing any structures on the property. All structures with the exception of the screen enclosure have passed final inspection. When the final inspection for the screen enclosure was done in August of this year, it was found to be located in the setbacks. The property owner discussed the matter with the contractor who informed him they used the existing pool deck as a marker for the rear setback. Unfortunately, the deck was in the rear setback, which is permitted by code. The contractor was attempting to provide the applicant with at least three feet of access around the pool along the rear and side property line.

Therefore, the granting of the side interior and rear setback for the existing screen enclosure is a reasonable request. The enclosure provides shelter for the pool and enhances the applicants use of this space. The existing fence and shrubs that have been installed between the enclosure and property lines mitigates the minor setback encroachments. The lot to the east is currently vacant while the dwelling on the lot to the north is situated on the opposite side of the lot leaving ample separation between the enclosure and dwelling.

Therefore, granting the two setback variances will allow the enclosure to remain with costly modifications and the applicant can obtain the necessary final inspection from the Building Division.

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

YES. the general intent of setbacks for accessory structures is to ensure a minimum distance between property lines and the principal structures on the lot. The existing screen enclosure in this case will have a 5 foot rear setback and a 2 foot along the side interior (North property line). The lot to the east is currently vacant and when constructed will have the unit orientated away from this property line due to access to the lot. The lot to the north supports a dwelling unit which is situated toward the north property line.

Therefore, considering the lot to the east is vacant and the unit on the lot to the north is located on the opposite side of the property, the general intent of the setbacks will be met, if the variances are granted.

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

NO. This area supports single family dwellings and some businesses that extend from Military Trail to Erie Terrace. This lot was currently vacant and overgrown with vegetation. The applicant just recently completed the construction of a single family dwelling garage and pool which is a significant improvement to this lot that was once overgrown with prohibited trees. The lot improvement will improve the tax base and hopefully encourage other investment by property owners to improve this antiquated subdivision.

ENGINEERING COMMENTS

No Comment. (ENG)

ZONING CONDITIONS

1. 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 the final inspection for the screen enclosure to be scheduled (B99013862). (BLDG-INSPECT)

2. By October 31, 1999, or prior to the final inspection for the screen enclosure, the applicant shall ensure the building permit, B9901262, for the screen enclosure is amended to reflect the approved setbacks granted with BA99-80. (DATE:MONITORING-BLDG PERMIT)

CHAIR PERSON KONYK: Item B of A 9900081, Mel Urban, agent for Cheryl Straurowsky, to allow a proposed solid roof screen enclosure to encroach into the required rear setback.

Is the applicant present?

You're name, for the record?

MR. URBAN: Mel Urban.

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

MR. URBAN: Yes, I do.

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

(No response.)

CHAIR PERSON KONYK: Okay. Any letters?

MR. SEAMAN: No, there are not.

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

(No response.)

CHAIR PERSON KONYK: Seeing none, item B of A 9900081 will remain on consent.

STAFF RECOMMENDATIONS

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

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 6617 Rock Creek Dr., approximately .75 miles S. of Lantana Rd. and .75 miles W. of Florida Turnpike, within the Murifield Estates Subdivision, in the RT/SE zoning district. (Pet. 81-233) within Tract "F" of the Balmoral PUD, which was approved by the Board of County Commission in 1981. The overall development is 217 acre in size with 451 dwelling units and a 130 acre golf course. The development is located south of Lantana Rd. and west of Florida's Turnpike.

The subject .33-acre lot with a 3,916 sq. ft. residence is a conforming lot with respect to size and dimensions. As indicated previously, abutting to the rear/west property line within the subject property is a 25' PUD buffer, which was required for the entire development. Beyond the rear property line are existing lake and Sherbroke Golf course, which acts as a natural barrier to any future development. Therefore, the visual impact will not impair the quality of the surrounding neighborhood amenities.

The ULDC recognizes a solid roof screen enclosure as an addition to the single family dwelling and therefore must meet the setbacks of the single family dwelling of 15 feet. However, the applicant is subject to section 6.5.G.6 of the code, which allows a 25 percent reduction exemption. Thus, for the proposed screen enclosure with

solid roof, the required rear setback is reduced to 11.25 ft. The applicant is requesting a rear setback of 5 ft., resulting in a variance of 6.25 ft. As previously indicated, the passive open space beyond the rear property line result in an extension of the subject lot visually which will mitigate any impacts of the variance request. Therefore, the variance, if granted, will allow the applicants the opportunity to improve the amenities for higher living quality and enjoyment of the outdoor activities and protection from the rain, sun or mosquitoes while satisfying the general intent of the code.

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

NO. As required by the board of County Commissioners at the time of approving the revised Master Plan, a min. 25" tree preservation buffer was observed and platted around the entire parcel. Such easement took 25' depth out of the 40' developable rear yard on the subject property, which restricts the applicant with alternative design option to make full use of the property. As stated by the applicant in the justification, the existing roofed screened patio is not sufficient enough in size (approximately 10' by 15') for maximizing outdoor use. The proposed structure will allow the applicants the opportunity to improve the amenities for higher living quality and enjoyment of the outdoor activities and protection from the rain, sun or mosquitoes.

The fact that this lot has a 25' landscape buffer in the rear of the lot and beyond a 13-'acre golf course to the rear is unique. Therefore, the applicant's request to construct a solid roof enclosure 30' from the subject rear property line is warranted; and, if granted, will satisfy the rear setback requirement.

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 special privileges upon the property owner. The proposed structure will increase the current 17' by 10' enclosed patio structure with additional 170 sq. ft. (17' by 10'), which will be consistent with other enclosures within the neighborhood. The setback encroachment is minor and will not create a negative impact on the existing lake and golf course directly beyond the subject rear property line. In addition, several of the surrounding neighbors share large roofed screened patios. The addition will be in conformance with the character of the neighborhood. The immediate adjacent neighbors to the east and to the southwest share large roofed screen patios that are similar in size to the proposed structure.

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 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. The intent of the rear setback is to ensure a minimum separation between adjacent property owners, privacy and compatibility of uses. The requested rear setback encroachment of 6.25' will not impend the adjacent property which is the 130 acre Sherbrooke PUD Golf Course. It will not have an impact on adjoining residential properties within Parcel "F" of this development. The proposed 6.25' rear setback variance will be compatible with the residential land use and will be consistent with the character of the neighborhood. Other surrounding properties in the area have screen enclosures.

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. 25' PUD buffer to the subject rear property line restricts the property owner with design solution alternatives for proposed addition. As previously mentioned, the existing lake and 130-acre golf course along the rear property line serve as a natural barrier between the property and the nearest structure to the rear of the property, which is more than 1000 yards away. The proposed structure will meet interior side setback requirements. therefore, the request is the minimum variance that will allow for this addition to occur, and is considered to be a reasonable expansion to the dwelling. Many similar screen enclosures exist in the neighborhood. Furthermore, the existing 25' wide buffer area with protective vegetation to the rear property line will further mitigate any negative impacts associated with this variance on the area involved, which is an existing lake and golf course.

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 will be consistent with the purposes, goals, objectives and policies of the comprehensive plan of the ULDC. The Comprehensive Plan encourages the development of residential communities that provides the property owner with a complete living environment. The requested addition is a typical accessory structure in Florida. The ULDC rear setback of 15' can be satisfied since there is a 25' buffer in the rear of the yard, then beyond the lot a 130-acre golf course. The separation requirement will be met.

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

NO. the variance, if granted, will be consistent with other enclosures in the neighborhood. The proposed screen enclosure with solid roof will meet the side setback requirements and therefore will not infringe on

neighbors property due to the setback and alignment. As previously indicated, the proposed solid roofed screened patio abuts to an existing 25' buffer in the rear of the lot and the existing lake and 103-acre Sherbrooke PUD beyond the subject rear property line. The passive open space provides a separation from the adjacent structures as required by the code.

Therefore, the variance will not have any adverse impacts on the neighboring residential properties.

ENGINEERING COMMENTS

No comments (ENG)

ZONING CONDITIONS

1. By August 21, 2000, the property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and copy of the Site Plan presented to the Board, simultaneously with the building permit application. (BLDG permit:BLDG)
2. By October 21, 2000, the applicant shall obtain a building permit for the proposed 17 ft. by 10 ft. screened enclosure with solid roof attached to the existing single family dwelling. (BLDG PERMIT:BLDG-ZONING)
3. The proposed roof screened enclosure is not allowed to be enclosed with any solid materials in the future (ON-GOING).
4. By November 21, 1999, the BA Zoning Staff shall ensure the Certified Site Plan has a notation on Lot 30 indicating the approval variances with conditions. (DATE:MONITORING-ZONING-BA).
5. The variance is limited to the rear setback for the proposed 17'X10' screen enclosure with solid roof to be 5 feet from the interior 25' PUD buffer easement line. (ONGOING)

Next item on consent is B of A 9900082, Barry Ratner, agent for David and Mona Pearl, to allow a proposed SFD to encroach into the required front setback.

Your name, for the record?

MR. RATNER: Berry Ratner.

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

MR. RATNER: Fully.

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

(No response.)

CHAIR PERSON KONYK: Any letters?

MR. SEAMAN: No, there were not.

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. RATNER: Thank you.

STAFF RECOMMENDATIONS

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

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

YES. Special circumstances do exist that are peculiar to the parcel of land, building or structure that are not applicable to other parcels of land within the same district. This is a legal conforming lot within the Addison Reserve subdivision. The lot abuts to the rear directly onto a lake. The applicant is proposed to construct a one-story 8,170 square foot dwelling. The dwelling is irregular in shape and designed to take advantage of the views of the lake to the rear. The front portion of the house supports the master bedroom and three-car garage. The master bedroom has a bath that faces the street. The bathtub is raised and placed in front of a window that faces the street. In order to ensure privacy and yet provide air and natural lighting into the bathroom, the architect has designed a 6 foot privacy wall in front of the bedroom window. The 6 foot wall is set back approximately 6 feet from the foundation of the house to allow air and light into the bathroom while at the same time obstructing views into the bathroom from the street. The wall is attached to the house and therefore must comply with the principal structure front setback requirement of 22.5 feet. If the wall was reduced to four feet and was freestanding it would be considered a privacy wall and would not require a variance. However, the applicant states the 6 foot wall is necessary to ensure privacy for the bathroom.

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

NO. There are no special circumstances and conditions that exist as the result of the applicant. The applicant hired an architect to design a single family residence to meet their needs. The house has been designed to maximize the applicants' view of the lake to the rear of the lot. When the layout of the house was reviewed by County staff it was determined that since the wall was an integral part of the principal structure it must comply with the principal front setback requirement. If the wall was reduced to 4 feet and was freestanding it could remain in the front yard. However, as explained in #1 above, the applicant states the wall was designed to obstruct views into the master bedroom from the street. By lowering the wall would

jeopardize the overall design intent and require a redesign of the bathroom window to ensure privacy.

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 denied by the comprehensive plan and the code to other parcels of land, buildings or structures in the same district. The proposed dwelling complies with the required 22.5 foot front setback. The unique situation in this case is how the wall is being classified by the County staff. Since the wall is attached to the principal structure and is an integral part of the house, it must comply with the principal structure setback. If the wall was freestanding and only four feet it could remain in the front yard without a setback variance.

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

YES. A literal interpretation and enforcement of the terms and provisions of the 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. The variance request is the minimum necessary to allow the applicant apply for a building permit for the dwelling. If the variance is denied, the applicant will have to modify the privacy wall to either eliminate it or detach it from the house and reduce it to 4 feet in height. Since the privacy wall is located only in front of the master bathroom window it's impact is limited from the street. The remainder of the single family dwelling will comply with the 22.5 foot setback. The 6 foot wall does not have the same impact as a solid wall of a structure in terms of mass and bulk and therefore will have minimal impact by encroaching into the setback by 4.76 feet.

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. Approval of the variance is the minimum variance that will allow a reasonable use of the parcel of land. As stated above, the privacy wall is attached to the dwelling and therefore, by definition, is considered part of the principal structure. Consequently it must comply with the 22.5 front setback. The wall is setback approximately 6 feet from the foundation of the dwelling but, more importantly, it was designed to obstruct views from the street into the bathroom. The applicant states that there will be 18 feet between the wall and street allowing for landscaping to be installed. The landscaping will further reduce any negative impacts associated with the wall encroaching 4.76 feet into the front setback. Approval of the variance will allow the applicant to

proceed with finalizing the architectural drawings and obtaining permits for the dwelling unit. The homeowner association has reviewed and approved the proposed wall that is the subject of this variance.

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 will be consistent with the purposes, goals, objectives, and policies of the comprehensive plan and the code. The intent and goals of the ULDC is to ensure structures comply with the underlying setback of the zoning district. As previously stated, the unique situation in this case is the fact that when the privacy wall was designed to be attached to the dwelling, and at 6 feet it became an integral part of the principal structure. Therefore, it must comply with the 22.5 foot front setback. If the wall was only 4 feet in height and detached from the house it would not require a variance. However, the intent of constructing the wall at 6 feet was to ensure the views into the master bathroom from the street are obstructed. The wall was architecturally designed to add interest to the front facade of the dwelling while maintaining conformity with the dwelling unit.

Therefore, granting this 4.76 foot front setback variance will be consistent with the intent of the code. Specifically, because the privacy wall is freestanding and not enclosed. It is only by definition that this wall must comply with the principal structure setback.

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

NO. Granting the variance will not be injurious to the area involved or otherwise detrimental to the public welfare. The applicant has already obtained the Homeowner association approval of the 6 ft. privacy wall. The applicant is proposing to install landscaping in the 18 feet between the wall and street. The landscaping will reduce the impact of the 4.76 foot setback encroachment into the front setback.

ENGINEERING COMMENTS

No Comment (ENG)

ZONING CONDITIONS

1. By August 21, 2000, the property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application.
(DATE-MONITORING-BLDG PERMIT:BLDG)
2. By October 21, 2000, the applicant shall obtain a permit for the single family dwelling to vest the variance for the privacy wall. (DATE: MONITORING ZONING)

3. By November 21, 1999, the BA Zoning staff shall ensure the Certified Site Plan has a notation on Lot 20, indicating the approved variance. (DATE: MONITORING ZONING-BA)

CHAIR PERSON KONYK: Next item on consent is B of A 9900083, Daniel Constanakos and Ruth Berge of D&D Constantakos, Inc., agent for Rhonda Busch, Guardian of Ronald Richardson, to allow an attached carport to encroach into the required front setback.

Your name for the record?

MS. BERGE: Ruth Berge.

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

MS. BERGE: Yes, we do.

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

(No response.)

CHAIR PERSON KONYK: Any letters?

MR. SEAMAN: Yes. There are two letters. One was for clarification. And the other was concern of safety of children of possible back-out from a carport.

CHAIR PERSON KONYK: So they were resolved or not applicable?

MR. SEAMAN: Well, I can -- not applicable.

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

(No response.)

CHAIR PERSON KONYK: Seeing none, B of A 9900083 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.

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

YES. The subject lot is a parcel located at 13793 53rd Court N., approximately .33 miles north of the intersection of Persimmon and N. 140th Avenue; and approximately .25 miles east of 140th Ave. on 53rd Court, in the AR zoning District. It is within Acreage of Royal Palm Beach Subdivision, in the agricultural residential (AR) zoning district. The subject lot currently supports an existing residence, garage, pools, spa and wheelchair activity trails for Mr. Richardson. Slash pines and minimal under story planting appear about the property. The surrounding properties to the east, west, south, and

north support existing single family residences.

The subject lot is a 1.15 acre (209" by 239") valid non-conforming lot in the AR rural zoning district. The subject lot is nonconforming in regards to the size and width of the property. Current ULDC property development regulations require an AR property to be a minimum of ten (10) acres, with minimum dimensions of 300 feet by 300 feet.

Historically, ULDC provisions permitted varying setbacks for nonconforming lots ranging from 25 feet to 100 feet when applying front setbacks. This was the result of a Code provision in Article 1 (nonconforming lots) acres could apply a 25 foot setback to all sides of the dwelling. Lots that were over the 1.25 but less than the ten acres and not meeting minimum lot dimensions were able to apply percentage setbacks, while properties that were less than ten (10) acres but met minimum dimensions the standard AR zoning district setbacks are applied. Therefore, since the lots in this subdivision vary in size from 1.15 to 2 or more acres, this provision has been applied to some properties in the area. This resulted in an inconsistency in the overall front setbacks for much of the Acreage area.

