

PALM BEACH COUNTY
BOARD OF ADJUSTMENT

Thursday, August 17, 2000
9:05 a.m. - 9:40 a.m.
100 South Australian Avenue
West Palm Beach, Florida

Reporting:

Sophie M. (Bunny) Springer
Notary Public

A T T E N D E E S

Robert E. Basehart, Chairman

Chelle Konyk, Vice-Chairman

Ms. Nancy Cardone

Mr. Glenn Wichinsky

Ms. Meril Stumberger

Mr. Raymond Puzzitiello

David Cuffe, Civil Engineer II, Land Development

Laura Beebe, Asst. County Attorney

Jon P. MacGillis, Principal Planner, Zoning

Alan Seaman, Senior Planner, Zoning

Joyce Cai, Planner II

Brian Cheguis, Intern/Paraprofessional

Mary Moody, Secretary

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P R O C E E D I N G S

VICE-CHAIRMAN KONYK: I'd like to welcome you to the August 17, 2000 Palm Beach County Board of Adjustment meeting.

And I'll ask Mary to start with the roll call and declaration of quorum.

MS. MOODY: Ms. Nancy Cardone.

MS. CARDONE: Here.

MS. MOODY: Mr. Joseph Jacobs.

MR. JACOBS: (No response.)

MS. MOODY: Ms. Chelle Konyk.

VICE-CHAIRMAN KONYK: Present.

MS. MOODY: Mr. Raymond Puzzitiello.

MR. PUZZITIELLO: Here.

MS. MOODY: Mr. Glenn Wichinsky.

MR. WICHINSKY: Here.

MS. MOODY: Ms. Meril Stumberger.

MS. STUMBERGER: Here.

MS. MOODY: Mr. Stanley Misroch.

MR. MISROCH: (No response.)

MS. MOODY: Mr. Jonathan Gerber.

MR. GERBER: (No response.)

MS. MOODY: Mr. Bob Basehart.

CHAIRMAN BASEHART: (No response.)

VICE-CHAIRMAN KONYK: I have before me proof of publication. Can I have a motion?

MR. WICHINSKY: So moved.

VICE-CHAIRMAN KONYK: By Mr. Wichinsky.

MR. PUZZITIELLO: Second.

VICE-CHAIRMAN KONYK: Second by Mr. Puzzitiello. All those in favor?

BOARD: Aye.

VICE-CHAIRMAN KONYK: We're accepting the publication in the Palm Beach Post, July 20th, 2000.

Next item on the agenda is the swearing in of the new Board members. Before we swear them in -- we only have one of them here; right? Okay.

I'd just like to mention that we're very excited to have a new member. We've been waiting for someone to fill this position for a long time.

MR. WICHINSKY: Three years.

VICE-CHAIRMAN KONYK: I'd like to ask Jon. Jon, have you sent them any information on how the Board of Adjustment operates so that they're more familiar with it, or maybe set up a workshop with the two of them?

MR. MacGILLIS: We actually -- did you get a copy of the --

MS. STUMBERGER: Yes, I did.

MR. MacGILLIS: This was a manual that we put together for new Board members and stuff.

VICE-CHAIRMAN KONYK: Okay, great. Who is going to do the swearing in? Laura?

(Whereupon, the oath was administered to Ms. Stumberger by Ms. Beebe.)

VICE-CHAIRMAN KONYK: Okay. Welcome.

MS. STUMBERGER: Thank you.

VICE-CHAIRMAN KONYK: Next item on the agenda is remarks of the Chairman. I'm just going to go forward with it.

For those of you who are not familiar with

us --

CHAIRMAN BASEHART: Did she say something bad about me?

VICE-CHAIRMAN KONYK: Not yet.

MS. STUMBERGER: No, but I almost left before I got sworn in.

VICE-CHAIRMAN KONYK: I'll just turn it over to you or do you want me to go ahead?

CHAIRMAN BASEHART: Go ahead.

VICE-CHAIRMAN KONYK: For those of you who aren't familiar with how the Board conducts its business, the agenda is divided into two parts.

The consent and the regular agenda. Items on the consent agenda are items that have been recommended for approval by staff, either with or without conditions.

If there's no opposition from the public, no Board member feels the item warrants a full hearing and the applicant understands and agrees with the conditions. If your item remains on the consent agenda, you're free to leave when we approve it.

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

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

If your item is on the regular agenda, we'll start out with the introduction by staff, the applicant will have an opportunity to make their presentation. Staff will make their presentation. At that point we'll hear from the public.

After the public portion of the hearing is closed, Board members will ask questions of either the staff or the applicant, and then vote on the item.

And now I'm going to turn it over to our Honorable Chair since he is now here.

Let the record reflect that Chairman Basehart has arrived.

CHAIRMAN BASEHART: Let the record reflect that I was stuck in the elevator.

VICE-CHAIRMAN KONYK: Were you alone?

CHAIRMAN BASEHART: Yes. That's the breaks. All right. Proceeding onto the consent agenda, the first item is BOFA 2000-044.

VICE-CHAIRMAN KONYK: Sorry, I didn't approve the minutes.

CHAIRMAN BASEHART: Okay. Before we get to that then, let's -- did you get to the remarks --

VICE-CHAIRMAN KONYK: No. We didn't get that, we stopped here.

CHAIRMAN BASEHART: Okay. The next item then is the approval of our July, 2000 minutes. Has everybody read them?

Any problems with them?

(No response.)

CHAIRMAN BASEHART: Okay. I'll need a motion to accept them into the record.