The applicant proposes an open sided carport to be attached at the front entry of the existing single family residence. The addition will be enhanced by native landscaping similar to that which currently surrounds the existing residence and garage. Therefore, special circumstances do exist that are peculiar to the parcel of land that are not applicable to other properties in other AR districts which are ten acres in size and meet minimum lot dimensions.

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 this subdivision 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 ten (10) acre requirement as a result of several code amendments over the past 20 years. Therefore, provisions allow setbacks to be established on the specific lot configuration rather than the literal application of the setbacks for the specific zoning district.

The applicant is requesting a front setback variance that will be consistent with the front setbacks on other developed lots in the Acreage of Royal Palm. As stated above, the front setbacks of the developed properties ranges from 25 feet to 100 feet. Additionally, the applicant is requesting a front setback which will be consistent and in some cases larger than other lots in the same subdivision. The larger land area in the rear of the lot is already supporting a screened pool and patio area, spa, wheelchair activity paths and pond.

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 variances 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 carport is a structure which is permitted in the AR zoning district.

The applicant is requesting a variance to reduce the front setback, if approved, will be consistent with the varying front setbacks already established in the Acreage of Royal Palm Beach; a rural subdivision. The fact that other single family residences and accessory structures in the general vicinity have setbacks as minimal as 25 feet, this variance, if granted will not be a special privilege. The request, if granted, will be consistent with the general setbacks of this rural 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. 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 (10) acre parcels and are intended to establish the buildings 100 feet from the front and rear property lines. This setback distance encourages an openness and unobstructed view from the street. However, the subject lot is only 1.15 acres, which is considerably less than the required ten (10) acre minimum. In addition, various Code provisions for setbacks for nonconforming residential lots vary within this subdivision because varying lot configurations (acreage and dimensions). The proposed 35 foot front setback will be adequate to ensure the general intent of the Code is satisfied.

Therefore, granting the variance will allow the property owner to reduce the front setback consistent with other properties in the general area, creating no undue hardship to the surrounding 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 variance requested is the minimum variance necessary to allow a reasonable use of the parcel of land. The proposed accessory carport would be located 35 feet from the front property line. The structure complies with all other property development regulations. Since the rear yard is currently developed with outdoor activity areas for Mr. Richardson, and the current garage is not high enough to accommodate the van from the outside elements, the only logical and easily accessible location for the carport is at the front door. The carport will be

attached to the front of the residence. The connection will be architecturally and aesthetically pleasing and further enhanced with a Florida landscape equal to that seen around the existing residence. For this reason, any visual impact will be minimal to the surrounding Properties.

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

YES. Granting of the variances will be consistent with the purposes, goals, and policies of the Comp Plan and the ULDC. The intent of maintaining minimum setbacks is to ensure uniformity along property lines, protect adjacent property owners, and maintain property values. As a result of various ULDC code provisions and staff 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 varying application of front setbacks for nonconforming AR lots, granting the variance will meet the general intent of the Code.

Therefore, the proposed front setback of 35 feet will be consistent with front setbacks established for other single family residences and accessory uses already constructed in this subdivision.

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

NO. Granting the variance request will not be injurious or detrimental to the area involved or to the public welfare. The required setbacks for the subdivision vary, depending on lot size, and interpretation of the setbacks for nonconforming AR lots. The proposed carport will be supported by columns and attached to the existing residence about the front door. The design will be aesthetically appropriate with the existing residence. The lack of solid walls will eliminate intrusion and disruption to the visual "sense" of the front yard. These design components with the proposed landscaping will minimize any negative impact by this variance request.

ENGINEERING COMMENT

No Comment (ENG)

ZONING CONDITIONS

1. By April 21, 2000, the applicant shall provide the Building Division with a copy of the Board of Adjustment result letter, and the site plan (Exhibit 9) of the Board of Adjustment file, simultaneously with the building permit application. (DATE: MONITORING -BLDG)

2. By June 21, 2000, the property owner shall obtain a building permit for the carport structure. (DATE: MONITORING-BLDG)

3. The proposed 28' by 18' carport addition shall not be enclosed with any type of walls or windows. It shall remain open to allow air and light to penetrate the structure.
(ONGOING)

4. By September 21, 2000, or prior to CO, whichever occurs first, the applicant shall install one 12' native tree and under story planting in front of the carport to buffer the addition from the street. (DATE:MONITORING CO-BLDG INSP)

CHAIR PERSON KONYK: Next item on content is B of A 9900086, Nanette Fogal, to allow a proposed addition to an existing SFD to encroach into the required front setback.
Your name, for the record?

MS. FOGAL: Nanette Fogal.

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

MS. FOGAL: Yes, we do.

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

(No response.)

CHAIR PERSON KONYK: Any letters?

MR. SEAMAN: Two letters. One in approval and one disapproval. The condition is perhaps lowering their property value.

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

(No response.)

CHAIR PERSON KONYK: Seeing none, B of A 9900086 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.

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

YES. The subject property is located at 11316 Avery Rd., approximately 1.8 miles south of PGA and 2.27 miles west of Ellison Wilson Rd., within Pirates Cove Subdivision, which was platted in 1958 (Plat Book 25, Page 197). The future land use designation is Low Density Residential (LR3) and the zoning classification is RS - single family residential. The subdivision supports 63 lots and has access from PGA. The majority of the lots abut either a canal or the Intracoastal Waterway. The two main streets that provide access to the 63 lots (Teach

Road, Avery Road)dead end in cul-de-sacs.

Lot 46, which is the subject of this variance application, is conforming in terms of lot size and property development regulations, however, has an irregular configuration. The lot is located on the curve of the 100 foot cul-de-sac on Avery Road. The cul-de-sac encroaches approximately 25 feet into 40 feet of the 75 foot front property line. The cul-de-sac encroachment into the front yard significantly reduces any addition to the southwest portion of the existing dwelling. The applicant has recently purchased the lot and is proposing to invest considerable money renovating both the exterior and interior. A second story and extension to the existing garage is proposed. In addition, the exterior facade will be completely renovated. Since this lot and house were platted and constructed in the late 1950s many needed improvements are required. The fact this lot abuts a canal to the rear and there is a boat dock made it an attractive investment for the applicant. The applicant has a boat that when not docked would like to store it in the garage. However, the existing garage was designed with the bathroom wall a concrete step encroaching into the area used to park vehicles. The existing garage can support a car or truck however, is too shallow to accommodate a boat and trailer. The ULDC does not permit boats and trailers to be stored in the front yard. The side yard has improvements in them that restricts storing a boat beside the house.

As previously stated, the proposed addition will be located along the southwest portion of the dwelling where the existing driveway and garage exist. However, this is where the cul-de-sac encroaches into the front yard by 25 feet.

Therefore, the existing constraints resulting from the cul-de-sac encroachment into the front yard, the fact the side yards cannot accommodate a boat/trailer and the ULDC provision that boats cannot be visible from the street results in the applicant's need to expand the existing garage. If the variance is granted, the applicant will be able to move forward with the proposed improvements to the dwelling and be able to eventually accommodate the boat/trailer in the expanded garage, out of sight of the neighbors.

2. SPECIAL CIRCUMSTANCES AND CONDITIONS ARE THE RESULT OF

ACTIONS OF THE APPLICANT:

NO. The applicant purchased the property in May, 1999. The subject lot was plotted in this configuration on a cul-de-sac abutting a canal to the rear in the 1950s. The applicant states that the previous owner also deeded five feet of the side yard to lot 47 to the south, which restricts access to the rear yard and the ability to store a boat along that side of the dwelling.

The applicant is proposing to renovate a 1958 dwelling in order to meet their current needs and desires to have a boat and trailer. The lot abuts a canal to the rear which has a dock for a boat. The proposed

renovations will include exterior and interior renovations at a considerable cost to the applicant. The applicant states they have a boat that they propose to park in their garage. However, the existing garage cannot accommodate the boat due to its size and the fact a concrete barrier extends out into the garage which restricts a boat from clearing the doors.

Therefore, the applicants commitment to invest in this property and make the necessary improvements is not a self created hardship. The fact the lot abuts a canal and dock to the rear supports the fact the applicant understood a boat could be accommodated on this property.

However, the applicant soon realized that unless the boat is docked in the canal behind the house it must be screened from views from the street. The logical location to store the boat would be in the garage, however, the garage is too shallow to accommodate the boat. Considering the fact the existing house is going to undergo extensive renovations the applicants decided to pursue a variance to add ten feet onto the existing garage in order to accommodate their boat indoors. The final improvements to this property will benefit the applicant and community at large.

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 what would be denied. Constructing an addition to the front of the existing garage in order to store/park a vehicle indoors is a reasonable request. Other lots do not typically have a cul-de-sac encroaching 25 feet into the front yard restricting an addition. If the existing house had the garage on the north portion of the house the proposed addition could be accommodated without need for a variance. Since the cul-de-sac only affects the south portion of the lot. Allowing the property owners to construct an addition to the garage will allow them the ability to store the boat indoors and thereby meet code and not detract from the residential character of the neighborhood. As indicated previously, due to the unique lot configuration, the property owners are restricted to alternative design options for accommodating their boat/trailer short of keeping it docked all the time or finding a place off-site. The proposed use of the addition to accommodate a larger garage, limited usable side yards, and an existing pool occupying the rear yard, further limits the options available for the proposed addition. To locate the proposed addition in the front yard near the front south property line is the only practical solution for the applicant.

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

YES. A literal interpretation of the provisions of the ULDC will deprive the applicants of rights commonly enjoyed by other parcels of land in the same district. Those properties not situated on a cul-de-sac do not face the same front yard restrictions as those properties which are located on cul-de-sacs. Therefore, those properties not located on a cul-de-sac can meet ULDC setback requirements without the limitations faced by those property owners on cul-de-sacs. The encroachment occurs along the southwest corner of the property where there currently exists a 6-foot-high wood fence. Therefore, any negative visual impacts associated with the proposed addition would be screened and mitigated. As indicated in the justification, with this application, the proposed addition when completed will be consistent with the overall architectural integrity of the home. Therefore, the proposed addition will be compatible with the residential dwellings and will maintain the property values within this older residential subdivision.

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. As previously indicated, the irregular lot configuration with respect to the cul-de-sac encroachment in the front yard, creates a hardship when locating the proposed addition to the single family residence. As previously stated, the applicant does not have alternative design options that would further reduce or eliminate the variance request. To construct the proposed addition in the southwest portion of the front yard is the only practical design solution for the applicant and will ensure the boat/trailer is kept indoors and out of view of the neighbors.

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

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

YES. The variance request complies with the general intent of the ULDC front setback requirement. The intent of the code is to ensure a minimum separation between the proposed addition and the front property line as well as adjacent property. The grant of the variance request will allow the homeowner to keep the boat and trailer on the property out of view. As previously indicated, the variance will not have negative impacts on the adjoining property to the south. The proposed addition, when completed, will be in harmony with the newly renovated residence. Typically, subdivisions similar to this that are located on the intracoastal Waterway and were platted 40 years ago are now in the process of attracting property owners who want to invest money in the property by renovating the existing property and dwelling. The applicant in this case purchased the lot and is proposing extensive external and internal renovations. The existing

6-foot-high wood fence along the southwest portion of the front property line will mitigate the impact from the proposed addition to this property owner. Since the lot is on a cul-de-sac the linear 25 foot setback that exists for the other lots on this street is not an issue. The cul-de-sac has a tendency to distort ones view of how far a house is setback, unlike those homes that are on rectangular lots further up the street.

The interior of the Comprehensive Plan is to encourage residential development to improve and maintain the living standards for people to better enjoy their neighborhood. The proposed extensive renovations and addition to an existing 1959 single family residence to accommodate the applicant's needs is not an uncommon request for homes built 40 years ago. There requested variance will allow the property owners to promote their quality and enjoyment of this property and enhance their life by allowing them the ability to keep their boat and trailer in close proximity. The adjacent properties are also located on the curve of the cul-de-sac will not be impacted by the requested front setback as a result of an existing fence and/or mature trees in their front yard.

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

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

NO. As previously indicated, there will be a sufficient separation/setback between the proposed addition and the lot line as well as affected residences.

In addition, the existing 6-foot-high wood fence along the south side property line on the subject property will mitigate the impacts associated with this variance.

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

Instead, the request is compatible with the surrounding uses of the area and approval of the variance will contribute to the promotion of the applicant's quality of life.

ENGINEERING COMMENT

No Comment. (ENG)

ZONING CONDITIONS

1. By June 21, 2000, the property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application.
(DATE:MONITORING-BLDG PERMIT:BLDG)

2. By June 21, 2000, the applicant shall apply to the building Division for a permit for the proposed renovations to the single family dwelling. (DATE:MONITORING-BLDG PERMIT)

3. By September 21, 2000, the applicant shall obtain a building permit in order to vest the front setback variance for the proposed addition to the existing garage. (DATE:MONITORING-BLDG PERMIT)

4. The boat and trailer shall be kept in the garage when not in use by the applicant to transport the boat. (ONGOING)

CHAIR PERSON KONYK: Next item on consent is B of A 9900088, Kilday and Associates, agents for Herbert Kahlert and Karl Kahlert and Bethesda Health Care, to allow for proposed signs on the individual pods within the overall New Albany development, et cetera.

MS. ANDERSON: Yes, ma'am.

CHAIR PERSON KONYK: Your name, for the record?

MS. ANDERSON: Candy Anderson, Kilday and Associates.

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

MS. ANDERSON: Yes, we do.

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

(No response.)

CHAIR PERSON KONYK: Any letters?

MR. SEAMAN: No, there are not.

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

(No response.)

CHAIR PERSON KONYK: Seeing none, B of A 9900088 will remain on the consent.

STAFF RECOMMENDATIONS

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

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

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

The 101-acre site is located at southwest quadrant of Boynton Beach Blvd. and Hagen Ranch Road and East of Florida's Turnpike, within the Overall New Albany LS/MU and Bethesda Health City, in the PUD and MUPD Zoning districts (Pet. 98-073, 98-073(1) & 93-35(A)). The LS/MU

is 61 acres in size and approved via Comprehensive Plan Amendment 96-89 COM 6 (Ordinance 96-66), which established minimum and maximum acreage and/or square footage for all the underlying land uses. All the uses within the LS/MU are governed under petition 98-073 with numerical designations for the individual pod. The Bethesda Health City is the out-parcel, which is 40 acres in size and located on the south of LS/MU and west of Hagen Ranch Road.

the uses within the LS/MU developments includes New Albany PUD (Pod "A"), Shoppers of New Albany, MUPD (Pod "B"), non-residential use subject to BCC approval (Pod "C," "D," & "E.") Three types of signs are proposed in this application as listed in the above "Variance Summary."

As previously indicated, the LS/MU is governed by approved Land Use allocation Master Plan as well as Ordinance 98-66, which established LS/MU District. Pods C, D, and E do not have any uses technically at this time, therefore, they are not a planned commercial development.

However, because the LS/MU is governed by one zoning petition number and is functioning much the same as the other large-scale Planned Commercial Development which would require a master plan, on-premise directional signage and variances.

As stated in the applicant's justification, the variance request in this application is based on the assumption that the entire LS/MU be considered one large-scale development, thus qualifying as "on premise" and "planned commercial development." Even though some of the pods do not have any uses associated with them, the LS/MU tract is configured such that no one would be able to find the residential components of the site (pod "A"), the nursing home (Bethesda Health City,) or the future commercial use in pod "C" and "D." The Shoppes of New Albany has a condition of approval to provide a directional sign for Florida's Turnpike in order to minimize vehicles making U-turns at the intersection of Boynton Beach Boulevard and Hagen Ranch Road. By directing internal traffic to Hagen Ranch road, existing vehicles can make a left turn and proceed north to the traffic signal at Boynton Beach Blvd.

The LS/MU and the affected out-parcel (Bethesda Health City), is approximately 101 acres in size. The Bethesda Health City, the New Albany PUD (Pod "A"), Pod "C" and Pod "D" are not visible from either Boynton Beach Blvd. or Hagen Ranch Road. Therefore, directional signage is important and will greatly benefit for both the out-of-area visitors and motorists entering or exiting the uses on the subject site to or from the major arterial road, Boynton Beach Blvd., Hagen Ranch Road or Florida Turnpike.

The proposed signage variances are related to identification signs. The variances are minimal in size and number and if granted, will allow for the subject site to function efficiently in terms of on-site circulation. Motorists will be provided clear signage for each use in

terms of location and distance to reduce confusion and vehicle conflicts.

Therefore, the uniqueness to this subject site is to a great extent for its approval as a LS/MU. The current ULDC provisions do not address specific signage for this type of use. Although each subdivision within this development has on-site point of purchase and wall signs, there is a need for "Overall" signage outside the specific subdivision. The applicant's proposed signage program is specially addressing the name/location of the uses within the subdivision and major roads in proximity to this development.

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

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

The original concurrency reservation for the entire 107 acres included a gas station, a health care facility, a nursing home and the uses allowed under the Ordinance 98-66 which created the LS/MU. The boundaries of the LS/MU itself did not include the gas station, the health care facility or the nursing home. However, due to the single project rule for traffic performance standards, everything was under one reservation approval.

The Bethesda Health City is a medical building providing needed medical care to the public. This building cannot be seen from either from Boynton Beach Blvd. or Hagen Ranch Road. In 1997, due to the lack of visibility to the public with minimal signage for the site, the Board of Adjustment approved a variance request for an off-premises sign to have frontage onto Hagen Ranch Road for the building. This variance was granted prior to the construction of Enterprise Center Way and Venture Center Way. The New Albany PUD (Pod "A") will be constructed as a 264-unit rental community and also not visible from Boynton Beach Blvd. or Hagen Ranch Road. It is visible from the Turnpike. However, motorists need clear direction of where to turn to reach the community. Pod "C" & "D" located in the middle or southwest corner are also not visible from the major arterial roads, the Boynton Beach Blvd. or Hagen Ranch Road.

Due to the above-mentioned situation, when approaching the site for the first time from either Boynton Beach Blvd. or Hagen Ranch Road it is not clear to a motorists which direction to travel to reach the use on the site. Therefore, the uses on the subject site require clear identification signage to direct the motorists entering or exiting each use location. Accordingly, the applicant is proposing variances for on- and off-premises directional signs in order to provide clear and needed directional information and business/development identification of each use as well as to improve traffic circulation to the general public.

Therefore, the development approval and the size of this project are unique and require special signage

program. The applicant's variance request is to ensure the directional/identification signage for this site meets with the general intent of the sign code. As previously stated, the current ULDC sign provisions do not specifically address this type of use and unique signage requirements. The applicant's proposal is creative and unique to this project. Therefore, the sign variances are not self created.

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

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

The requested signage will not provide any additional recognition of the businesses or residential development from the streets or create inconsistent signage along Boynton Beach Blvd. (Sign "A"), Hagen Ranch Road (Sign "A"), Enterprise Center Blvd. (Sign "A&B") and Venture Center Way (Sign "C"). The proposed signs are not advertisement but directional or identifying the locations. Therefore, considering the fact the proposed signs will be limited to directional information to assist the motorists maneuvering this 101-acre LS/MU and health facility site, the variances will meet the general intent of the sign code, which is to ensure adequate and clear identification for each use while at the same time limiting the number, type and appearance of them along the right-of-ways. The proposed signs will be in keeping with the general requirements of the sign code with respect to number, appearance and location. The Board of Adjustment has considered and approved variance requests in the past for the other developments that requires either new or additional signage to better identify the use for motorists.

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 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.

The variance request is to provide minimum signage for the multiple uses that have been approved in separate parcels on the 101-acre multi-use project. As previously indicated, the LS/MU is governed by approved Land Use Allocation Master Plan as well as Ordinance 98-66, which established LS/MU district. Pods C, D and E do not have any uses technically at this time, therefore, they are not a "planned commercial development" literally. However because the LS/MU is governed by one zoning petition

number and is functioning much the same as the other large-scale planned Commercial developments which would require a master sign plan, on-premise directional signage and directional signage internal to commercial developments.

As stated previously, several uses are located off major streets and therefore do not have visibility for motorists. The proposed signs will directly benefit the public visiting the site by vehicles by providing clear and adequate identification and directional information of the property location, which is necessary to avoid delay and confusion for the motorists in reaching the site.

As indicated in the applicant's justification, the proposed on- and off-premises directional signs will provide the following major benefits:

1. New out-of-area visitors to Bethesda Health City;
2. Out-of-area apartment seekers. (Pod "A");
3. Visitors to the residents of New Albany PUD (Pod "A");
4. Patrons of the Shoppes of New Albany (Pod "B");
5. Existing traffic will proceed to the Turnpike via Hagen Ranch Road rather than causing a bottleneck at Boynton Beach Boulevard. waiting to make a U-turn.

In addition, the proposed signs will also benefit the future customers of the non-residential Pod "C" & "D".

Therefore, if the variance request is denied, this 101-acre site would have limited identification signage for the future users. The large size of the development and mixture of residential, commercial, institutional and civic uses makes signage a necessity to the overall success of this development and how it will function.

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 requests are minimal with positive impacts on the health, safety and welfare of the general public. As previously indicated, many motorists visiting the site will not be familiar with the layout of the 101-acre area and will have difficulties in locating specific use from either Boynton Beach Blvd. or Hagen Ranch Road. The variances, if granted, will greatly benefit the public to identify each use on the subject site as well as how to exit the site to reach major roads.

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

YES. Grant of the variance will be consistent with the purposes, goals, objectives and policies of the comprehensive plan and this code.

The intent of the variance request is to construct on- and off-premises directional signs and directional signage internal to commercial developments in locations to provide the best visibility to both motorists approaching on Boynton Beach Blvd., Hagen Ranch Road or

Florida Turnpike and motorists exiting the subject site. The proposed variances meet with the general intent of the sign code, which is to encourage on-premises directional signs to assist communicating directions for vehicles maneuvering or locating of site features while encouraging off-premises signs to be within close proximity to the uses they are advertising so as not to confuse the motorists. They will also satisfy the general intent of the sign code which is to ensure adequate and clear identification for each use. The proposed signs will be in keeping with the general requirements of the sign code with respect to appearance and location.

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

NO. The Grant of the variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

As indicated in the applicant's justification, the proposed on-and-off-premises directional signs will provide the following major benefits to the following uses of the site:

1. New out-of-area visitors to Bethesda Health City;
2. Out-of-area apartment seekers. (Pod "A");
3. Visitors to the residents of New Albany PUD (Pod "A");
4. Patrons of the Shoppes of New Albany (Pod "B");
5. Exiting traffic will proceed to the Turnpike via Hagen Road rather than causing a bottleneck at Boynton Beach Blvd. waiting to make a U-turn.

In addition, the proposed signs will also benefit the future customers of the non-residential Pod "C"&"D".

Therefore, the proposed variances are reasonable and will not impact adversely on the surrounding properties.

ENGINEERING COMMENTS

No Comment (ENG)

ZONING CONDITIONS

1. By July 21, 2000, the property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application. (BLDG PERMIT: BLDG)

2. The proposed signs shall be permitted and constructed consistent with the Exhibit 9 in the BA99-088 file. The applicant shall provide the Building Division with a copy of Exhibit 9, that was presented to the Board of Adjustment for approval of this sign variance. (BLDG PERMIT:BLDG)

3. By November 21, 1999, the applicant shall administratively amend the certified master plan for petition 98-073, 98-073(1) & 93-35(A), to reflect the approved variances for the on-premises directional signage, directional signage internal to commercial

developments and master sign plan for sign "A", "B"&"C" and the off-premises directional signs for sign "C" as indicated in the site plan (Exhibit 9, BA99-088). (DATE:MONITORING-ZONING-DRC)

4. By August 21, 2000, the property owner shall obtain a building permit for at least one of the approved signs as indicated in the site plan (Exhibit 9, BA99-088) in order to vest this variance approval and avoid the need for time extension to the Development Order. (DATE:MONITORING-BLDG. PERMIT)

5. The signage, approved with this application, shall be constructed consistent with Exhibit 9 and at no time in the future be modified from identification/location signage to point purchase signage. (ONGOING)

CHAIR PERSON KONYK: Next item on the consent is B of A 9900089, Kilday and Associates, agent for Palm Beach County Property and Real Estate Management and the Miller Company, to allow an MUPD to exceed the maximum permitted off-street parking spaces.

Your name, for the record?

MR. SCHMIDT: John Schmidt, Kilday and Associates.

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

MR. SCHMIDT: Except for number three, we have spoken with staff and would like it to read, the final site plan shall be revised to show a maximum of one hundred and eighty-five off-street parking spaces.

CHAIR PERSON KONYK: Is that correct?

MR. SEAMAN: That's correct.

CHAIR PERSON KONYK: Do you agree with that?

MR. SEAMAN: Yes, I do agree.

CHAIR PERSON KONYK: Okay.

Any letters on this?

MR. SEAMAN: No, there are not.

CHAIR PERSON KONYK: Any opposition from the public? (No response.)

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

(No response.)

CHAIR PERSON KONYK: Seeing none, B of A 9900089 will remain on the consent.

MR. BASEHART: Before we go on on that issue. I thought it's been discussed for about three or four years now about taking that provision out of the code.

What's the status of that idea?

MS. LAVALLEY: For the parking?

MR. BASEHART: Yeah.

MS. LAVALLEY: Actually, we have a code revision going through, I think, in January where we would allow a percentage increase in the parking.

MR. BASEHART: Great. Okay.

STAFF RECOMMENDATIONS

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

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

YES. This vacant conforming 3.81 acre property is located north of Linton Blvd., and adjacent to Jog Road. The BCC in June 1999, approved a small scale comp plan amendment from Park to CL/3 commercial low 3 (99-SCA103 COM), with an official zoning map amendment to a planned commercial development (PDD) and rezoning from AR to MUPD) (Multiple Use Planned Development). The site is surrounded by a mix of residential, institutional and park uses. The South County Civic Center is located to the north, a plant nursery and Morikami Elementary School (P95-10) are located to the west, across Jog Road (120 foot ROW). Currently under construction and located to the south, is a commercial development known as Addison Place I (P97-118).

The applicant is proposing to develop the site consistent with the approval by the BCC. The site plan indicates two commercial buildings: 24,000 sq. ft. one-story retail building and a 4,000 sq. ft. one-story financial institution. The overall lot coverage will be 20%. The site will comply with all property development regulations. The applicant is requesting the Board of Adjustment to grant a variance from the MUPD parking regulations. The ULDC MUPD parking regulations limits the number of off-street parking spaces to the minimum required by code. For the proposed square footage of 28,000 sq. ft. at 1 space for every 200 sq. ft. the minimum parking is 140 spaces. The applicant is proposing a total of 185 parking spaces for a 45 parking space variance. The applicant justifies the extra 45 spaces as necessary to meet the future tenants needs. The uses that can be accommodated on this site are regulated by a condition on the land use amendment and ULDC. The uses are typically general and personal services, restaurants, veterinary clinics. The applicant's client is concerned that if several restaurants located in the retail area the required parking will not be adequate to meet the needs of the overall center. This will result in on-site vehicular conflicts between users of the various businesses within the plaza.

Therefore, there are unique features to this property and use that warrant special consideration when applying the literal interpretation of the MUPD parking provisions. This lot is limited to 3.81 acres, the ULDC requires commercial sites over 3 acres to be designated as a MUPD.

The site has only 252 feet of depth off Jog Road and access onto to Jog Road and an access Road to the south.

The lot coverage of 20% is consistent with the MUPD provisions. The property owner was also required to provide pedestrian access from this site to the surrounding school, civic complex and park. The additional 45 parking spaces will not adversely affect the overall build out of this site. There will be adequate buffering along the ROW, perimeters, parking lot and foundations of the building to ensure the intent of the parking code is met. Staff is recommending a condition that to mitigate the extra 45 parking spaces the applicant provide an additional 1,800 sq. ft. of landscaping around the buildings and/or parking spaces adjacent to the building. This will ensure the general intent to the MUPD parking requirements to limit parking and encourage additional landscaping/open space for the users of the site.

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

NO. The applicant is proposing the construction site in compliance with the approvals. The site will provide local residents with needed services such as restaurant, bank, professional offices, florist, news stand, medical or dentist office, etc. The applicant states, in their justification, that their client has been approached by possible tenants who are interested in opening restaurants in the retail building, however, they are concerned that the parking ratio of one space for every 200 square feet is too low. Typically, parking for restaurants is calculated at a ratio of 1 space for every 80 sq. ft. Therefore, the applicant is seeking a variance to provide an additional 45 off-street parking spaces to ensure the future tenants needs are met and there will not be vehicular conflicts on site created by insufficient parking. Staff has recommended approval of similar variance requests (BA99-63) and the Board has supported the recommendation based on staff's analysis of the intent of the code and the applicants justification of hardship and ability to meet the general intent of the code. The applicant has agreed to a condition, recommended by staff, to provide 1,800 sq. ft. of additional landscape to mitigate the additional 45 spaces to be located along the rear of the 28,000 square foot building (east property line). The extra spaces will provide parking for customers and staff in the rear of the building. The parking will be screened from the proposed Morikami Park expansion to the east by the 10 foot landscape buffer required by code.

Therefore, granting the 45 additional parking spaces, requested by the applicant will meet the general intent of the code and ensure the future tenants and users have adequate parking to avoid on-site vehicular conflicts. The condition to provide additional landscaping to mitigate the impact on the site of an additional 45 spaces also ensures the general intent of the code is 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. The granting of this variance will not grant upon this applicant any special privilege. Other applicant's have applied and been granted variances from this parking code provisions. The ULDC parking provisions for MUPDs are general and in this particular case, if literally applied will create a hardship for future tenants. The ULDC MUPD parking provisions were established to ensure adequate off street parking while at the same time encourage developers to provide only the minimum number of parking spaces and to provide more open spaces/plazas for the pedestrian using the site. Historically, many large scale planned commercial developments (PCD) to days equivalent to an MUPD, have off street parking twice what is required by code. The current MUPD parking regulations are intended to apply to larger developments that are greater than 10 acres that could provide acres of parking spaces that are not used on a regular basis. However, that is not the case in this situation. The site is only 3.8 acres, only .8 acres over the minimum size to qualify for an MUPD designation. This site will have a balance between the built form and open space. There will be adequate landscaping provided in the buffers, parking lot and foundation plantings that will meet the goal of the MUPD requirements to make it a pedestrian orientated environment.

Therefore, the granting of a variance to provide an additional 45 off street parking spaces for this use will not grant a special privilege on the owner. It will ensure the future tenants and customers have adequate parking that is required of all sites in Palm Beach County. The lack of off street parking will result in avoidable vehicular conflicts.

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 establishes minimums in the code to ensure continuity in regulations such as: setbacks, heights of buildings, lot coverage, parking, etc., to ensure the final project is compatible with existing and future developments. The MUPD parking regulation is unique in that the minimum parking required is also the maximum. In other zoning districts a property owner can provide more than the minimum parking provided they meet all other property development regulations. However, in an MUPD, the code intends for only the parking necessary for the uses. The land that would be used for extra parking is to landscape and/or dedicate to some type of pedestrian amenity. Since the general intent of a MUPD is to provide personal services within a user friendly environment that encourage the user to walk to uses, have sitting area to wait for public services, etc.

In this particular situation the applicant has a limited site area to provide excessive off street parking. The proposed additional 45 spaces are spaces that will be utilized on a regular basis. The applicant's client is

also required to provide pedestrian access from this site to other sites surrounding it. This requires walkways, etc through the parking lot to the adjoining uses. Also the site will provide for amenities that are in keeping with the general MUPD requirements.

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 requesting the minimum parking variance that will allow for 45 additional spaces then permitted by code. the additional spaces will be utilized on a regular basis by the future users of the site. The site will support 28,000 sq. ft. of retail and a financial institute. The retail uses will support personal services. The applicant's client has two restaurant tenants that are interested in leasing, however, they are concerned that the MUPD parking for this site is not adequate to meet their needs. The parking ratio of the ULDC MUPD parking is 1 space for every 200 sq. ft., however, restaurants in the ULDC regular parking regulations typically require parking at 1 space 80 sq. ft. or it is based on the number of seats and staff. To avoid on-site vehicular conflicts the applicant is proposing an additional 45 spaces along the rear of the building that can accommodate overflow parking and staff.

This will ensure that the space in front of the building will be used by the general public.