VICE-CHAIRMAN KONYK: So moved.

CHAIRMAN BASEHART: We have a motion.

MR. WICHINSKY: Second.

CHAIRMAN BASEHART: All those in favor indicate by saying aye?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Okay. The minutes for the July meeting are adopted.

Jon, do you have any remarks?

MR. MacGILLIS: No comment.

CHAIRMAN BASEHART: No changes to the agenda?

MR. MacGILLIS: No.

CHAIRMAN BASEHART: Okay.

CHAIRMAN BASEHART: That gets us then to the consent agenda, the first item being BOFA 2000-044, Charles Yannette for the Estates Property Owners Association. Is the applicant here? Okay. If you could step forward.

For the record, the staff is recommending approval of this item with three conditions. Are you familiar with the conditions?

MR. YANNETTE: Yes, I am.

CHAIRMAN BASEHART: Do you agree with them?

MR. YANNETTE: Yes, I do.

COURT REPORTER: May I have his name?

MR. YANNETTE: For the record, my name is Charles Yannette, Parker Yannette Design Group.

CHAIRMAN BASEHART: Very good. Any letters?

MR. MacGILLIS: There were six calls. No one was against the petition, and the City of Palm Beach Gardens was also contacted and they have no concerns with this variance.

CHAIRMAN BASEHART: Okay. Is there any member of the public that's here to speak on this item?

(No response.)

CHAIRMAN BASEHART: Seeing none, any members of the Board?

(No response.)

CHAIRMAN BASEHART: Okay. We'll leave this item 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.

**ANALYSIS OF ARTICLE 5, SECTION 5.7.E
VARIANCE STANDARDS**

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

YES. The subject property located approximately 4.5 miles West of Bee Line Hwy. is within the Bay Hill Estates PUD (f.k.a. Stonewal Estates). There is an existing lake located between the entry drive and the East property line. Widening of Northlake Blvd. will reduce the potential sites where an entrance wall sign could be adequately accommodated. The most suitable location for a new entrance wall sign is found in the northeast corner of the property at a distance of 170 feet away from the site's access point. The combination of reduced available land, required pedestrian/automobile infrastructure, and existing site features create a situation unique to the applicant's parcel of land, not applicable to other parcels of land in the same district.

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

NO. The proposed widening of Northlake Blvd. has precipitated the need to construct a second entrance wall sign in a location beyond the maximum distance of 100 feet allowed in the ULDC, Article 714.1.2.b. Roughly 48 feet of the right-of-way will be reacquired for the purpose of widening Northlake Blvd. and adding a 6 foot sidewalk. The presence of a lake requires the property owner to provide a pedestrian/vehicular barrier at 48 inches high with handrail. The combination of required infrastructure and existing land conditions along the northern boundary of the site create a situation in which the property owner requires relief and **is not** the result of the applicant.

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

NO. Granting the variance **will not** confer upon the applicant special privileges. Neighboring properties are vacant and do not have the same entrance wall sign considerations as this particular residential PUD. Circumstances beyond the control of the applicant have precipitated the need to modify existing sign requirements in order to improve safety for residents and the general public attempting to find and/or access the property.

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 applicants of rights commonly enjoyed by other parcels of land in the same district. Existing and newly created circumstances beyond the control of the applicant have created a situation in which variance relief is required. The intent of Article 7, Section 14.1.2.b "entrance wall signage...shall be within 100 feet of any access point" is to provide warning of an approaching entrance drive for a particular property. In this instance, the property owner is constricted by a combination of external circumstances that requires the construction of an additional entrance wall sign outside the maximum allowable distance from the site's point of entry.

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

YES. This site supports a 507 acre PUD with 263 single family lots. The existing sign located at the entrance to the development is difficult to view due to landscaping and East bound traffic. Upon reconstruction of Northlake Blvd., the existing sign will be relocated on a center median within the entranceway, further reducing its visibility to West bound traffic. Existing site conditions, widening of Northlake Blvd., and construction of associated infrastructure (including: curbs, sidewalk, traffic lanes, and medians) require the applicant to effectively construct an entrance wall sign approximately 12 feet in from the East property line and at a distance of 170 feet from the site entrance, for a variance of 70 feet.

6. GRANT OF THE VARIANCE WILL BE CONSISTENT WITH THE PURPOSES, GOALS, OBJECTIVES AND

POLICIES OF THE COMPREHENSIVE PLAN AND THIS CODE:

YES. Granting variance relief **will be** consistent with the purposes, goals, objectives and policies of the ULDC as provided in Article 7, Section 14.1.2.b. The provision allows for placement of "a development identification sign located at an entrance and placed on an entrance wall in that development...for the purpose of identifying the development and...subject to (specific) standards." The intent of this specific code provision is to ensure that identification signage is located within close proximity to points of ingress/egress for any given development. In this instance, the need to be effectively identify and access the development is heightened by the inadequacy of the existing entrance sign to provide advance notice to motorists approaching from the East. Existing conditions are such that the combination of West bound traffic, fifty-five (55) mile per hour speed limit, and fully developed landscaping contribute to reduced visibility of the entrance sign. Relocation of the existing sign into the entranceway - upon completion of widening Northlake Blvd. - will further reduce visibility of the entrance sign. The addition of an entrance wall sign would improve identification of the development and provide adequate advance warning for visitors, guests and residents.