Therefore, the granting of variance to allow the applicant to provide 45 off street parking spaces more than permitted by the MUPD parking regulations is a reasonable request. the extra parking will be on a regular basis and will avoid vehicular conflicts on site that could result from insufficient parking.

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

YES. the applicant has received all the required approvals to amend the land use from PARK to CL/3 early this year. Also as a condition of that approval the BCC limited the uses on this site to: financial institution, offices, florist, personal services, general retail, laundry services, newsstands, printing or copying services, restaurant and veterinary clinics. All these uses typically have a high demand for short term parking.

Therefore, the need for adequate parking is critical to how well the site attracts tenants and customers. Poor parking discourages new tenants and results in customers avoiding the center for lack of convenience. The general intent of the MUPD parking provision will be complied with if the variance is granted. The general intent is to encourage large MUPD to limit parking to the minimum necessary for the uses and to design more open spaces and landscaping on-site. This is a relatively small MUPD which is only .8 acres over the minimum acreage to qualify for an MUPD. There will be no significant difference on this site with or without the additional 45 parking spaces. The only advantage of the variance to the

application is to ensure the parking for the 28,000 sq. ft. retail and 4,000 sq. ft. financial institution will be sufficient to meet the future tenants and users needs. This will reduce on-site vehicular conflicts and lack of parking for the site.

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

NO. As stated in number 6, the additional 45 off street parking spaces impact the site in a negative manner. The spaces will be incorporated in the site design to ensure all minimum landscape code requirements are satisfied. All required landscape buffers and internal parking lot landscaping will be installed, as required by code.

The granting of the variance for 45 additional parking spaces will not be injurious to the surrounding area. In fact the applicant is proposing the additional spaces to ensure the proposed uses will have adequate parking to avoid vehicles parking in undesignated spaces or in the rights-of-way.

ENGINEERING COMMENTS

No Comments (ENG)

ZONING CONDITIONS

1. The property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application. (BLDG PERMIT:BLDG)
2. By December 21, 1999, the applicant shall ensure the BA conditions are shown on the certified site plan. (DATE:MONITORING-ZONING-DRC)
3. This parking variance shall be limited to 45 additional spaces. The final site plan shall be revised to show a total 185 off street parking spaces for this site. (DRC)
4. By October 21, 2000, the applicant shall obtain a final inspection on the parking for this site to vest this parking variance. (DATE:MONITORING-BLDG:CO)
5. By March 21, 2000, or prior to DRC certification of the site plan, whichever occurs first, the applicant shall receive approval of the landscape plan that reflects the additional 1,800 sq. ft. of landscaping that will be installed around the proposed buildings as shown on Exhibit 20, in the BA99-089 file. (DATE:MONITORING-ZONING/DRC)

CHAIR PERSON KONYK: Okay. The items that will remain on the consent are B of A 9900059, B of A 9900071, B of A 9900072, B of A 9900073, B of A 9900074, Board of Adjustment time extension 9900079, B of A 9900080, B of A 9900081, B of A 9900082, B of A 9900083, B of A 9900086, B of A 9900088, B of A 9900089.

And B of A 9900078 has been reordered to the end of the regular agenda.

MR. BASEHART: Madam Chair, I'd like to make a motion that we approve the consent agenda as amended with some conditions of approval as discussed during the consent consideration amended as recommended.

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

MR. JACOBS: Second.

CHAIR PERSON KONYK: Second by Mr. Jacobs.

All those in favor?

(Panel indicates aye.)

MR. RUBIN: Madam Chair, just for the record, I'm in favor of all items that have just been placed on the consent agenda by motion, other than 99-80, 99-82 and 99-86; but I'm not asking that they be pulled from the consent, though.

CHAIR PERSON KONYK: Okay. So all items except for 99-80 and 99-82 and 99-86 are past unanimously. And those three items are six to one.

Did anybody hear from the applicant on that item that we're reordering?

You didn't hear from them yet?

MS. LAVALLEY: We called and nobody was home. Hopefully, they're on their way.

CHAIR PERSON KONYK: Okay.

CHAIR PERSON KONYK: First item on the regular agenda is B of A 9900086, Lawrence Smith of Gary, Dytrych & Ryan, agent for Charles and Susan Barker, to allow a privacy hedge along the side property line to exceed the maximum allowable height in the front yard.

MR. SMITH: Good morning, Madam Chair.

CHAIR PERSON KONYK: The applicant is present.

MR. SMITH: I'm Larry Smith, representing Charles and Susan Barker.

CHAIR PERSON KONYK: Okay. Before you go further, we're going to see if there's anybody from the public to speak on this item. And we're going to have everyone sworn in at the same time.

Everyone that's going to speak, please stand and raise your right hand.

(Thereupon, the speaker were sworn.)

CHAIR PERSON KONYK: Now you may continue.

MR. SMITH: Thank you.

I have -- if I could take just a second. I've got a video I'd like to show you at the end of my presentation.

I know that there's an exhibit over here that Mr. Penney had. And I'm going to use that as well.

CHAIR PERSON KONYK: Okay.

MR. SEAMAN: Could I interject? I believe -- I thought I heard Madam Chairman say 86. This is 85.

CHAIR PERSON KONYK: Oh, I'm sorry.

I need glasses. Let the record reflect that it's B of A 9900085 that we're hearing right now.

MR. SMITH: Thank you, Madam Chair.

My name, again, is Larry Smith. I'm with Gary, Dytrych & Ryan. And I represent the Barkers.

I'd like to direct your attention to the survey that's on the board and explain to you exactly what we're asking for.

The property that we're talking about here is just north of PGA Boulevard on the Intracoastal Waterway, east of Prosperity Farms Road, runs to the Intracoastal Waterway from a street called Coconut Row, which is right here. There's a street leading in from Prosperity Farms which is Inland Cove Road right here.

The property was originally twice the size of the property that you see here. The prior owner took a larger lot, which was about double in size from this property here, which is the property in question, and subdivided that property. This is interesting property because Inland Cove Road runs into this property right here. So the only frontage this property has on any public street is about ten feet of property frontage.

The property has access -- my client's property is here. There's another piece of property here, which is owned by a Mrs. Newlon. And the property has access through easements granted by Mr. and Mrs. Lanan's, predecessor in title, who live right here, and gets access into the Barker property and the Newlon property through an easement granted by this property owner here.

In turn, when the prior owner of this property granted an easement -- split the property, he granted an easement across here to give access to Mrs. Newlon's property. And she's now the owner of the property up here.

What we're asking for, specifically, here is the hedge on the south side of the property is an eight-foot hedge, and we're asking to be allowed to carry that eight-foot hedge all the way to the property corner. And I'll show you some pictures to explain how we think we meet all of the criteria of the -- required for the variance and explain to you how this doesn't really impede any visual barrier or cause any problems concerning the requirements of the code.

What I'd like to do, first, is pass around some pictures, which I have labeled as Exhibit 1 through 5. And I can explain -- as these go around, I can explain what they illustrate. If I may, which side should I start at? Should I submit them to the clerk, or should I just start at one of the corners?

CHAIR PERSON KONYK: You can bring them here and --

MR. SMITH: Very good.

CHAIR PERSON KONYK: -- we'll accept them -- get a motion to accept?

MR. WICHINSKY: So moved.

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

MR. RUBIN: Second.

CHAIR PERSON KONYK: -- Mr. Rubin.

Will accept these into the record, and we're going to keep these now.

MR. SMITH: Yes, that's fine.

One thing I'd like to note is this petition originally started with -- actually, our client had the hedge at eight feet and asked -- the neighbor to the south asked that it be cut down, which our client did cut it down.

Our client's goal here is to achieve a visual barrier between the property to the south and her property. Really, the goal here is to achieve a privacy element that is becoming prevalent throughout this neighborhood. And I can explain to you and show you the video at the end of the presentation to show you how the neighborhood is developing.

I've always kind of taken the position that fences, hedges and walls make good neighbors. And I think that a hedge in this particular instance that's allowed to grow up to eight feet provides a visual barrier that we're trying to achieve here that would do a lot to go toward -- essentially, separating the neighbors from the south.

I'd like to talk about the photos for a minute, as they're going around. Photo number one -- they're all labelled up in the upper, right-hand corner -- shows the Barker's property looking west to east; and the hedge that is in question is on the right-hand side of that photograph. And the Barker's property, if you -- is that Mediterranean-style house with the barrel tile roof.

Photograph number two shows the Barker property again. It has a little better hedge on the right-hand side, a little better shot of the hedge. Number three is an aerial photograph of the Barker property, and it shows a partial view of the house to the south and shows the location of a motor home which is parked on the property to the south.

We have another aerial view in picture number four, which is looking west from the Barker's house, looking out toward Inland Cove Road, which is the road that goes straight. Coconut Row turns left. And, if you'll notice in that picture, you'll see that the corner of Inland Cove Road and Coconut come together right there at the Barker property. And the hedge, again, is on the left of that just inside that white fence on picture number four.

And number five I submitted to illustrate the overall quality of landscaping that the Barkers have tried to achieve in re-landscaping their property. And it shows a large landscape island between the property to the north and the Barker's property, which is the other lot that was split off when the two properties were split.

As Exhibit No. 6, I'd like to read into the record a letter from Michael and Karen Lanan. They're the property owners which are straight west of the Barker property, which is right here. So the Barkers' frontage is primarily up against the Lanans' property. Mr. and Mrs. Lanan say, Dear Charlie and Susan, although you have not requested it, Karen and I would like to support your request for a zoning variance. Due to the odd configuration of our lots in the corner, with the

exception of your driveway, all of your front yard joins our side yard. Your landscaping does not hinder or impede pedestrian or vehicular traffic in any way nor does it block anyone's view of the road or waterway. We think you have done a magnificent museum-quality landscape theme. Thank you for making such a wonderful and visually appealing improvement to our neighborhood. We think your request should be easily approved. After all, many Palm Beach and Jupiter mansions have enormous landscaping directly adjacent to roadways. Your neatly-manicured, low hedge is merely adjacent to our side yard. Please feel free to use this letter in any way that may be helpful.

I would note that this letter was unsolicited given to the Barkers who gave it to me. I'd like to submit this as Exhibit No. 6 and note that, attached to the letter, Mr. Lanan has taken some pictures of the neighborhood; and it's pretty self-explanatory. Let me submit them; and, as they go around, I'll explain what they show.

CHAIR PERSON KONYK: Motion to accept?

MR. SMITH: Thank you.

MR. RUBIN: I'll move.

MR. JACOBS: I'll second.

THE COURT: Mr. Rubin moves, Mr. Jacobs Seconds.

All those in favor?

(Panel indicates aye.)

MR. SMITH: And Mr. Lanan's letter is submitted as Exhibit 6. And, if I could ask you to pass that around to show the photos that Mr. Lanan has attached. He took these photos and marked them up. These are not our markings.

The photo number one shows it from the street looking into the Barker property, showing his property on the left and the Tuppen property on the right, which is the property to the south of the Barkers where the hedge is running between Tuppen and Barker.

Number two, that shot number two is a shot looking southeast from Mr. Lanan's property down the road; and, number three, is looking down the road to the south showing Coconut Row.

With regard to the criteria for the variance, which is really what you folks have to consider, I think that the reason for the code provision about the hedge could be summarized in three items. And I think the staff, in repeating their -- in their staff report -- has really distilled this down into three items.

You're looking in a condition to keep these hedges low, it seems to me, to not have any visual obstruction when someone pulls out so you don't create a safety hazard. Obstruction of light and air is mentioned in the staff report. And you don't want to -- and the staff report also says that the goal is to try to foster interaction between neighbors. Essentially, those are the three items which the staff has pointed out in evaluating this petition.

I would say that we have a situation here that is unique. You have a large piece of property that's been subdivided into two with basically no access to the street, other than through an easement. Almost has no street frontage. You don't have a situation where you have a through street. You have Coconut Row, which comes to a dead end, essentially, at Inland Cove Road right here. And then you have Inland Cove Road running west out

to Prosperity. So you have a corner situation with no frontage. So that makes this a unique property.

This property, in getting access ingress and egress to the property and to the property to the north, really doesn't depend on access to the north because there is no access to the north. That's where Mr. Lanan lives. You're not going to have a situation which is going to create a safety hazard by allowing this variance because the property owners that use the gate, which is back here -- there's a gate back here -- pull out through the gate slowly and can look down Coconut Row and have a clear view of Inland Cove Road down the street so there's not going to be visual impediment by the granting of this variance to allow the hedge to go up to the property line.

The second criteria, basically, that's been distilled down in the staff report is the visual obstruction of light and air. And I would submit to you that there really is no visual obstruction of light and air in that these are very deep properties. This property is extremely deep. It's over two hundred feet deep. And we're talking about a short stretch of hedge right up in the front.

And the houses are set back. The Tuppens' house is set back and the Newlons' house is set back. So you really have nobody that's going to suffer as a result of allowing this hedge to grow up.

In addition, I'd like to point out that the Tuppens have a pump house out here that -- there's a picture of that in your staff report, I think. And, in addition, we'd like to have that obscured because that's not -- it's pretty unsightly. And, when you pull out, you get to see it.

So this is an effort to achieve privacy. It's an effort to achieve a -- basically, a better relation with the southern neighbor because fences make good neighbors; hedges make good neighbors.

And, finally, I'd like to say that probably a more overriding reason than anything to grant this variance is this is a neighborhood that is somewhat in transition. I told you that the owner -- previous owner of the Barker and Newlon property have taken a large lot and split it in half, and you've got two fabulous houses on the two lots that were created.

I'd like to show you the video just to give you a flavor of what the neighborhood does look like. I took it myself, and it's not a professional-quality video. But I think it gives you some idea of the kind of privacy that the neighbors are trying to achieve here. So, if I could, I'll just go turn it on and explain it as we go. It's only about a couple-minutes long.

This is the Barker property. I'm standing in the gate, basically, looking east. And the hedge is on the right of this video. And now I'm turning, just to show you the hedge and there's a tree here. Just turning around -- I'm standing just inside the gates, actually.

And there's the top of the pump house. And then this is continuing -- that's the gate for the southerly neighbor. And this is the part of the hedge that we'd like to grow up. And there's the Barker and Newlon gate.

As you can see, Inland Cove Road goes off to the right. It's, actually, straight out -- perpendicular to the front of the Barker property. Coconut Row goes off

the left. And that forms a corner right here where you are. Or I'm looking right at the corner now.

Now I'm looking down Coconut Row, showing the post for the Tuppens' gate. And this is the Tuppens' fence on the south side of the Tuppens' property, which is the southerly neighbor to ours. This property is one property removed. It's on the south side of the Tuppen property. And, as you can see, they have large hedges in the front for privacy and a very nice house, which you'll see in just a second.

That's a shot looking north on Coconut Row. And that's the same hedge looking from the other direction. And there's the house behind the hedge that we're -- I was just showing you.

I would submit that we have met all of the criteria that are required for the variance. We'd appreciate your favorable recommendation and favorable approval of this petition.

CHAIR PERSON KONYK: Next, we'll hear from staff.

MR. PENNEY: I believe Mister -- my name is Mark Penney. I'm interning here at zoning.

I believe Mr. Smith has provided an adequate overview of the case, the physical circumstances; so I won't reiterate that nor to waste the Board's time.

I'm bringing attention to the fact that in the justification statements, the pump house was an issue to the applicant in a sense that the light on top of the pump house -- and there's a picture of the pump house in the staff report on page one ninety-five.

The pump house is about six feet high. And, after reviewing this site, during the site visit and researching the site, staff adequately addressed the fact that this light was indeed blinding onto the applicant's property, and that the four-foot hedge compassed within there as well as the eight-foot hedge would be enough to mitigate the effects of any sort of light. And the light that minimal, in our opinion.

Secondly, staff offers alternatives to the hedge, which are the -- installing of canopy trees as well as standard multi-stem trees in the area between the existing hedge and driveway that would provide the same effect as a hedge while not creating such an intrusive structure.

Finally, granting the variance to allow an eight-foot-high hedge may establish a precedent for other property owners in the area to request the same special privilege.

This neighborhood is located close to the Intracoastal. Because of that, there are a lot of -- renovations are being done. In the future, this might be a trend for individuals who are establishing new properties in the area to come up and ask to grow higher hedges. And, down the road, you might have a similar effect to the City of West Palm Beach where you have insanely high hedges which take away from a lot of the community character.