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 or otherwise detrimental to the public welfare as variance relief is sought to alleviate a potentially dangerous existing condition at the entrance to the Bay Hill Estates property. Residents of the PUD have indicated that visitors and guests have complained about the inability to recognize the entrance point to the site with the existing signage. Adjacent properties are currently vacant and the proposed wall sign - to conform to all applicable ULDC regulations as specified in Article 7, Section 12.1.b. - will be accompanied by required landscaping. Improving development identification signage would work to improve intersection safety at Northlake Blvd. and Bay Hill Drive.

ENGINEERING COMMENTS

No Comment (**ENG**)

ZONING CONDITION(S)

1. The applicant shall provide Palm Beach County Building Division with a copy of the Board of Adjustment result letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application. **(BLDG. PERMIT)**

2. By August 17, 2001, the applicant shall obtain a building permit for the entrance wall sign from Palm Beach County Building Division to vest the sign variance. **(DATE: MONITORING - BLDG. PERMIT)**

3. The applicant shall construct the entrance wall sign in such a manner so as to conform to all other applicable regulations found in the ULDC Article 7, Sec. 14.1.2. including the following:
 - Overall height of sign shall not exceed 8 feet
 - Lettering shall not be greater than 24 inches in height
 - Sign surface area shall not exceed 60 square feet
 - Sign shall not be located in any safe distance triangle
 - Copy or logo shall only identify the development and be affixed on the face of the wall **(BLDG-PERMIT)**

CHAIRMAN BASEHART: Next item is BOFA 2000-045, Jasper and Melissa Long. Are they here?

MR. LONG: Yes, sir.

CHAIRMAN BASEHART: Staff is recommending approval of your application subject to conditions. Are you familiar with them?

MR. LONG: Yes, sir.

CHAIRMAN BASEHART: Do you agree with them?

MR. LONG: Yes, sir.

MR. MacGILLIS: Staff has a modification to condition Number one on page 15. We'd like to add an additional sentence to the end of number one, which I believe the applicant has reviewed and accepts.

"This document shall be recorded by the applicant. After approval by the County Attorney's Office, a copy of the recorded document shall be provided to the zoning division, building division for inclusion in the BOFA file and attached to the building permit record."

CHAIRMAN BASEHART: Do you agree with that?

MR. LONG: Yes, sir.

CHAIRMAN BASEHART: Okay. Any letters?

MR. MacGILLIS: There were three. No objections.

CHAIRMAN BASEHART: Okay. Any member of the public here to speak on this item?

(No response.)

CHAIRMAN BASEHART: Seeing none, any member of the Board have a problem with this?

(No response.)

CHAIRMAN BASEHART: Okay. We'll leave this item BOFA 2000-045 on consent.

MR. LONG: Thank you, sir.

STAFF RECOMMENDATIONS

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

ANALYSIS OF ARTICLE 5, SECTION 5.7.E VARIANCE STANDARDS

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

YES. The subject property is a vacant lot located on the N. 95th Ave., approximately 2.2 miles S of intersection of Indiantown Rd. and Jupiter Farms Rd., within the Jupiter Farms Subdivision, in the AR Zoning District. The surrounding lots are typical in size (1.25 acres) and layout (rectangular). This is a rural residential subdivision that supports single family residents, accessory structures and ponds. The rural natural character of the area is enhanced by the preservation of the native vegetation.

There is a 0.28-acre pond on this 1.29-acre lot (170'x329'), which has been existed since 1965, prior to August 31, 1991, the date the current ULDC excavation regulations were adopted. The pond was excavated when the setback requirements for residential ponds was 25 feet from all property lines. When the current standards were adopted in 1991, the code established several types of excavations each with their own standards in terms of setback, size of the pond, depth, slopes and littoral planting. This pond is exempt from all these requirements because it is a legal non-conforming pond. The only requirement that the applicant must comply

with is the setback requirement. As previously stated, it is only when the current property owner applied for a building permit or a complaint is filed with Code Enforcement by a adjacent property owner is the owner made aware of the setback violation.

Prior to August 31, 1991, there was no permitting or inspections required for ponds excavated on single family residential lots. Unfortunately some contractors excavated the ponds too close to the property lines. The subject property was subdivided into agricultural residential lots (unrecorded) after the pond was excavated for a farmland purposes (drainage).

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

NO. The current owners purchased the lot in 1999 and were not aware of the existing pond that was encroaching into the required 25' or the current 15' setbacks. The contractor who excavated the pond at least 35 years ago is responsible for excavating the pond into the required setbacks. However, since it was excavated many years ago and the current property owners have no recourse or mean to find out how to resolve the setback problem with the contractor.

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

NO. Other property owners have submitted similar variance requests and have been approved by the Board of Adjustment (i.e. BA9800081). The applicant has demonstrated that the granting of this variance will only allow an existing situation to remain. Staff has no record of complains from surrounding residents related to the pond encroaching into the setbacks. The general intent of the setbacks will be satisfied, if the variances are granted. The 15 foot side interior setback encroachments occur at the middle of the pond, therefore, will not affect the maintenance or access to the pond.

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 requested variances **are** the

minimum that will allow the pond to remain in the same configuration without costly medications. The property owner did not excavate and was unaware of the encroachment when they purchased their lot. If the variance is denied, the applicant would have to fill the pond at considerable expense to the owners and inconvenience to neighbors (noise and traffic on roads resulting from fill be brought in to fill the pond & heavy machine to re-establish slopes.)

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

YES. The requested setback variances **are** the minimum necessary to allow the subject pond to remain in its present configuration. Many lots in this rural and other Palm Beach County subdivisions support ponds that was excavated many years ago. Since the interior side setback encroachments occur near the middle of the pond, it will not adversely affect the adjacent property owners. In addition, staff has found no formal complaints on file with code enforcement against this pond from the surrounding neighbors including the property owners behind the subject property. As previously indicated, the County will require the property owners to file a Hold Harmless Indemnification Agreement with the Palm Beach County.

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 minimum setback, as previously stated, is to ensure there is a land area between property lines to allow for access to the lake for maintenance vehicles and pedestrians. As previously stated, the 15 foot side interior setback encroachments occur at the common property lines between the subject and the adjacent properties and are towards the middle of the pond. Behind the subject rear property line is an existing single family residence. There were no formal complaints against this pond from the surrounding neighbors. In addition, the County will require the property owners to file a Hold Harmless Indemnification Agreement with the Palm Beach County. Therefore, granting of the requested variances will be consistent with Comprehensive Plan as well as the general intent of the excavation setback requirements.

7. THE GRANT OF THE VARIANCE WILL BE INJURIOUS

TO THE AREA INVOLVED OR OTHERWISE
DETRIMENTAL TO THE PUBLIC WELFARE:

NO. This rural subdivision has many lots that are similar in size and layout supporting existing ponds. Many of the ponds were excavated prior to 1991 when the County did not permit or inspect the ponds. Therefore, in certain cases the contractor excavated the pond too close to the property line. This pond has existed for at least 35 years without any formal complaints from surrounding neighbors. Staff is recommending a condition of approval that the subject property owners file a Hold Harmless Indemnification Agreement with the Palm Beach County.

ENGINEERING COMMENT(S)

No Comment. **(ENG)**

ZONING CONDITION(S)

1. By November 17, 2000, the property owner for lot #192 shall submit to the Zoning Division a Hold Harmless Indemnification Agreement to be forwarded to the County Attorney's office for review and approval. The agreement shall specifically include indemnification against any negligence on the part of the Palm Beach County in approving the Indemnitor's request for a rear setback variance relief from the literal intent of the Unified Land Development Code, Excavation standards. **(DATE: MONITORING-ZONING-Ctty Att)**
2. Prior to the issuance of the final Certificate of Occupancy for the proposed single family dwelling (PR00012910), the property owner shall provide the Building Inspection Section with a copy of the Board of Adjustment Result Letter and a copy of the Plot Plan, (Exhibit 22, BA2000045), submitted to the Board of Adjustment. **(CO-INSPEC)**

CHAIRMAN BASEHART: Next item is a time extension, BOFA time extension 2000-046, Land Design South.

Your name for the record?

MS. MORTON: Jennifer Morton with Land Design South.

CHAIRMAN BASEHART: Okay, Jennifer, staff is recommending approval subject to five conditions. Are you familiar with them?

MS. MORTON: Yes.

CHAIRMAN BASEHART: Do you agree with them?

MS. MORTON: Yes.

CHAIRMAN BASEHART: Okay. Any letters?

MR. MacGILLIS: No, this is a time extension.

CHAIRMAN BASEHART: Okay, that's right. It wasn't advertised.

Any member of the public here to speak on this?

(No response.)

CHAIRMAN BASEHART: Any member of the Board have a concern?

(No response.)

CHAIRMAN BASEHART: Seeing none, we will leave this on consent as well.

STAFF RECOMMENDATIONS

Staff recommends a maximum of 12 month time extension for BA99-63, Condition #4, from August 19, 2000, to August 19, 2001, consistent with Section 5.7.H.2 of the ULDC, to provide additional time for the petitioner to commence development and implement the approved variances.

The property owner shall comply with all conditions of approval of BA99-63, unless modified herein:

1. The property owner shall provide the Building Division with a copy of the Board of Adjustment Letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application.
(BLDG PERMIT: BLDG)
2. By November 19, 1999, the applicant shall ensure the BA conditions are shown on the certified Site Plan. **(DATE: MONITORING-ZONING-DRC). COMPLETED IN JANUARY 2000**
3. This parking variance shall be limited to 18 additional spaces. The final site plan shall be revised to show a total 81 off street parking spaces for this site. **(DRC)**
4. By August 19, 2000, the applicant shall obtain a final inspection on the parking for this site to vest this parking variance.
(DATE: MONITORING-BLDG-CO)

Is hereby amended to read:

By August 19, 2001, the applicant shall obtain a final inspection on the parking for this site to vest this parking variance.
(DATE: MONITORING-BLDG: CO)

5. By March 19, 2000, or prior to DRC certification of the site plan, whichever occurs first, the applicant shall receive approval of the landscape plan that reflects the additional 720 square feet of landscaping will be installed around the

proposed funeral home shown on Exhibit 9, in the BA99-063 file. **(DATE: MONITORING-ZONING/DRC). COMPLETED IN JANUARY 2000**

CHAIRMAN BASEHART: Next item is -- that actually concludes the consent agenda. A short agenda.

VICE-CHAIRMAN KONYK: Mr. Chair, I'd like to make a motion to approve the items in the consent agenda, BOFA 2000-044, BOFA 2000-045, BOFA 2000-046 with the staff report becoming part of the record.

CHAIRMAN BASEHART: Okay. We have a motion by Ms. Konyk. Do we have a second?

MS. STUMBERGER: Second.

CHAIRMAN BASEHART: Okay. Second by Ms. Cardone. Do we have any discussion?

VICE-CHAIRMAN KONYK: Her name is not Cardone.