And that is zoning's recommendation for denial.

CHAIR PERSON KONYK: Okay. Thank you.

MR. PENNEY: You're welcome.

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

Step forward and state your name for the record.

MR. TUPPEN: My name is Ron Tuppen. I own the

property to the south. I want to go on record saying I have no objection to the hedge whatsoever. But it says there are conditions; and I would like, possibly, three conditions.

First of all, he stated that was an eight-foot hedge. May I use this drawing?

CHAIR PERSON KONYK: Sure.

MR. TUPPEN: This hedge from this point on back to the house is anywhere from ten to twelve feet right now.

CHAIR PERSON KONYK: The yellow portion you're talking about?

MR. TUPPEN: I'm sorry?

CHAIR PERSON KONYK: You're talking about the portion that's colored yellow?

MR. TUPPEN: The portion that's colored yellow --

CHAIR PERSON KONYK: Okay.

MR. TUPPEN: -- that currently exists is between eight -- well, there may be a couple of sections in there that are eight foot. But some of them are twelve foot. Some of them are ten and eleven.

First condition, put a height on it. You don't have any height. And, secondly, they grow over on my side. About in July, I came back from a long trip. And I cut some of this hedge here. I had my yard boys cut it.

She had a letter written to me by this law firm that accused me of everything short of mayhem, which I'll submit a copy of the letter; and you can put it in the file, if you like.

I've never had any contact with her with the exception, she's got twenty foot here, which this Board granted the right to split this property, which I strenuously objected to five years ago. You've got twenty foot of ingress/egress. This person took her garbage cans and put them on my side even coming across the driveway and putting them out here. She got code enforcement, Solid Waste Authority. And the Solid Waste Authority told her she'd have to keep them on her side in front of her property. Now she does that. But this started the hassle.

I don't have any objection; she can grow that hedge out there. But, right on the corner, there's a Coconut -- or a cabbage tree that's mine. And it's on my property. And I don't want her encroaching on it, bothering it or anything else. And it's practically on the line.

This hedge was planted by Graziata, the original builder. All fence companies hold a fence back three inches off the property line. That's the code. He planted these trees almost on the line. They all come over and they hang over.

Right now, I have a couple -- my pictures aren't as elaborate as the others. But I have a couple of Polaroids here that I will get to you.

This shows --

CHAIR PERSON KONYK: If we accept these in the record, we can't give them back.

MR. TUPPEN: That's fine. You can keep them.

CHAIR PERSON KONYK: Can I have a motion to accept?

MR. RUBIN: So moved.

CHAIR PERSON KONYK: Okay. Mr. Rubin.

MR. JACOBS: Second.

CHAIR PERSON KONYK: Second by Mr. Jacobs.

MR. TUPPEN: You can see how this overhangs my

property line now.

CHAIR PERSON KONYK: Whose chain link fence?

MR. TUPPEN: That's mine.

And that's three inches back from the actual property line. This is a section we cut. All we did was cut it back.

MR. JACOBS: What is the hedge vegetation?

MR. TUPPEN: I don't know. It isn't a ficus, but it's -- I don't know what it is. She can tell you.

CHAIR PERSON KONYK: Okay. Anything else?

MR. TUPPEN: Yes. I didn't get a chance to look at those other five pictures. May I look at them?

CHAIR PERSON KONYK: Sure. Helen has them.

MR. TUPPEN: She mentioned the motor home parked there. Where is the picture with the motor home?

CHAIR PERSON KONYK: There isn't one.

MR. TUPPEN: Their isn't a motor home parked there. There never was a motor home. It was a travel trailer. It's sitting right here, the travel trailer. This picture was taken some time ago. The travel trailer hasn't been there in six weeks, eight weeks. But it's pretty well shielded. She can't see it from her house, as evidenced here. Code enforcement's been out, and they approved it.

Right back here. They approved it, so there's no problem there.

Like I say, I have no objection whatsoever to the hedge. But I want a condition that you put a height on it somewhere. And the second, she has professional lawn people that come every week. They can come right on my side, and I want them to keep that hedge cut back on my side of the property. If they're going to grow it up there, keep it cut back.

CHAIR PERSON KONYK: Will you let them enter your property --

MR. TUPPEN: Absolutely.

CHAIR PERSON KONYK: -- to do that?

MR. TUPPEN: Anytime they want.

CHAIR PERSON KONYK: Okay.

MR. TUPPEN: Now, I have a gate there. But my wife is there usually. All they have to do is say, we want to come in and cut it. The people on the other side do that and there's no problem. That's -- other than that, I haven't any other problems.

CHAIR PERSON KONYK: Okay. Thank you.

Anybody else wish to speak on this item?
your name, for the record?

MR. BYRNE: My name is Emit Byrne, B-y-r-n-e.

And while I am cousin to Mrs. Newlon, I am not an attorney; so I don't have any elaborate presentation. But Mrs. Newlon has a sore throat and has asked me to address the people on this issue.

Mrs. Newlon owns the property directly to the north of the applicant, and she is opposed to the eight-foot hedge by reason of the fact that the entrance and the exit to the property, which is shared by the Barkers, will impede vision to the south.

The current four-foot hedge is certainly adequate. The light, air and uniformity of the neighborhood would be impaired. As Mr. Smith pointed out in this diagram, which I could barely see, there is but ten feet opening onto Coconut Row and Inland Cove. Because it's right in the corner, of course it isn't going to impair these people to

the west, because their driveway is out in the open.

But this one is right on the curb. Any additional sight-impairing hedge work would not only block view of northbound traffic on Coconut, but it's a distraction. Mr. Tuppen's driveway is immediately along side. God forbid the two of them come out at the same time and can't see each other.

Four feet is plenty of height. To do any more is just going to obscure the area and confuse the issue for the neighborhood.

Thank you very much for your time.

CHAIR PERSON KONYK: Thank you.

Anybody else to speak on this item?

(No response.)

CHAIR PERSON KONYK: Seeing none, does any Board member have a question either of staff or the applicant?

MR. RUBIN: I have a question of the applicant.

MR. SMITH: Yes, sir.

MR. RUBIN: I'm just reading the letter of justification that you submitted with the petition.

MR. SMITH: Right.

MR. RUBIN: And in subsection A and B, you were emphasizing the -- apparently, the adjacent property owners, quote/unquote, harassing actions. Is that the thrust of your justification or just a fact that is bringing before the Board. And what are you referring to?

MR. SMITH: It's a fact that I think is germane to the request. I don't think it is necessarily complete justification. I think complete justification is that coupled with the fact that, again, it is a neighborhood somewhat in transition. You're having larger estate-type homes. Mr. Tuppen has a large home. Ms. Newlon has a large home. And the property that I showed you in the video is a real nice house back there. And there are some others that are at the end of the street, very nice. All those properties along the Intracoastal Waterway are becoming estate-quality homes.

That's what I think is -- coupled with the actions and the discontent between Mr. and Mrs. Tuppen and Mr. and Mrs. Barker, I think is a justification enough for this hedge. I think we meet the criteria because of that.

The other thing I'd like to say is the -- the motor home I didn't realize was gone. But we have no problem in maintaining the hedge both on Mr. Tuppen's side and our side and maintaining the entire hedge at eight feet. Mr. Tuppen may be right a little bit. I'm not sure. But, at any rate, we'll maintain the whole hedge at eight feet in his side too.

CHAIR PERSON KONYK: You're not really giving in anything there because code already has a provision that the hedge should be maintained at eight feet. And, if the hedge isn't maintained at eight feet, someone in the neighborhood could call code enforcement and ask them to investigate the situation; and then they would be required to maintain it at eight feet.

MR. SMITH: What we are agreeing to do, though, if Mr. Tuppen will allow it, our client will instruct her landscape people to go on his property to maintain the hedge.

I do want to point out that he -- you know, he and his landscape people did cut the hedge. But, when they cut the hedge, as he noted earlier, they cut it well over

onto our client's property. So what we'd like to do is maintain the hedge. We'll be glad to maintain it on his side as well as our side. And, the course, the code requires it to be kept at eight feet, which we'll do.

MR. JACOBS: I'm concerned with the visual obstruction aspect of this thing. Are there any plans to place mirrors that I've seen in some places?

MR. SMITH: We can do that. But, again, you know, I could reshoot the video. It's really not necessary. By the time you get out of the gate and get to the road. I disagree with Mr. Byrne in that there is no visual obstruction.

And I'll show you the video, again, because I walked out the gate and then turned and looked down Coconut Row in the video; and you'd have to -- you have plenty of room to stop, take a look at both the Tuppens' driveway where their pillars were on their gate. I just disagree with Mr. Byrne on that. And I'll be glad to show the video. I think that will be -- you know, if you pay a little closer --

CHAIR PERSON KONYK: I don't want to see the video, again.

MR. BASEHART: I do.

MR. SMITH: You'd like to see it, again?

MR. BASEHART: Yeah. I'd like to see it again.

MR. SMITH: Hold on just a second.

I'm standing just inside the gate here.

CHAIR PERSON KONYK: Whose house is that?

MR. SMITH: That's the Barkers' house, my client.

CHAIR PERSON KONYK: Where's their house?

MR. SMITH: Mr. Tuppen lives right there. Mrs. Newlon lives over here.

CHAIR PERSON KONYK: Where does Mrs. Newlon have to pull out?

MR. SMITH: She has to pull out the same gate we do.

CHAIR PERSON KONYK: Show me when we get to the video.

MR. SMITH: Okay.

MR. SMITH: There's the Tuppens' gate.

MR. BASEHART: The hedge we're talking about is right in front of us?

MR. SMITH: Right there. Yeah. That's right.

And there's the Barker/Newlon gate.

Now, the hedge would stop past -- this is the tree that Mr. Tuppen is talking about. So the hedge is going to stop back behind the tree.

MS. BARKER: No. I wouldn't even come close --

MR. SMITH: Wouldn't even come close to the tree.

MR. BARKER: Not even close as where the hedges are now.

CHAIR PERSON KONYK: Well, this is an existing hedge? You're not asking --

MR. SMITH: That's right.

CHAIR PERSON KONYK: -- for a new hedge?

MR. SMITH: Now, there's what you look at down Coconut Row.

MR. BASEHART: Is that where the hedge starts right there?

MR. SMITH: The hedge starts even behind where I was. Let me see if I can pause this at the right spot.

MR. BASEHART: Right there.

MR. SMITH: There.

Now, I'm parked as if I was parked still on the brick pavers, looking down the road. There's the Tuppens' driveway. And I panned over to -- Inland Cove Road is no problem. You've got no visual obstruction at all.

As you can see, you have no visual obstruction down Coconut Row either.

Madam Chair, I think I've neglected to ask that the video be entered into evidence as Exhibit 7.

CHAIR PERSON KONYK: Okay.

MR. TUPPEN: May I have a moment of rebuttal?

Oh, I'm sorry.

CHAIR PERSON KONYK: Okay. Come on forward, Mr. Tuppen.

MR. TUPPEN: You know, I'd like to address -- he says the harassment there. I want to enter this letter into evidence. This is a letter written by this attorney.

CHAIR PERSON KONYK: Mr. Tuppen, it doesn't -- well, I guess since he brought up the issue of harassment.

MR. TUPPEN: Yes. They brought it up.

We were gone for two and a half months. And we got back in the middle of July. We don't harass these people. The only problem we've ever had is garbage cans in front of --

CHAIR PERSON KONYK: Okay. We already heard that.

MR. TUPPEN: And she has all her -- she won't let her yard people -- she won't let anyone park in her driveway.

She has them park in front my house.

CHAIR PERSON KONYK: Okay.

MR. TUPPEN: And she says I do that because I don't have any frontage. Well, that's her problem. She's got a seventy-five-foot lot. The house is seven and a half foot from the property line.

CHAIR PERSON KONYK: Okay.

MR. TUPPEN: Thank you.

CHAIR PERSON KONYK: Can we except this into the record? Motion?

MR. BASEHART: You have the right as the boss.

CHAIR PERSON KONYK: Now I have the right? Before I had to have a motion. What do you do, decide as we go along we're going to have the right when we have to take a motion.

All right. Is anybody prepared to make a motion on this item?

MR. SMITH: Madam Chair, before you make a motion? The picture's gone. I was just discussing with my client, her existing hedge is somewhat back from the property line. And we would maintain it at the current location, no closer to the street than the current location.

CHAIR PERSON KONYK: In other words, you wouldn't add anymore hedges?

CHAIR PERSON KONYK: Wouldn't add anymore hedges toward the street. But it is set back a little bit from the property line. The request specifically asked to go all the way to the property line.

CHAIR PERSON KONYK: So you're asking to add more hedges?

MS. BARBER: No.

MR. SMITH: No. We're asking -- We're telling you that we won't add anymore hedges than what's there now closer to the street. We just want to maintain what's there at eight feet. In other words, we wouldn't create a visual obstruction.

MR. SEAMAN: One of the comments I wanted to be sure was clear that, of course, it is in violation of the code. And we have good options where you can provide the screening you're looking for and the height and the aesthetic attractiveness by the use of particular species of trees, that would be the canopies that provide the additional blockage of light and wind in that particular area and meet code.

CHAIR PERSON KONYK: They have to have how many foot canopy?

MR. BASEHART: Well, see I --

CHAIR PERSON KONYK: How many foot of clear trunk does code say? Is it six feet?

MR. SEAMAN: In this particular case the requirement would probably -- I would have to check, but I believe it is six feet of clear trunk. And, of course, the hedge now is four feet; so you've got a little bit of a two-foot visual area in between there.

CHAIR PERSON KONYK: In other words, you're asking that they maintain the hedges 4 feet? They'd be -- well, they can put the trees in without our permission?

MR. SEAMAN: That's right. By code, they're allowed to do that.

CHAIR PERSON KONYK: As long as they have that six foot of clear trunk.

MR. BASEHART: I don't recall ever having seen anything in the code that says that trees have to be maintained with six feet of clear trunk.

CHAIR PERSON KONYK: If it's a site problem, yes.

MR. BASEHART: Where's that in the code? Show me in the code.

MR. SEAMAN: Let me reiterate. Safe distance requires that there be a certain clear trunk. But, in this case, I do not believe that applies. I do not believe that there will be a requirement that the trunk height be maintained at any particular --

MR. BASEHART: All right. So the bottom line is that, if we apply the code; and he can't have the six foot hedge or -- what does he have --

CHAIR PERSON KONYK: Eight.

MR. BASEHART: Eight foot hedge, he could have a four-foot hedge with trees planted so that the canopy touches the top of the hedge. And he'd have his solid barrier, and he wouldn't be in violation of the code?

MR. SEAMAN: Correct. That's --

MR. BASEHART: What's the difference between giving him the variance and doing the other alternative? I mean --

MR. SEAMAN: I think he wouldn't be here.

MS. LAVALLEY: We're saying there's other site design options available.

CHAIR PERSON KONYK: Right.

MR. BASEHART: That amounts to the same thing.

CHAIR PERSON KONYK: But, in other words, if there's other site design options available, then he doesn't meet the seven criteria.

MR. SMITH: May I say something in response?

CHAIR PERSON KONYK: Uh-huh.

MR. SMITH: That's one thing I didn't address during the presentation. If you notice in the video, that's a fairly narrow grass strip between the pavers for the driveway and the hedge where it is now. And you're really

not going to accomplish what we need to accomplish. What you're going to do is you're going to pack that full of vegetation. If you're saying that it accomplishes the same thing and it's going to meet code, it will probably create a worse situation --

CHAIR PERSON KONYK: He's saying it. I'm not. Look at him.

MR. SMITH: Okay. You're the Chair, though.

I think you're going to create a worse situation. This is probably a minimal request, albeit that it is requiring a variance. It's a minimal request to achieve what we just heard from staff because, if you take a four-foot hedge and you plant a bunch of trees, you're probably going to block more view than you would with simply an eight-foot hedge where the hedge is now.

All we want to do is block the pump house, basically. And potential that the light gets across the pump house. And I think -- and we want to do that without creating a visual obstruction and without, you know, obscuring light and air and so forth. And I just don't think -- you don't have those problems here. It's just one of those situations where the problems just don't exist.

Let me say this. I guess, you know, if you're looking for some kind of compromise, a six-foot height would be fine to cover the pump house. But the four-foot just doesn't get it.

CHAIR PERSON KONYK: Okay.