CHAIRMAN BASEHART: I'm sorry. Okay. Second by Ms. Stumberger. Any discussion?

(No response.)

CHAIRMAN BASEHART: Okay. All those in favor indicate by saying aye?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no?

(No response.)

CHAIRMAN BASEHART: Okay. Consent agenda is approved.

CHAIRMAN BASEHART: Next item is our regular item, BOFA 2000-029, Petition of Ronald and Jacqueline Reckseit to allow a proposed cabana bathroom to encroach in the setbacks. Is the applicant here?

MRS. RECKSEIT: Yes.

CHAIRMAN BASEHART: Staff, can you give us an introduction to this item?

VICE-CHAIRMAN KONYK: Do you want to put everybody under oath?

CHAIRMAN BASEHART: Okay.

MR. SEAMAN: Go ahead?

VICE-CHAIRMAN KONYK: No, we're going to do the oath.

VICE-CHAIRMAN KONYK: Anyone that's going to speak on this item needs to be sworn in at this time.

(Whereupon, speakers were sworn in by Ms. Springer.)

CHAIRMAN BASEHART: Okay.

MR. SEAMAN: Petition 2000-029 is the petition of Ronald and Jacqueline Reckseit to allow a proposed cabana bathroom to encroach into the required non-zero lot line minimum side interior setback, located at 7735 Monarch Court, approximately .34 miles west of Hagen Ranch Road within the PUD Polo Trace 2, Plat 3.

The applicant is proposing to construct an attached bathroom outside and along the home's east property wall. The structure would contain a toilet, sink for the use of the family and guests who use the existing pool.

The required side setback is 10 feet along the non-zero lot line. Locating the bathroom in this area would require a reduced setback of six feet, four inches which would be a variance request of three feet, eight inches.

The applicant feels that the location of the existing interior bathroom or bathrooms are too far, approximately 60 feet from the pool, and that it is inconvenient for the pool users when they need to change their clothes or use the restrooms.

Staff has reviewed the variance request and found the applicant has not demonstrated compliance with the seven criteria. It is felt that the zero lot line home is typical of those found in zero lot line PUDs. The lot is typical, also, with no unique circumstances to warrant special consideration for setback reduction.

Staff feels that the applicant was aware of the interior bathroom locations and distances to the pool when they purchased the home. It is also found that many of the homes in the area do not have direct access from their bathrooms to their pool.

It is also felt by staff the applicant has not demonstrated whether alternative locations for the addition have been explored which might eliminate the need for a variance. Granting the side interior setback does conflict with the general intent of the code which suggests maintaining minimal separation between property lines and structures.

CHAIRMAN BASEHART: Okay. At this point what we'd like you to do is provide us with your presentation and your justification for the granting of the variance.

MRS. RECKSEIT: Okay. Good morning. My name is Jackie Reckseit.

CHAIRMAN BASEHART: You've been sworn in?

MRS. RECKSEIT: Yes. I do want to make one correction. Three feet, eight inches is 44 inches. I believe you said 64 inches?

MR. SEAMAN: Six feet, four inches.

MRS. RECKSEIT: Oh, six feet, four inches?

Okay. I'm sorry.

Okay. I'm reading off the staff recommendations which they were kind enough to provide us with and referring to them. So the first condition, the staff said there are no unique circumstances not applicable to other parcels, and our belief is that while our circumstance is not singular, it is still unique as there are very few homes in the community with pools, less than five percent. And most of those homes do not have our floor plan. Actually, to our knowledge there are only two other homes with pools that do have our floor plan.

In this section, the staff suggested that we consider other alternatives such as a different site or indoor carpeting, and I want to point out here that there is no alternative site available that would be viable.

To build contiguously to the building in any other location would require us closing up an existing glass door which would be prohibited by our community bylaws. To build otherwise within our lot lines would require building a free standing cabana somewhere in the center of our pool deck which would look like an outhouse and would also not be accepted by community bylaws.

The staff also recommended the use of indoor carpet, and I want to point out that that's not a viable alternative due to the problem of mold and mildew. A carpet that would get continually wet would harbor mold. Both my husband and I have mold allergies, and I do have test verifications for that, which would be aggravated by this.

The staff has pointed out that we are asking for this as a convenience, and I want to point out that we are not asking for this as a convenience for changing clothing. What it is is an issue of danger.

We have a three year old granddaughter, we expect to have more grandchildren visiting. She has friends visiting. We have a good deal of older people visiting. Invariably, when they go into the pool, they decide that they have to go to the bathroom. In order for them to access the bathroom from our pool, they have to walk across 60 feet of tile.

I can dry myself off and wait. My husband can. Our younger adult guests can, but the little children can't. And we have had an older person slip and fall. Fortunately, she did not break her hip. My granddaughter slips and falls all the time. Fortunately, she's a little kid and doesn't fall very far, so she hasn't gotten hurt.

It is true that we bought the house knowing that the bathrooms would be very far away from the pool. However, we never thought of this as a danger issue. We came from an apartment in New York and we didn't have the situation before. We did put in a textured tile because we knew that when you have a pool there is some wetness, and the tile is as textured as we could get it, but it is not sufficient. We have put large absorbent mats at the entrance to the door that we use, both front

and back. Neither of those are enough to have prevented slipping.

Item number two says the circumstances were self-created. I think I've addressed that. Again, I do agree that we purchased the home knowing that the bathroom was far from the pool, but we did not know it was going to be a safety issue, and I do not feel that that was self-created.