So now you're saying you want a six-foot height.

MR. SMITH: We'll accept that, if the Board will go along with some kind of compromise situation. Either way, I don't think you'll do any visual obstruction here.

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

MR. RUBIN: For purposes of discussion, I'll make a motion with respect to B of A 99-85. I would move that, based upon the staff report, that the petition be denied for failure to meet the seven criteria. In addition to that, or further explanation, in reviewing the written justification, as I mentioned earlier in section A, B and C and D, the primary justification appears to be that there's -- and I'll quote, no other reasonable and achievable solution to the blighting problems caused by the adjacent property owner and/or the harassment caused by the adjacent property owner.

I didn't particularly see that harassment, nor am I convinced that that would be a justification for granting a variance. To me, it's obvious that the property owner would like to have a higher hedge. But the bulk of their property is protected by a hedge which appears to even be exceeding the eight-foot requirements all along the side.

This little section doesn't appear to be giving the property owner any material protection that they're looking for.

So in evaluating the petition, I'm going to agree with the staff in saying that, in my opinion, the seven criteria were not met.

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

MR. WICHINSKY: Madam Chair?

CHAIR PERSON KONYK: Yes.

MR. WICHINSKY: I concur with Mr. Rubin's comments, and I'll be seconding his motion.

CHAIR PERSON KONYK: We have a second by Mr.

Wichinsky.

Any discussion?

MR. SMITH: Madam Chair, under discussion, could I make a couple of comments; and my client would like to say something. Is that appropriate?

CHAIR PERSON KONYK: They're not appropriate.

MS. BEEBE: If you want to let them.

CHAIR PERSON KONYK: Okay. Go ahead.

MS. BARKER: My name is Susan Barker. And I do thank Mr. Tuppen for giving me the variance from doing this. And I appreciate that. We have had our problems, and it's been over trivial nothings.

But the real reason for this is truly the pump house. There must be something in the code that states that if there's this tremendous pump house, it's at least six feet tall -- he does light it. Yes, he has taken care of it at night for me. It is better. But, when you drive up the street, that's what you see first. When you drive into the driveway, it's right there to my side. When I drive out, it's right there. It is an eyesore.

There are no shrubbery around the pump house at all.

There's not even a little twig. So it's this giant white cube. I have gone to great lengths to make this home beautiful, and I can't imagine how you cannot allow a hedge to go to at least six feet to cover, at least so that when you're driving in and out, egress, you don't have to look at this huge white cube. There's got to be something in the variance for this.

CHAIR PERSON KONYK: Anything else?

MS. BARKER: Only -- no. That's all.

MR. JACOBS: Madam Chairman, I would be disposed to grant the variance subject to certain conditions.

CHAIR PERSON KONYK: We have a motion and a second on the floor. Why don't we see what happens with that then.

MR. JACOBS: All right.

CHAIR PERSON KONYK: Anything else?

Okay.

Do you want to do a roll call?

MS. MOODY: Mr. Basehart?

MR. BASEHART: I'm going to vote no.

I'd be inclined to support a variance for maybe a six-foot height limit rather than eight. But the motion is for flat denial, so I'm going to vote no.

MS. MOODY: Mr. Jacobs?

MR. JACOBS: I would vote no also.

MS. MOODY: Ms. Cardone?

MS. CARDONE: I'm going to vote yes. I believe there are alternatives which could be used.

MS. MOODY: Mr. Wichinsky?

MR. WICHINSKY: Yes.

MS. MOODY: Mr. Misroch?

MS. MISROCH: No.

MS. MOODY: Mr. Rubin?

MR. RUBIN: Yes.

MS. MOODY: And Ms. Konyk.

MS. KONYK: Yes.

MS. MOODY: It's four to three.

CHAIR PERSON KONYK: Motion carries. The variance is denied.

MR. SMITH: Thank you for your time.

STAFF RECOMMENDATIONS

DENIAL, based upon the following application of the standards

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

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 residential lot configuration is the result of a subdivision in 1995, SD-95-65 where two lots were created from one. The lot is located at the point where Coconut Row and Inland Cove Road meet. The lot has 75 feet of frontage and a depth of 328 feet. The property currently supports a single family dwelling, guest cottage, pool and dock. There is a Eugenia hedge that runs along the south property line from approximately the location of the house west to the front property line. The hedge can be 8 feet along the south property line to the front setback line which is 60 feet off the street. At that point it must be maintained at a height of 4 feet.

Staff's review of the applicant's justification and site inspection cannot identify any special conditions or circumstances that are peculiar to the parcel of land, buildings or structure, that are not applicable to other parcels of land, structures or buildings in the same district.

The applicant's main justification is the manner in which the adjacent property owners maintain their parcel coupled with their harassing actions is a special condition that can only be mitigated by maintaining a sufficient hedge of 8 feet to screen the views from his client's property. Staff could not identify any tangible physical structures or conditions on the adjacent property which would warrant blocking the view of the subject property. The applicant can maintain the hedge along the east property line at the front setback line at 4 feet. To buffer the adjacent property either trees or shrubs can be installed that could obstruct the views and accomplish the applicant's goals.

Therefore, this property has no unique characteristics that would warrant special interpretation and application of the hedge height limitations. There are other means to accomplish the applicant's desired goal without the need for a variance. As previously stated, the applicant can create a privacy screen by planting trees and/or shrubs along the side yard that will provide instant visual screening from the adjacent property. This natural vertical barrier would allow for air and light to pass through properties, act as a less concentrated visual barrier, and would not set a precedent in the area for future developments to maintain hedges in excess of the height limitations.

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

YES. This is a self created hardship. The variance process is established to allow deviation from the literal intent of a code provision that places an undue hardship

on the applicant. In this particular situation to maintain a hedge at 8 feet in the front setback is a self created hardship. Staff has offered the applicant the alternative solution to plant trees and shrubs in the area between the existing hedge and driveway that would provide the vertical height needed to screen the adjacent property while at the same time allowing air and light to travel between the properties.

The applicant states the adjacent property owner has not maintained their property and has been harassing his client. The applicant states the hedge will screen the applicant's property from the adjacent 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:

YES. Granting the variance will confer special privileges upon the property that other parcels in the same zoning district would be denied.

The intent of the code provision to provide minimum hedge height is to eliminate visual barriers in the front yards, to ensure air and light is not obstructed by solid barriers (hedge/fence) to pass through properties, to deter visual barriers that isolate neighbors from each other, and create situations where crime can occur since neighbors cannot watch each other's property from the street and finally to establish a precedent in the area for future property owners from requesting variances or assuming hedges can be maintained at 8 feet in the front yard.

Granting this variance request based on the arguments set forth by the applicant is contrary to the intent of the code provision.

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 4 foot hedge is considered an adequate barrier for the aforementioned reasons. The applicant may exercise the option to plant a variety of trees and shrubs along the property line adjacent to the hedge to provide the additional screening necessary to meet their goal of achieving a visual buffer from the property to the south.

The planting of trees/shrubs along the existing hedge to act as a privacy barrier is comparable to a hedge, but less concentrated and obtrusive. Trees and shrubs will allow the air and light to penetrate and is also permitted by code to exceed 8 feet.

Therefore, there is an alternative solution available to the applicant that can be easily met to avoid the need for a variance. Staff had recommended this solution to the applicant and would refund the cost of the variance application. However, the applicant informed staff his

client preferred the solid hedge to buffer the two 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:

A 4 foot high hedge in the front setback (25 feet from the Base Building Line) is reasonable and adequate enough to serve as a privacy barrier between properties. The main house on this lot is set back approximately 230 feet and the guest house 135 feet from the front property line which is far enough onto the property for the permitted 8 foot high hedge to be screened from the adjacent property.

Therefore, denial of the variance request will still allow a reasonable use of this residential property. With the installation of trees and/or in the front yard the applicant's goal to provide a visual buffer between the properties can be established without the need for a variance.

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

NO. The variance request does not comply with the general intent of the ULDC hedge height requirement. As previously stated, the intent of the code requirement to provide minimum hedge height is to eliminate visual barriers, to allow for air and light to pass through properties, to deter visual barriers that would be created in the neighborhood. Also the granting of this variance would establish a precedent and/or level of comfort for other neighbors to maintain hedges at 8 feet in height in the front setback.

The intent of the Comprehensive Plan is to encourage residential development to improve and maintain the living standards for people to better enjoy their community. Permitting an obtrusive 8 foot hedge in a front setback fosters neighbor isolation which deters from future cohesive "community" development.

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

YES. Granting of the variance may negatively impact the surrounding area. The code currently allow hedges at 8 feet along the side yards and four in the front yard. The intent of this code provision is intended to protect the interests of both parties on opposite side of the fence. In this case the property owner to the south has already filed a complaint to code enforcement that the hedge is too high in the front yard. The applicant's client can achieve their same goal of buffering the two lots by installing trees and shrubs in the area adjacent to the hedge without the need for a variance. This would hopefully help foster a better neighborhood relationship.

ENGINEERING COMMENT

The Affidavit of Plat Waiver, approving the subdivision which created the subject lot, established an ingress/egress easement over the west thirty-five (35) feet of the lot. This easement was approved as access and frontage for the two (2) lot subdivision, in lieu of a standard local street, pursuant to variance (SD-74) granted by the Board of Adjustment on September 21, 1995. As a result, the Base Building Line and "frontage" for the subject lot is the interior easement line, being thirty-five (35) feet east of the west property line. Therefore, it appears that the front yard setback for determining allowable hedge height should be measured from the interior easement.

ZONING CONDITION

NONE. Staff is recommending denial of this request. However, if the Board chooses to approve this request staff reserves the right to recommend conditions of approval.

MR. BASEHART: I'd like to also point out. I mentioned to the Chairman when the meeting started, I have to leave at quarter to eleven. I was able to get a meeting with Mr. Walker in the traffic division, which is a difficult thing to do. And I can't give up the opportunity to have that meeting.

CHAIR PERSON KONYK: We'll take a two-minute break. I mean a two-minute break because Mr. Basehart does have to leave.

(Thereupon, a recess was taken.)

CHAIR PERSON KONYK: Mr. Whiteford, would you introduce the item. But, before you introduce the item, let's just clarify that this isn't a variance; so we don't have the same leeway that we have. This is an appeal of the interpretation?

MR. WHITEFORE: That's correct.

CHAIR PERSON KONYK: Do you want to explain that?

MR. WHITEFORE: Yes, ma'am.

This is an appeal of an interpretation to the code which is -- goes to the Board of Adjustment. I can tell you that, on this item, Dennis and I have been talking for quite some time. It's an issue regarding a project which is a proposed zoning petition. The is holding up the certification of it. There are other issues holding up certification of the project, including that it doesn't have concurrency and some other issues.

Dennis appealed to, first, Dominic Simms, who's my executive director. Dom did not disagree with the interpretation, so that's how we ended up here.

But, just very briefly, if I may, the request is to appeal an administrative interpretation on a section of the code regarding access to places of worship.

The ULDC states that all places of worship which include a rectory shall front on a collector or arterial street. Lot frontage means that side of a property line abutting the legally accessible street right-of-way. The definitions of access and legal access are in the handout by staff on the first page at the bottom and you have that information.

That the application of the code requires a place of worship with a rectory to have frontage which is legally accessible from a collector or arterial.

Mr. Koehler, however, represents a client who wishes to have access to a proposed place of worship with a rectory from a road which the traffic division has determined is not a collector or arterial. The subject property in this particular case is on Northlake Boulevard. It's on the corner of Northlake and 130th Avenue North. The proposed access is from 130th Avenue North only. That road is not a collector or arterial.

Over the last two years, the Board has approved numerous places of worship with rectories that have satisfied this criteria. The criteria is considered use related. Therefore, a variance is not permitted. It's our position that in order to have access from 130th Avenue North would actually require an amendment to the ULDC.

The findings of fact during your report from staff, staff recommends that the Board of Adjustment uphold the interpretation of the ULDC and require a place of worship with a rectory to have access from a collector or arterial.

MR. BASEHART: Just kind of as an aside to the issue of whether your interpretation is correct, why is it that -- what is it about a rectory that would trigger a requirement that access be from a collector or arterial? It seems to me, a rectory is where the people that run the institution -- the priest or minister lives, which makes it a residence which would be consistent with access to a local street. But the code says, if you have one of those, then the whole church has to be on a collector or arterial. If you don't have a rectory, the church could be on a local street. And this rule -- the rule doesn't make any sense to me.

MR. WHITEFORD: I think it more has to do with locational criteria to insure that churches which may or may not have a large rectory or monastery or something of that nature are placed on a periphery of a neighborhood or on the local -- instead of being located internal to a neighborhood on a local street on the periphery, collector arterial. We have situations where the churches themselves have access is the collector or arterial. The actual rectory itself, if it's only for a priest or two or whatever the case may be, it's actually located off of a legal road.

I do want to point out though, just one thing, as I have told Dennis, that this is project is still under review. It has not been certified. There's been no recommendation formed on it. We'll do that after it gets certified when it gets to that point. It may be that's even required by the traffic division or as a condition of approval by staff to mitigate any impact on the local residential area that this project maintain access off of Northlake Boulevard.

We've been working for many weeks with the land development division and traffic division and Mr. Keohler to work up something acceptable to satisfy the code criteria. We thought we had it resolved. We were hoping -- thinking that this item might be withdrawn. Everybody could amicably resolve the issue. It's possible this project could have a right-in/right-out off of Northlake Boulevard. And Dennis will, of course, elaborate on why he doesn't think that is practical.

CHAIR PERSON KONYK: Thank you. Okay.

Dennis, your name for the record?

MR. KOEHLER: Good morning. My name is Dennis Koehler. I'm an attorney with offices here in West Palm Beach. And I'm here today on behalf of the Emerald Buddha Temple.

As Mr. Whiteford told you, this is a zoning petition in progress. It's for, as the site plan reveals -- actually, you see a lot of green on it. That's one of the problems. It's for a Buddhist temple and monastery, worship place, administration building and a replica of a thousand-year-old Lowshon (phonetic) Buddhist called the Emerald Buddha Temple will go here.

And this site plan, as you can see, I've done in my very professional fashion some hash marks to show the wetlands and wetland buffer areas that we have to deal with in designing this site. And it took us about four months of work with environmental specialists, South Florida Water Management District and so on to come up with this plan that we have. And from the very beginning, we always planned to have access off of North 130th Avenue, which, of course, the street already exists. It will be improved, paved and so on. And we thought that made a lot of sense to use an existing intersection rather than create a whole new access off of a high-speed roadway, which, of course, is one of the engineering department's policies to eliminate or minimize these kind of potentially dangerous traffic movements off of high-speed roadways. But that issue didn't raise itself until very late in the process.

Let me make my presentation here. You know we're here to appeal Mr. Whiteford's decision, his interpretation. We're here because he has refused to budge, has refused to offer a reasonable compromise to us. Although, at the last minute it seemed he had one. But engineering came through and said -- Mr. Whiteford had said, how about if you just do a right-in only? That will technically satisfy my interpretation of the code. Engineering came back and said, no. You're going to have to do right-turn-in/right-turn-out. And because this is only a hundred and fifty feet from an existing intersection and a right-turn-out would be even closer, it just makes no sense from a traffic safety point of view. That's why we're here appealing Mr. Whiteford's decision.

I want to tell a little story to entertain you a little bit, but it's pertinent to my main argument, which has to do with due process of law.

MR. BASEHART: Is this a true story or a fairytale?

CHAIR PERSON KONYK: Bob, it's a true story, and it involves Bob Basehart.

MR. BASEHART: Hu-oh.

MR. KOEHLER: This is why experience can be so much fun.

The date is November 1, 1984, my last day as a member of the County Commission Zoning Board. A petition brought by Schmere and Fearing -- Bob knows what I'm talking about now -- was for a commercial shopping center special exception at the northeast corner of Glades Road and Lyons Boulevard down in the Boca area. I think some of you know the area. It's an existing center.

This petition had been recommended for approval by the staff. Bob was planning, zoning and building department director at the time. Recommended for approval by the then planning commission. They came to the County Commission. This is Thursday morning, my last day as a member of the zoning board.

Bob came in breathless. He had a report in his hand, he said, commissioners, here is a report just received from the consultant. It's called the South County Space Commercial Space Needs Study. He said, his report tells, surprise, that we have more commercial space down here in the Boca area than we really need and can be justified. So, therefore, I am changing staff recommendation to you today to recommend denial of this petition.