The staff feels that granting this variance would confer special privileges. We disagree with that as there are many homes in Palm Beach County that have outdoor cabana baths or alternately they have indoor bathrooms accessible from the outside.

The staff also notes that granting the variance request would run contrary to the intent of the code and requirement to maintain separation between the structures and lot lines and would permit the construction of a building which would visually intrude on an already narrow zero lot line. We disagree with this.

First, we feel that the fact that we are proposing to build it contiguously to the house and in the same design and construction will make it an inconspicuous extension of the house as opposed to a n o b t r u s i v e b u i l d i n g .

Additionally, we intend to further camouflage it with landscaping which would actually improve the visual aspect of this ten foot corridor between houses.

I

don't think the staff has pointed this out yet, but we do have a letter from our neighbor to the east which is the neighbor that would be able to see this extension. The extension would face a blank wall on their part and they have submitted a letter saying that they have no objection to this.

The staff also notes that the continuity of the neighborhood would be disrupted since other residents have not constructed similar structures. We brought some additional pictures that were not presented to the staff because we did not realize this was going to be an objection, and I believe that after viewing these pictures you would agree with us that there is no continuity in the neighborhood.

I have pictures of a screen enclosed area that extends way beyond into the ten foot corridor. I have a picture of a pool that apparently it's a courtyard pool that actually extends the entire length from one house to the other house in this corridor. I also have pictures of the numerous air conditioning units, pool operation units, water treatment units which extend.

We have measured the various equipment. Our own pool equipment extends 55 inches into this area. The air conditioning, which every house has, extends 40 to 42 inches. Our proposed cabana would extend 44 inches. I would like to submit to the Board of Adjustment some of these pictures showing the sides of the homes in our neighborhood already existing. May I do this at this time?

CHAIRMAN BASEHART: Sure. You understand that whatever you submit for consideration by the

Board is kept in the file?

MRS. RECKSEIT: Yes. Okay.

CHAIRMAN BASEHART: Anybody have any objection to accepting these pictures?

VICE-CHAIRMAN KONYK: I don't have any objection, but I just want to make the clarification to the applicant that this Board bases their opinion on the seven criteria.

If these people are violating any parts of the Code, et cetera, that's not something that we would review or --

MRS. RECKSEIT: I agree with that. I don't think they're violating any part of the Code because all of these things to my knowledge were built prior -- they were built by the builder. They were not built afterwards, and I believe they have a Certificate of Occupancy which would mean that they would have met the Code.

VICE-CHAIRMAN KONYK: Right, but I'm just letting you know that the code enforcement handles things like that.

CHAIRMAN BASEHART: The Code doesn't require mechanical equipment in the setbacks. Air conditioning units and pumps and things are allowed in the setback.

MRS. RECKSEIT: Right. That I agree with. I was -- my point in that was just pointing out that they're very unattractive, and I would like to show you what our side looks like.

These are the various --

VICE-CHAIRMAN KONYK: Motion to accept pictures.

CHAIRMAN BASEHART: Okay. We have a motion. Second?

MR. WICHINSKY: Second.

CHAIRMAN BASEHART: We have a motion and --

MRS. RECKSEIT: These are the various screen enclosures that extend. There are two of them. This is the pool which is apparently a courtyard pool which extends from one house right to the other house.

CHAIRMAN BASEHART: We have a motion by Ms. Konyk, second by Mr. Wichinsky. All those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: That's to accept the pictures into the record. You have more?

MRS. RECKSEIT: This is just showing what it looks like with the pool equipment and the air conditioning equipment.

CHAIRMAN BASEHART: Okay. We voted to accept the pictures into the record.

MRS. RECKSEIT: Also, I just want you to get a chance to see this first. This is what our side looks like at the moment. What I want to point out here is that from the street side you can't even see the back area where we propose to put the cabana bath.

CHAIRMAN BASEHART: We'll accept these in under the original motion. Do you have any more pictures? Might as well get them all in at once.

MRS. RECKSEIT: Okay. I don't think I really have any pictures that are necessary right now.

VICE-CHAIRMAN KONYK: I have a question for staff. In looking at this, I know this is a standard zero lot line; is that correct?

MR. SEAMAN: Yes.

VICE-CHAIRMAN KONYK: Is this structure, and I haven't totally read everything here, going to create any kind of drainage problems? Are there any drainage easements that are affected or --

MR. SEAMAN: I can only say that what shows there doesn't seem to be any easements that are shown on the actual survey.

VICE-CHAIRMAN KONYK: But isn't it different to have a solid structure in that area than it is to have a screened enclosure or like Bob said a mechanical because if there is any runoff it can get around a screen enclosure, but it can't get around a solid wall to create a puddling problem somewhere?

MR. MacGILLIS: Part of the permitting process goes through building permit review for the structure, and I'm not absolutely sure on the structures. I mean, the original house has to go to engineering for review.

VICE-CHAIRMAN KONYK: Right.

MR. MacGILLIS: Or they've got to show on the survey that the drainage on the site is going to be accommodated on the property and not spill onto the adjacent property.

VICE-CHAIRMAN KONYK: Right. Okay.

CHAIRMAN BASEHART: According to the survey, there is the three foot overhang easement in there, though. For the roof of the zero lot line on the other side to overhang the property line.

MRS. RECKSEIT: Criteria number four. The staff has said that not granting us a variance would not deprive us of rights commonly enjoyed by other occupants or other residents, and what they're stating is that other residents in the neighborhood are enjoying their pools while accessing bathrooms within their residence.