Alan Ciklin was the attorney for Schmere and Fearing, the developer.

MR. BASEHART: I did that?

MR. KEOHLER: Bob did that. I remember clear as a bell.

And we began to question Bob. And, being the lawyer on the board, I said, excuse me, Mr. Basehart, this report that you have, has it been reviewed by any government agency? because we certainly have never seen it before. And Mr. Basehart said, no, it hadn't. I said, well, then if that's the case, if it hasn't been reviewed by any agency, it hasn't been discussed or adopted by the county commission, then how can we make a zoning decision based on the standards and findings contained in that report? Mr. Basehart didn't have an answer.

But, politically, it made sense, because of Fran Reisch and the West Boca political activists down there, to vote against it. So I was on the descending side of a three to two vote to deny that petition.

In 1985, when the circuit court got it, Schmere and Fearing versus Palm Beach County, the court slapped down the decision -- the denial decision and said, sorry, folks, you violated due process of law.

I don't have a copy of that court opinion here. But I can tell you that that principle, due process of law, is very important. And Mr. Basehart himself, I'm sure, now remembers that whole experience.

MR. BASEHART: Huh-uh. I don't remember.

CHAIR PERSON KONYK: He doesn't remember it.

MR. KOEHLER: I, certainly, have never forgotten.

MR. RUBIN: Why don't you put him on the witness stand.

MR. BASEHART: I think it was Stan Ruddick. I don't think it was me.

MR. KOEHLER: No. It was Bob Basehart. I remember.

You were wearing a brown jacket at the time, Bob.

CHAIR PERSON KONYK: Did he have a South Park tie on?

MR. MISROCH: And he still has it.

MR. KOEHLER: My point in telling the story is this, Commissioners, it's very easy for government, and particularly we well-intentioned government employees like

Bill Whiteford, to overlook fundamental constitutional principles when they go about doing their business.

Now, what I've done in the two-page memo I handed out to you is summarize and take you through a very step-by-step basis, why what Mr. Whitefore has done is unconstitutional.

MR. BASEHART: You're illegal.

CHAIR PERSON KONYK: I thought this was going to be quick.

MR. KOEHLER: Well, I've got to make my point.

CHAIR PERSON KONYK: Okay.

MR. KOEHLER: I've got to make my point.

I think that Mr. Whiteford knows, and I, certainly, have given him every opportunity to grasp the fact that his position is not constitutional. But Bill dismisses my talk on due process as lawyers' talk. As you know, you don't have to be a lawyer to practice zoning law in Florida. In fact, most of the zoning agents are not lawyers.

So when a lawyer comes in and makes legal arguments about things like the constitution, the tendency of the bureaucracy is to brush it off. And that's exactly what Mr. Whiteford has done in this case.

I complained about that to Mr. Simms. As you know, Dominic -- thanks to Dominic we're here today. I wrote a letter and I said at the conclusion of that letter, Mr. Whiteford's position is reasonable and untenable when all of the facts are considered and arguably unconstitutional since the standard that his interpretation seeks to enforce was never adopted by Palm Beach County ordinance.

And that's the whole thrust, Board members.

I'm going to ask Mr. Whiteford a few questions down the line. But my major point is the -- and, if you look at the first page of Mr. Whiteford's report to you, look what section 6.4.d.21 -- actually, it's "d" -- says, all places of worship which include a rectory shall front on a collector or arterial street. Does the standard say, and have access from? No, it does not. How did Mr. Whiteford arrive at that interpretation? He has given you an interpretation of an interpretation of a definition. You can't do that under due process of law.

The County Commission must adopt a standard in order for it to be enforceable. Mr. Whiteford has gone to several definitions. If you take a look at, again, his first page. He goes to the definition of lot frontage, and you see the definition says that the property abuts a legally-accessible street right-of-way. It doesn't say shall have access. Is says, is must be legally accessible. And we agree that this lot frontage on Northlake is legally accessible.

CHAIR PERSON KONYK: Wait a minute. Can I ask a question? In order to be legally accessible, wouldn't it have to have an access to make it legally accessible?

MR. KOEHLER: That ought to be stated in the code. It's not stated in the code.

By the way, you know, your job is to hear, review, consider and approve or reserve decisions of the zoning director. I want to tell you that my experience over all these years since I left public office is that boards like yours tend to give the great benefit of the doubt to the people that you see every day. And you tend to reject arguments like I'm making, constitutional arguments, as

just being irrelevant. The typical attitude -- I'm not excusing anybody here -- is this; listen, if you feel so strongly about it, you go on into the court and let the court sort it out.

That does a terrible injustice to people like my client who's a church resident -- religious organization struggling to make the funds to even pay the professionals to go through this process, let alone build the project. My client is out in California right now raising money.

My point is, it's very difficult to get boards like yours to even consider these arguments. And I understand what I'm up against. But that doesn't mean it's not going to detract from what I like to think is the passion of my presentation about the constitution.

Let me continue. If Mr. Whiteford and staff would like to have an access requirement in the code, then they ought to put that language in the code. They ought to ask the county commission to adopt a standard that says, project frontage and project access shall be required for places of worship with rectory. That is not what the code says.

Really, that's, in essence, my argument. And, again, to remind you of what I think is obvious; but, apparently, staff doesn't understand is that due process requires public notice, public hearing, public adoption, an opportunity for the public to be heard. Due process is the idea that the people are on notice of what the government requires. If you read that code, the special set of regulations for places of worship with rectory, there's nothing in there that says you have to have project access on a major arterial or collector road. The public is forced to guess or wait for the zoning director to interpret an interpretation of a definition. That violates fundamental due process.

Let me say something else. I haven't talked with the assistant county attorney about this. I did fax Linda a copy of my memo. My strengths also with county government and municipal government is that the attorneys are not about to step up and tell you, you know, you're treading on dangerous constitutional ground here. They perceive their job as being to defend whatever decision people make, and they never voice their opinions.

Occasionally, when a municipal attorney or a county attorney is outspoken and says, Commissioners, you're treading dangerous constitutional ground, they wind up out of a job. That's why you see changes. So I don't expect Ms. Beebe to step up and say, you know, Mr. Koehler is correct. Due process of law does require this and the standard doesn't exist in the code; and, therefore, it's unconstitutional for Mr. Whiteford to cobble together a standard which really doesn't exist, has never been considered by the county commission.

MS. BEEBE: Can I go ahead and interject now?

MR. BASEHART: First of all, as I said, I've got to leave. Probably, that's to your benefit, Dennis, with the track record that I have of treading on the constitution.

MR. KOEHLER: But you've learned a lot in the last fifteen years, Bob.

MR. BASEHART: I have to leave.

CHAIR PERSON KONYK: Okay. Let the record reflect that Mr. Basehart is leaving.

MR. KOEHLER: To close my introductory remarks, this

is your opportunity to consider the constitutional arguments that I've offered and to do justice in this case.

The remedy, if Mr. Whiteford and the staff desire it to require project access from a collector roadway is to amend the code, not to force people to guess as to what the county requires. And, you know, he can site you ten examples of where they've done this in the past. But that doesn't make it constitutional. I am making a constitutional argument.

I do have some questions I want to ask Mr. Whiteford, if you want to get into it, having to do with --

CHAIR PERSON KONYK: I'd like Ms. Beebe to be able to respond to what you asked her to respond to before you continue on.

MS. BEEBE: I read the letter that was provided to Mr. Whiteford yesterday. Essentially, it appears, Mr. Koehler, that you're taking this argument -- this is not an appropriate forum to raise that claim. In addition, this code section has been adopted by a public hearing and notice. The question is, whether it can be interpreted the way that the zoning director has interpreted it.

I want to remind you about the standard review. It says, in making its decision -- which refers to the Board -- the interpretation of the zoning director shall be presumed to be correct, and the applicant shall have the burden to demonstrate error. I know that there's new members on the Board, and they may not have been familiar with that section.

CHAIR PERSON KONYK: Okay. Thank you. Anything else?

MR. KOEHLER: I would just add one other thing. The reason that we haven't jumped at the alternatives that have been offered is because it doesn't make any sense. It makes no sense to have a right-in/right-out about a hundred and thirty feet or so from an existing intersection. It doesn't make sense.

It does make sense, and Mr. Whiteford has the power -- I want to point out to you, Board members. Again, look at page one of the definition of lot frontage, which he's using as a basis for giving the interpretation that he has. It says, on a corner lot -- and we have a corner -- the frontage may be designated by the owner, subject to the approval by the zoning division. And he's supposed to look at that lot and say, is it consistent with the orientation of the other lots and improvements on the same side of the street.

This is a one-unit-per-ten-acre area under the comp plan. There's only one lot on this side of the street. There's only one lot that can be developed over here. It's presently vacant. So when Mr. Whiteford tells you about all these potential conflicts with residences and accesses, that's not true in this case. It's not going to happen. We suggest to you that this site plan with this access as proposed makes the most sense because it will funnel all traffic off of the main thoroughfare into a safe and secure access paved to meet county collector standards.

Technically, the land development division has said, well, it may be eighty feet wide and the petitioner may be willing to pave twenty-four feet and satisfy all the technical standards. We just don't think it's a collector

street. So that's a technical reason. That's all I'm going to say about North 130th Avenue why it doesn't qualify as a collector in the staff's opinion.

I'm telling you, the zoning director has the discretion, if he want to, to make this all go away by saying, let's just reach the best compromise and allow that to happen. He hasn't done that. He prefers to do his thing, force us to go through this drill.

CHAIR PERSON KONYK: I think that what you're saying is that he has the option of giving you your way and interpret it in the way that you see it. But he's already explained to us why he's interpreting the way that he is.

MR. KOEHLER: And I'm telling you that's unconstitutional the way he's interpreting it. The standard does not appear in the code.

And I don't expect you folks to grasp or to go along with my argument.

CHAIR PERSON KONYK: Glenn, you're an attorney.

MR. WICHINSKY: There are a couple of attorneys on the Board. But I don't think we're standing here as attorneys. We're Board members.

Let me ask a question. I'm going to present this as a layman, not as someone who went to law school. Looking at the zoning director's interpretation which was faxed out just yesterday to some of us, let me grasp this. Is what's being said here that the zoning director went beyond the interpretation by dealing with the issue of accessibility if he strictly dealt with the issue of arterial and collector streets and left it at that in his findings of fact were items one -- let's see -- 1, 3 and 4 and did not address the issue of accessibility, then you don't have a problem with that interpretation?

MR. KOEHLER: I disagree totally with finding of fact number 3. The ULDC does not specifically require access to.

MR. WICHINSKY: So the issue of access is what's the crux of this. You're claiming that it's not an issue. It shouldn't be brought into the discussion; and, therefore, the interpretation exceeds what's --

MR. KOEHLER: -- in my judgment, permissible. That's correct.

His duty -- his tasks are restricted by ordinance. The ordinance, the standard we're talking about, about project frontage, doesn't talk about project access. He's gone through the code lifting and plucking provisions that have to be interpreted in order to make his case. And I'm telling you that that's not the way standards -- not what due process requires. Due process requires that you spell out to the public what you're going to require. You can't just cobble together a standard out a series of interpretations.

MR. RUBIN: Are you saying that the zoning director can't go to the definitional section of a code to help him interpret the section at issue?

MR. KOEHLER: I issue the question, Mr. Rubin. If you look at point number B on page two, I point out, the ULDC provision in the code clearly requires only that such places of worship shall front on a collector or arterial street. This language is not vague, and it is not subject to interpretation. There's no need for him to interpret, except to support his position.

MR. RUBIN: He's saying -- he's doing the, if X, then

Y, then Z. He's taking, I'm looking at 6.4.D.2.1.A.1. and it says, places of worship shall include a rectory -- shall front. Now, obviously, your argument that it doesn't say that it has to have access there is correct because there's nothing in that one sentence.

So he's saying what does shall front mean? And he goes to the definitional section and lot frontage means, legally accessible street right-of-way. So he's saying, what does legally accessible mean? Well, he goes to the next definitional section, legal access means principle means of access. So he's saying principle means of access must be, in this case, on a collector or arterial street.

You don't have -- the property owner will not have the option in this case to choose where it's going to front because this section specifically says shall front. And, therefore, with the definition of what legally accessible is based on the definition of what frontage is, puts it into that sentence. That's his interpretation.

I'm not sure I follow why it's constitutional or unconstitutional. It still seems to be, is there competent, substantial evidence that his interpretation is correct?

MR. KOEHLER: Mr. Rubin, who in this earth is going to understand what you just explained, which is Mr. Whiteford's interpretation?

MR. RUBIN: Hopefully, some more people --

MR. KOEHLER: If you come into the county seeking development approval, who's going to understand it? You don't get it by reading the code. You're not going to get it by reading the code.

MR. RUBIN: He said -- unless you're going to point us to some other sections that contradict the sections that the zoning director brought to our attention, I think that's fair to say, well, he can't just pull these definitions out of hat if there are other definitions which contradict them. I think that's something you could bring to our attention.

But why can't he use these two definitions to describe and explain what shall front means? Why can't he?

MR. KOEHLER: Because the language shall front on is clear. There's no interpretation room there. You don't have to go any further. Does anyone question what the requirement, the standard shall front on means?

MR. RUBIN: I think if a code has a definitional section, I think the zoning director and members of the public are obligated to look at what that specific definition is.

MR. JACOBS: I think you only go to definitions if there's an ambiguity. And, to me, the words shall front are not the same as access. I think the code provision is clear.

MR. RUBIN: You're saying -- so you're agreeing with his -- with the appellant's interpretation, which is fine in terms of the decision. But I don't -- still think it reaches a constitutional argument. But if we get to the same place, it doesn't really matter.

I, respectfully, disagree because I think the zoning director can use definitional sections of the code in interpreting another section of the code. And I think it's fair for the appellant to point out why the zoning director can't use those definitional sections. Is that

your argument because that's unconstitutional --

MR. KOEHLER: No. My argument is the standard in question is crystal clear. There's no need to interpret.

There's no need to go looking around the code for definitions that you can interpret to clarify the standard because the standard is clear to begin with. The standard says, shall front on. It does not say, shall have access from. If they want to make it say that, they amend the code.

MS. BEEBE: The section 3.2 of the code, it says, definitions, the terms in this code shall have the following definitions. The definitional section for frontage, you go to lot frontage, why can't they -- the code requires them to go to the definitions to determine --

MR. KOEHLER: Even if you do that, the lot frontage definition merely states that you have to abut a legally accessible street right-of-way. It doesn't say that you have to actually provide access. And, as we've shown on this sketch, it's really impossible to provide that access in any kind of safe way or any way that respects the Buddhist site plan that we have on the board there.

By the way, I want to add one thing for the Board members. Had land development accepted Mr. Whiteford's compromise, which was the angle right turn only, which would have come in here into the parking lot, we would not be here. But the engineering department rejected Mr. Whiteford's offer, and that's why we're here. So I'm not totally at war with Mr. Whiteford. But, because of that, I have to be here.

MR. WHITEFORD: If I could, we have a representative that is here from the engineering department who will respectfully disagree to the last statement from Mr. Koehler. Apparently, the engineering department will allow a right-in/right-out at that particular location to satisfy his technical --

CHAIR PERSON KONYK: I think he's saying that you were allowing a right-in only without a right-out, and engineering wouldn't allow that?

MR. WHITEFORD: We have the engineering department here who can speak for themselves.

CHAIR PERSON KONYK: Well, he said that you want to just put a right-in and have the out somewhere else, and engineering wouldn't agree with that.

MR. WHITEFORD: I actually didn't have a preference.

In trying to work with the applicant -- we don't design properties for applicants. And they came to us seeking a solution, and we gave them some ideas. It's not our job to solve their problems. But some of the ideas we threw out were -- the code says, legally accessible. It doesn't say to or from. I right turn in would technically satisfy the code requirement.

At the end of the day, would not be -- accept that as being adequate to address any issues that come up during our eventual review of this project. For the public hearing review process is another matter. But what came back, evidently, was that the engineering department would not only support a right-in but also a right-out.

CHAIR PERSON KONYK: They will support a right-in? Oh, right. Okay. I got ya.

MR. JACOBS: Madam Chairman, do you think it's all relevant?

CHAIR PERSON KONYK: Yes. It's all relevant.