I would like to point out that, as I said before, very few homes in the neighborhood have pools and even fewer have our floor plan, just the two that I know of.

More importantly, none of us have any way of knowing whether or not these other residents are experiencing the same problem and to what degree this is infringing upon their ability to enjoy their pools, and we have no way of knowing how they use their pools. Perhaps they don't entertain guests at their pool. Perhaps they don't have young children at their pool or much older adults visiting as we do. And perhaps they do and are contemplating the same solution of requesting a variance to build a small cabana bath.

The staff in number five says that we have not pursued alternative locations on the site for the exterior bathroom or other alternatives.

Again, as I pointed out there is no place. I do have pictures of that just showing that there

would be no place on this entire back. If you feel that you need other than my word in saying that, I'll submit them. If not, I don't need to.

CHAIRMAN BASEHART: Does anybody feel like they --

VICE-CHAIRMAN KONYK: Well, let her submit them. I'll make a motion to accept -- what is this, more pictures?

MRS. RECKSEIT: It's just pictures of our back yard showing --

VICE-CHAIRMAN KONYK: Pictures of the back yard?

MRS. RECKSEIT: Right, no alternative location.

VICE-CHAIRMAN KONYK: Motion to accept.

MR. PUZZITIELLO: Second.

VICE-CHAIRMAN KONYK: Second by Ray.

CHAIRMAN BASEHART: Okay. Motion by Ms. Konyk, second by Mr. Puzzitiello. All those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Okay.

MRS. RECKSEIT: And as I said before, we feel very strongly that indoor carpeting would create a condition of mold which would aggravate our mold allergies.

We believe that this variance is the minimum variance required to allow reasonable use of the pool and a bathroom without danger. And we do not believe it is reasonable to place us in a position of causing serious injury to our guests and further subjecting us to the possibility of lawsuits based on these injuries by denying the ability to have bathroom access directly from the pool area.

In number six the staff has said that the granting of the variance will not be consistent with the goals and objectives of the Code. And they state that the continuity of the neighborhood would be affected negatively. That's why I submitted the previous pictures and there is no continuity of the neighborhood. There are screened enclosures that protrude, there's a pool that takes up the entire space, there's a multitude of apparatus which is not screened by landscaping.

Similarly in number seven the staff says that the grant of the variance will be injurious to the area. Again, as with the pictures we submitted, we believe that it will not be injurious to the area. The staff also notes that granting this variance may encourage other residents to request the same.

Firstly, we do not believe that we should be denied a necessary variance because of a possibility which may or may not ever occur.

However, should others request variances for similar reasons of safety, we believe that they too should be granted and that the Board of Commissioners should require that the construction be minimal, integral and unobtrusive, as ours is proposed to be, and should further require landscaping camouflage.

We strongly believe that the Board of Commissioners' role is of great importance in maintaining the quality of life in Palm Beach County. Part of that quality of life is pool safety.

In recent years, pool gating which was once considered unattractive and unnecessary and thus remained optional has become a requirement, even though as I think we would all agree unfenced pools are generally more visually attractive. Similarly, we believe that it could be a safety requirement to have outdoor access to a bathroom from every pool, and perhaps it will be in the future just as pool gating is now.

In the interim, we do not believe that we or other homeowners should be deprived of the ability to enjoy our pool safe in the knowledge that our guests are not being subject to the dangerous potential of serious injury when they need to use a bathroom before they can dry off properly.

Thank you for your time.

CHAIRMAN BASEHART: Thank you. Before we go to comments by the public --

VICE-CHAIRMAN KONYK: Is there any public here?

CHAIRMAN BASEHART: Well, there is one gentleman here.

VICE-CHAIRMAN KONYK: He's with her, he's not been sworn in, so I don't believe he's speaking.

CHAIRMAN BASEHART: Okay, then assuming that there is no public input, why don't we go to the staff's review and recommendation.

MR. SEAMAN: Well, staff has reviewed the variance request and found that the applicant has not demonstrated compliance with the seven criteria, and we recommend denial based upon that the following application of the standards enumerated in Article 5 are not upheld.

MR. MacGILLIS: I don't know if you want us to go over it again since we've already done it. So the staff's findings of fact are on page 31.

VICE-CHAIRMAN KONYK: I have a couple of comments. A lot of time when applicants come before this Board, they don't understand the importance of the seven criteria which is really all we can use to determine whether your variance is approved or denied, and we don't always agree with staff. Sometimes we see it differently than they do.

Unfortunately, in your circumstance there are setbacks that are different for screen enclosures than there are for solid walls, et cetera. And based on staff's report and the evidence today, I'm prepared to make a motion to support the staff decision as I feel that they've demonstrated that the seven criteria has not been met. And I'd like to go ahead and make a motion. I wasn't going to, but I will.

I make a motion BOFA 2000-029 for denial based on staff's recommendation and having the staff report become part of the record.

CHAIRMAN BASEHART: We have a motion by Ms.

Konyk. Is there a second?

MS. CARDONE: Second.

CHAIRMAN BASEHART: Second by Ms. Cardone. Any member of the Board want to have any discussion about the item?

MR. PUZZITIELLO: Mr. Chair.

CHAIRMAN BASEHART: Yes, sir.

MR. PUZZITIELLO: I will not be able to vote on this due to being a corporate officer of K Hovnanian who was the developer and builder of this site.

CHAIRMAN BASEHART: Okay. So Ray is going to abstain on this item. I think you have to do a form.