MR. JACOBS: No. I disagree respectfully, Madam Chairman, respectfully.

I think that the issue is you have a definition in the code which is crystal clear, and the question is whether the staff can interpret that -- what is a crystal clear definition out of existence. I just don't think it can.

MS. CARDONE: Can I ask a question?

CHAIR PERSON KONYK: Uh-huh.

MS. CARDONE: Thank you.

Is it possible for this applicant to have what he wants, which is not to have the access off of -- is that Northlake, by the way?

MR. KOEHLER: Yes, Northlake.

MS. CARDONE: -- off of Northlake, but to have his access off of 130th by what we're doing right now? Because I understand what we're doing right now. We're arguing about some language and whose interpretation of the language we're holding.

But as a completely separate issue, can he get that access through some means? Can he come before us? Can he come before somebody to get that because I do believe it makes sense to have access on the side road. I really do. I think it makes a lot of sense, and that argument is very valid.

But, as I understand what we're doing here, that's not what we're doing. So can you just tell me, can they get that somehow?

MR. WHITEFORD: This is kind of the critical moment between whether or not the code requires them to have an access to or from Northlake Boulevard. If the decision is that the code does not require it -- the property to have access to or from Northlake, then his only other means of access is 130th. It's a moot point essentially.

CHAIR PERSON KONYK: I think what she's leading to -- and, Dennis, please don't get upset when I say this, because I know that you don't want us to go that far with this, but if, in fact, we uphold your decision, is there any remedy for him not to have the access on Northlake?

MR. WHITEFORD: If you uphold the decision and he -- the strong desire is to have only access off 130th, his only option at that point is -- well, he's got a couple, I guess, appeal to the circuit court and whatnot. But the other would be to request an amendment to the code.

CHAIR PERSON KONYK: What about a variance?

MR. WHITEFORD: Cannot grant a variance is abuse related.

CHAIR PERSON KONYK: Okay.

MR. WHITEFORD: The other option, of course, the one we were working towards was some sort of compromise where you simply just provide both.

CHAIR PERSON KONYK: Okay. And then maybe not use the other one?

MR. WHITEFORD: It would be there. It would be accessible.

CHAIR PERSON KONYK: But they don't have to use it, right?

MR. WHITEFORD: Accessibility would have to be maintained whether people use it or not.

CHAIR PERSON KONYK: I mean, if you had a gate on it that had to be opened and closed to use, then that would

be their option? Right? I mean, nobody says that's the only one they can use, right?

MR. WHITEFORD: I think we'd only have a problem if it were permanently closed.

CHAIR PERSON KONYK: Just questions. Just questions. I understand. I don't want to get you, you know, on the constitution again. But I just wanted to ask a question.

MR. KOEHLER: While the Board ponders, let me just comment on this roadway situation.

If Mr. Whiteford's interpretation is upheld, then we have no choice. We have to come up with some way to have access from Northlake. It's about a hundred and fifty feet from this point to the property line. That means somewhere in there, we'd have to create an in and out right hard by the existing intersection. And that raises the obvious question, why? Why would you want to have right in and out when you've got this roadway right here, which is for more secure and safe?

MR. WHITEFORD: Certainly, the access point could be located further west on the other side of that wetland area. The constraints that you're going to hear is one of cost.

CHAIR PERSON KONYK: Can I ask a question? That's all -- all the green spot is wetland?

MR. KOEHLER: Wetlands and buffer areas, yes.

CHAIR PERSON KONYK: Is that something to do with this -- did they realize all those wetlands were there when they were buying the property?

MR. KOEHLER: Well, you know, the real estate broker never made those representations at the time the client was considering the purchase. After he had executed his contract, as you know, if you're going to buy any property out in the western area, you better think about wetlands.

So at my suggestion, the client retained Pat Painter, a wetlands biologist to go out there with the South Florida Water Management District. And that's when we found that all of this property was wetlands that, either had to be mitigated like crazy, if you wanted to build in it. The original plan was to put the Buddha temple, according to feng Shui (phonetic) principles, in the dead center of the property.

We, finally, convinced the client, you can't do that because the cost would be humongous. So we agreed -- the client agreed to relocate his structure so that none would encroach on the existing wetlands and buffer areas.

CHAIR PERSON KONYK: So he was aware that the wetlands were there before he purchased the property?

MR. KOEHLER: Yes. But, as I think some of you know, when a client falls in love with a piece of property for price and location, you can't change their mind. Our engineer even tried to talk them out of buying it. But he said, no, I've been looking for six years. This is the spot for me.

CHAIR PERSON KONYK: Okay.

MR. KOEHLER: And we were able to make it work out from a site-planning point of view.

In fact, it's going to be beautiful when you think about all the wetlands preserves we're going to have.

Anyway, that's my answer.

CHAIR PERSON KONYK: Okay. Thank you.

Anybody prepared to make a motion on this item?

MR. RUBIN: Before we have a motion, I just wanted to

hear the zoning director go through the analogy and to clarify why it is a requirement as opposed to an option under the section of the code to have the principle access in this case be on the collector or arterial street.

MR. WHITEFORD: I was actually going to say earlier when Mr. Rubin was going through the same thought process that I couldn't have said it better. Actually, the way he presented it was exactly how we go about interpreting the code and applying the code.

We go to the special standards which are related to individual uses in 6.4 of our code. We do use the definition sections, obviously, for guidance. You know, I call it connect the dots. You go -- the code says what the code says. Actually, I don't even know if there's any interpretation here actually being talked about. What we're really talking about is the need for an amendment to the code in order for Mr. Koehler's client to accomplish what it is he wants to.

I don't know if exactly the access needs to be the principle access. I wouldn't necessarily agree with that statement that you made when he said principle access. The code says access, it doesn't say what kind; it doesn't say to or from. And those types of issues, though, are addressed during the public process when churches and that type of thing require that level and scope of review and approval by the Board.

It may be that, as a condition of approval, that this project could be required to have its only access off of Northlake. That's left to be seen.

CHAIR PERSON KONYK: Am I correct in assuming that -- first of all, the code -- the ULDC is how many pages?

MR. KOEHLER: Couple thousand.

CHAIR PERSON KONYK: Half a million? You know, and if we were to include every definition within every regulation, this ULDC would be ten times the size that it is --

MR. WHITEFORD: That is correct.

CHAIR PERSON KONYK: That is why we rely on the definitions to interpret the code along with the code.

MR. WHITEFORD: And we do this -- and, of course, we've worked with Mr. Koehler on all of the projects. And, you know, most cases, it works to everyone's benefit. In this particular case, it's something that is not.

CHAIR PERSON KONYK: Isn't that really why every little word isn't in every little regulation because the code would be --

MR. WHITEFORD: -- every definition every time it's used.

CHAIR PERSON KONYK: Right. Okay. Thank you.

MR. RUBIN: Now, you've confused me a little bit when you're stepping back from the principle means language.

Are you saying that at some point through this process it may be that he could get access to this property on Northwest 130th, not Northlake, is that despite your interpretation today? That that could happen?

CHAIR PERSON KONYK: No. I think he's saying he could have it both places.

MR. RUBIN: But it must be at least -- your interpretation is that it must be at least on Northlake?

Then aren't you using the word principle in that context if that's where the legal access must be at least

there?

MR. WHITEFORD: I see what you're meaning. You're going to the definition of legal access. But we're --

MR. RUBIN: I assumed that's why you cited it for us, there was some reason to say there's a difference between access and legal access because in the definition of lot frontage, we're going to use legally accessible as opposed to just accessible.

MR. WHITEFORD: I don't know if we ever got into that level as to whether or not it's more trips -- vehicle trips coming in off the property off of Northlake versus 130th which is the more major of the two, which is for the principle versus, you know, the secondary, that type of thing.

MR. RUBIN: And, Mr. Koehler, your response is that we shouldn't even be looking at these two definitions; just look at the one sentence in section 6.4 and read that for what it is?

MR. KOEHLER: It's crystal clear, as Mr. Jacobs said. Yes. That's my legal position.

MR. JACOBS: I think that, just as a practical matter, if the administrative agencies have the power, by definition, to change the clear provision of the code, then I think there's not much purpose in having a code. I think it's really almost Horn Book administrative law that you do not interpret code provisions that are crystal clear.

MR. KOEHLER: Madam Chair?

CHAIR PERSON KONYK: Yes.

MR. KOEHLER: I just want to make a comment following up on Mr. Jacobs' Point. Obviously, I'm pleased to hear him make that point.

It's an invitation to abuse if you allow the administrators to freewheel through the code picking and choosing provisions to suit their interpretations of how things ought to be. That's not the way laws are established. The county commission establishes the standards that guide Mr. Whiteford's behavior.

The standard requiring access does not exist.

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

MR. RUBIN: For purposes of discussion, I'll move that -- I guess deny the appeal based upon the zoning director's interpretation --

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

MR. RUBIN: I'm upholding the zoning director's interpretation based on its presumptive correctness and that substantial, competent evidence has been presented to us through the other sections of the code being cited for us in the definitions.

And I respectfully disagree with Mr. Jacobs. I think there are many sections of the code which address the single issue. But that doesn't mean you can, therefore, ignore what else may be in the code. And I think it was certainly reasonable for the zoning director who's charged with that responsibility to look to a definitional section to try to interpret it in this particular case, no more than that section references how high your hedge has to be or what the setbacks are or anything else about what's going on with the property.

But the key is, it's presumptively correct; and I

think he's shown that it's presumptively correct. So that's the basis of the motion.

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

MR. WICHINSKY: Second.

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

Any discussion?

MS. CARDONE: That was a lengthy statement on the motion. Could I just here the crux of the motion, again?

CHAIR PERSON KONYK: To uphold the zoning director's interpretation of the code was the crux of the motion.

MS. CARDONE: Okay.

CHAIR PERSON KONYK: Any discussion?

MR. JACOBS: I think I've made my position clear.

I think that, in this particular instance, I think the zoning director is incorrect. I think, if you allow the staff to interpret a clear provision of the code out of existence, then as a practical matter, the staff can do anything it likes with any application.

CHAIR PERSON KONYK: Can we vote on this?

MR. WICHINSKY: Let me make one final comment.

CHAIR PERSON KONYK: All right.

MR. WICHINSKY: In seconding Mr. Rubin's motion, I just get a sense that there was some room here to work out the issue without getting to the point of having to address the technicality of the interpretation. And, if there's still an opportunity to do that after this -- after we complete what our work is today, I would hope you would do it. Just something smacks at me here saying that we didn't need to get to this point, but we're here.

CHAIR PERSON KONYK: Okay. Any further discussion? (No response.)

CHAIR PERSON KONYK: Seeing none, all those in favor of upholding the zoning director's position? All those in favor?

(Panel indicates aye, except for Mr. Jacobs)

CHAIR PERSON KONYK: All those opposed?

MR. JACOBS: No.

CHAIR PERSON KONYK: Motion carries five to one.

MR. KOEHLER: Thank you Board members. I appreciate the opportunity to make these arguments. I just hope that, in the future, you will be sensitive to these issues when they come before you.

CHAIR PERSON KONYK: Okay. Thank you.

MR. SEAMAN: Madam Chair, we still have to deal with 99-78.

CHAIR PERSON KONYK: Did the applicant ever arrive?

MR. SEAMAN: (Shakes head.)

CHAIR PERSON KONYK: Well, I really would say that since there's no letters; there's no opposition from the public and no Board member feels that this item warrants a full hearing, I don't see any reason why we can't approve that item? Does anybody else see any reason why we can't approve it?

MR. WICHINSKY: Madam Chair, do we want to -- do we want to do that? Or do we want to condition it that the applicant has the right to submit a faxed or written statement saying that they, in fact, support those conditions?

CHAIR PERSON KONYK: Okay. We can make it conditional upon the applicant submitting a letter saying

they understand and agree with the four conditions. I believe it was? Is that okay?

MR. WICHINSKY: That's not to question the intern's verbal representations, just to secure the record.

MS. BEEBE: They don't necessarily have to agree with the conditions, though.

CHAIR PERSON KONYK: Well, I'd like to know that they do.

MR. RUBIN: I'd like to pull the item.

CHAIR PERSON KONYK: Pardon?

MR. RUBIN: I'd like a full hearing and have the applicant make a presentation.

I think we're starting a dangerous precedent not to require an applicant to be here. When is the next time? I think --

CHAIR PERSON KONYK: I don't think --

MR. RUBIN: Right. Give them the benefit of the doubt and postpone it until next month and give them a chance to be here. I would not want to encourage people to not show up either intentionally or by mistake because I think this is an important process, and they're obligated to be here.

MR. PENNEY: This applicant is also a lawyer himself, so he knew the --

CHAIR PERSON KONYK: Oh, you didn't tell me he was a lawyer.

MR. PENNEY: So I think they're not two lay people. They do know the procedures. He knew what was required of him.

MR. RUBIN: If there was a problem, he could have contacted the office and said we're stuck or --

MR. PENNEY: If he contacted me and asked if he could show up later.

MR. RUBIN: Did you try to contact the law office, and nobody was at the law office? Did you say there was a lawyer representing him?

MR. PENNEY: He's a lawyer. The applicant is a lawyer himself. That's his occupation. He just contacted me asking if he could show up later in the day when this application went before the Board. I said, no, it's hard for us to say how fast these things go. Show up at nine, stay until the end or until yours comes up and is finished. So he knew what was going on.

MR. RUBIN: And you tried to contact him at his office?

MR. PENNEY: No. I just contacted him at home.

MR. WICHINSKY: I'm familiar with this -- I think this petition.

MR. RUBIN: That would be my objection to the process of just approving. I may be out voted, but that's just my personal preference.

MR. JACOBS: I agree with Mr. Rubin.

MS. CARDONE: I agree with Mr. Rubin also. We all made it here today.

MR. WICHINSKY: That's just getting a letter --

CHAIR PERSON KONYK: Does it say that we have to -- if it's on the consent and the applicant's here -- not here, does it say we have to pull it from the consent?

MS. BEEBE: You don't have to pull it from the consent, and you can hear it today. But you may want to postpone it in the event there is any objections from the commission. That's up to you. They received proper

notice.

MR. RUBIN: I'll make a motion -- was there another motion on the table?

CHAIR PERSON KONYK: No. There's not a motion.

MR. RUBIN: I'll make a motion that we postpone this petition until the next regularly-scheduled meeting, then it can be placed on the consent agenda with a letter coming from this -- from the zoning department saying, you need to be here for the hearing. And, if they don't show up again, I would not -- I would take that into consideration.

MR. JACOBS: Second.

CHAIR PERSON KONYK: We have a motion from Mr. Rubin to pull this item from the consent and postpone it to the November 18th meeting and a second by Mr. Jacobs.

All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: Motion carries.

So this item will be postponed.

MR. WHITEFORD: I believe that's it, unless there's any comments from the Board.

CHAIR PERSON KONYK: No yet. We have one other thing. We have this attendance thing. September meeting, Mr. Puzzitiello was away on business, so we have to decide if that's an excused or an unexcused absence.

Do we need a motion?

MS. CARDONE: I would move it as an excused absence.

MR. JACOBS: I second that.

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

All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: Mr. Puzzitiello's absence is excused.

Now that's all we have.

MS. CARDONE: Bill, can I just say something before we leave? I believe what you did was right, and I upheld your decision. I also really strongly believe that having the access right off of Northlake Boulevard just really isn't smart. And his argument holds up well.

Building neighborhoods means you don't stick everything on those collectors. So could you guys really try hard to get what they need to do because it makes sense.

MR. WHITEFORD: We haven't gotten quite at the level of review of contacting the neighbors, working with the district commissioner to really look at the impact of that proposed use in that general vicinity. The item never got certified, so we never got that in-depth part of view. But your comments certainly will be taken to heart and considered by staff.

MS. CARDONE: Thank you.

CHAIR PERSON KONYK: Motion to adjourn?

MR. JACOBS: So moved.

CHAIR PERSON KONYK: Motion by Mr. Jacobs. Second by Mr. Rubin?

MR. RUBIN: Yes.

CHAIR PERSON KONYK: All those in favor?

(Panel indicates aye.)

CHAIR PERSON KONYK: Motion carries unanimously.

(Thereupon, the proceedings were concluded at 11:30

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 the
court reporter 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 102 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 5 day of November, 1999.

RACHELE L. CIBULA, NOTARY PUBLIC