MR. PUZZITIELLO: I already did.

CHAIRMAN BASEHART: Okay. All right. Any further comments? Okay. We're ready for a vote. Might as well do a roll call.

MS. MOODY: Ms. Nancy Cardone?

MS. CARDONE: I vote for the motion.

MS. MOODY: Ms. Chelle Konyk?

VICE-CHAIRMAN KONYK: I made the motion.

MR. MOODY: Mr. Glen Wichinsky?

MR. WICHINSKY: In favor of the motion.

MS. MOODY: Ms. Meril Stumberger?

MS. STUMBERGER: In favor of the motion.

MS. MOODY: And Mr. Bob Basehart?

CHAIRMAN BASEHART: In favor of the motion. Okay. It's a unanimous decision. Sorry.

MRS. RECKSEIT: I thank you.

STAFF RECOMMENDATIONS

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

ANALYSIS OF ARTICLE 5, SECTION 5.7.E VARIANCE STANDARDS

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

NO. There are **no** unique circumstances not applicable to other parcels. The applicant purchased the property in 1999 with the residence, patio and pool previously constructed. The applicant was aware of the home's floor plan and the relationship with respect to distance to the pool. Staff believes other alternatives might meet the need for a variance. They include different location on the site or use of indoor carpet to absorb the water and slipperiness of a wet floor.

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

YES. This **is** a self created hardship, the residence, patio and pool were constructed before the applicant purchased the property in 1999. The applicant was aware of the home's floor plan and the distance from the pool to the nearest interior bathroom. Other residents in PBC have similar floor plans where easy access to a "cabana" from the pool is not available.

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

YES. The granting of this variance will grant special privilege on the applicant. The variance request, if approved, would run contrary to the intent of the code and the requirement to maintain separation between structures and lot lines. It would also permit the construction of a building which would intrude visually on an already narrow zero lot line parcel of 50 feet x 110 feet. The continuity of the neighborhood would be disrupted since no other similar structures have been constructed by other residents.

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. Other residents in the neighborhood are enjoying their pools while accessing bathrooms within their residence. The applicant needs to explore other options to eliminate the need for a variance that is self-created.

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

NO. The applicant has not pursued alternative locations on the site for the exterior bathroom. Other locations may eliminate or reduce the setback needed for the structure. Modification to slippery floor may also eliminate the need for any exterior construction.

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

NO. The granting of this variance will **not** be consistent with the goals and objectives of the code. The variance request, if approved, would run contrary to the intent of the code and the requirement to maintain separation between structures and lot lines. It would also permit the construction of a building which would intrude visually on an already narrow zero lot line parcel of 50 feet x 110 feet. The continuity of the neighborhood would be affected negatively since other similar structures have not been constructed by other residents.

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

YES. The granting of the variance will be injurious to the area. The neighborhood is generally built-out with other zero lot line homes with accessory pools. None of which have been constructed external bathrooms in the side interior lot. The location of the applicant's outdoor bathroom will negatively affect the neighborhood by visually disrupting the view down the lot and minimizing the open space or separation between structures and property lines. Also, granting a variance of this nature not based on hardship or unique circumstances will encourage other residents to request similar variances.

ENGINEERING COMMENT(S)

No comments. (ENG)

ZONING CONDITION

Should the Board recommend approval, staff requests the opportunity to recommend conditions.

CHAIRMAN BASEHART: Okay. That concludes the items on the agenda. Anybody have anything they would like to discuss before we adjourn?

Going to our attendance report for the July meeting, it's not on here.

VICE-CHAIRMAN KONYK: It goes from June to August.

CHAIRMAN BASEHART: The --

VICE-CHAIRMAN KONYK: Oh, June, July; it is on there but she didn't fill it out.

MS. MOODY: I may have given you the wrong copy.

CHAIRMAN BASEHART: Yeah, this looks like it was from the July meeting where you got the June attendance, but there's nothing on --

Okay. So what we'll do is we'll skip the absence approval because we don't have the forms. We'll do July and August at the September meeting.

VICE-CHAIRMAN KONYK: And I'm putting Glenn in charge of remembering that.

CHAIRMAN BASEHART: You're not going to make the meeting?

VICE-CHAIRMAN KONYK: No, I'll be here. But I don't want to be in charge of remembering it.

CHAIRMAN BASEHART: Okay. We're ready, I think, for a motion for adjournment.

VICE-CHAIRMAN KONYK: Motion to adjourn.

CHAIRMAN BASEHART: There's a motion.

MS. STUMBERGER: Second.

CHAIRMAN BASEHART: Ms. Konyk made the motion, Meril Stumberger seconded it. Anybody opposed to adjourning?

(No response.)

CHAIRMAN BASEHART: I didn't think so. The Board meeting is adjourned.

(Whereupon, the meeting was concluded at 9:40 a.m.)

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C E R T I F I C A T E

THE STATE OF FLORIDA)

COUNTY OF PALM BEACH)

I, Sophie M. Springer, Notary Public, State of Florida at Large,

DO HEREBY CERTIFY that the above-entitled and numbered cause was heard as hereinabove set out; that I was authorized to and did report the proceedings and evidence adduced and offered in said hearing and that the foregoing and annexed pages, numbered 4 through 27, inclusive, comprise a true and correct transcription of the Board of Adjustment hearing.

I FURTHER CERTIFY that I am not related to or employed by any of the parties or their counsel, nor have I any financial interest in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 8th day of September, 2000.

Sophie M. Springer