

**PALM BEACH COUNTY**  
**BOARD OF ADJUSTMENT**

Thursday, December 21, 2000  
9:06 a.m. - 11:10 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**

Mr. Robert E. Basehart, Chairman

Mr. Stanley Misroch

Ms. Nancy Cardone

Mr. Raymond Puzzitiello

Ms. Meril Stumberger

Mr. Jonathan Gerber

David Cuffe, Civil Engineer II, Land Development

Laura Beebe, Assistant County Attorney

Jon P. MacGillis, Principal Planner, Zoning

Joyce Cai, Planner II

Alan Seaman, Senior Site Planner

Mary Moody, Secretary

**I N D E X**

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**CERTIFICATE OF REPORTER:**

P R O C E E D I N G S

CHAIRMAN BASEHART: I'd like to call this December 21, 2000 meeting of the Palm Beach County Board of Adjustment to order. The first item of business is the roll call.

MS. MOODY: Ms. Nancy Cardone.

MS. CARDONE: Here.

MS. MOODY: Mr. Joseph Jacobs.

(No response.)

MS. MOODY: Ms. Chelle Konyk.

(No response.)

MS. MOODY: Mr. Raymond Puzzitiello.

MR. PUZZITIELLO: Here.

MS. MOODY: Mr. Glenn Wichinsky.

(No response.)

MS. MOODY: Ms. Meril Stumberger.

MS. STUMBERGER: Here.

MS. MOODY: Mr. Stanley Misroch.

MR. MISROCH: Here.

MS. MOODY: Mr. Jonathan Gerber.

MR. GERBER: Here.

MS. MOODY: And Mr. Bob Basehart.

CHAIRMAN BASEHART: Here. So we've got six members. We have a quorum.

Next item of business on the Agenda is the Proof of Publication. I have a copy of the proof which was published in the Palm Beach Post on December 3rd. We'll just enter this into the record.

Okay. Next item is remarks of the Chairman. The only thing I'd like to do is for those of you who are not familiar with the proceedings of this Board give you a brief summary of how we operate.

The agenda is broken generally into two parts. The first part is what we call the consent agenda. Those are the items that have been recommended for approval by the staff, with or without conditions. And if there are conditions where the applicant has agreed with those conditions and where there's been no indication of opposition from the surrounding property owners, Those items, if they stay on the consent agenda do not require a full presentation. And if members of the Board have read the staff report and agree with it, they will be voted on as a group for approval.

If any member of the public is here that wants to register opposition to any consent item, it will be pulled off the agenda and required to have a full hearing. If any member of the Board is uncomfortable with the staff report and recommendation, it will also be pulled and require a full hearing.

The second portion of the agenda is the regular agenda and those are the items where the staff is recommending denial or modification or where there's been an indication of opposition, those items will have a full hearing.

With that, I don't think I have anything else that needs to be said.

Any other member of the Board have anything they

want to say or announce?

(No response.)

CHAIRMAN BASEHART: Okay. Seeing none, next item is the approval of the Minutes.

We all got a copy of the minutes on disk and we have a hard copy here. If everybody's read them and has no corrections, we're ready for a motion to adopt the minutes.

MS. STUMBERGER: I'll make a motion to adopt the minutes, Mr. Chairman.

CHAIRMAN BASEHART: Okay. We have a motion.

MR. GERBER: Second.

CHAIRMAN BASEHART: Motion by Ms. Stumberger, second by Mr. Gerber.

Any discussion?

(No response.)

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

B O A R D: A y e .

CHAIRMAN BASEHART: Opposed, no.

(No response.)

CHAIRMAN BASEHART: Okay. The November, 2000, minutes are adopted.

Next item on the agenda is the remarks of the Zoning Director. Jon?

MR. MacGILLIS: Just one comment. On behalf of staff, we would just like to wish you all a happy holiday season and look forward to working with you next year.

The second item is I don't know if some of you know that Chelle Konyk's husband is seriously ill. I think that's why she's not here today. We've generated a card and I think it's --

MS. STUMBERGER: It's right here.

MR. MacGILLIS: Okay. If everybody would like to sign it, we would get that to her.

CHAIRMAN BASEHART: Is there any member of the Board that hasn't signed it? Okay.

MR. MacGILLIS: That's the only comments.

CHAIRMAN BASEHART: Okay.

CHAIRMAN BASEHART: That will take us to the agenda. The first items are requests for postponement.

We've got one, BOFA 2000-069. Jon, is this the first postponement?

MR. MacGILLIS: Yes, that's by right. We did receive a letter from the applicant. They are working with staff to address some of our concerns with the number of variances that are being requested and the additional time is needed to produce some additional floor plans and stuff.

That will be time certain for the January 18, 2001 hearing.

CHAIRMAN BASEHART: Okay. And that doesn't require any vote because it's --

MR. MacGILLIS: No. It's by right.

CHAIRMAN BASEHART: Okay. That will take us to the consent agenda. The items 2 through 6 are consent items. We'll go through them individually before we vote.

The first item is a time extension. Is the applicant here?

MR. LELONEK: Yes, sir.

CHAIRMAN BASEHART: Okay. Your name for the record?

MR. LELONEK: Joe Lelonek with Land Design South.

CHAIRMAN BASEHART: The original approval had two conditions of approval. You don't have any problem with that?

MR. LELONEK: No, no problems with those.

CHAIRMAN BASEHART: Any member of the Board feels this needs to be discussed?

(No response.)

CHAIRMAN BASEHART: Okay. Since time extensions are not advertised, I guess there's no public input. That will stay on consent.

#### **STAFF RECOMMENDATION:**

Staff recommends a maximum 12 month Time Extension be granted for both the development order for BA2000-003 and for condition No. 1, from January 20, 2001 to January 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 BA2000-003, unless modified herein:

**ZONING CONDITIONS:**

1. Prior to January 20, 2001, the applicant shall obtain a building permit for this site in order to vest the access point variance onto Jog Road. (**DATE:MONITORING-BLDG PERMIT**)

**Is hereby amended to read:**

Prior to January 20, 2002, the applicant shall obtain a building permit for this site in order to vest the access point variance onto Jog Road. (**DATE:MONITORING-BLDG PERMIT**)

2. The final site plan presented to DRC for the Piper's Glen PUD 5 acre commercial tract shall be consistent with the plan presented to the Board of Adjustment (Site Plan, Exhibit 9). (**DRC-ZONING**)

**ENGINEERING COMMENT:**

No comment regarding the requested variance. However, it should be noted that in previous discussion with the BCC regarding addition of an access connection to Jog Road for the subject commercial tract, the Engineering Department agreed that a right-in/right-out connection with right turn lane (northbound) on Jog Road would create a better traffic circulation situation than access on Piper's Glen Boulevard only.

CHAIRMAN BASEHART: Second item is BOFA 2000-067. Peggy T. -- is it Jupe? Okay. If you could step forward.

The staff has recommended approval of your variance with three conditions. Your name for the record?

MS. JUPE: Peggy T. Jupe.

CHAIRMAN BASEHART: Okay. You agree with those conditions?

MS. JUPE: Yes, I agree with them.

CHAIRMAN BASEHART: Do we have any letters?

MR. MacGILLIS: There were no letters on this item.

CHAIRMAN BASEHART: Any member of the public here to speak in opposition to this item?  
(No response.)

CHAIRMAN BASEHART: Seeing none, any member of the Board feels this needs to be pulled?  
(No response.)

CHAIRMAN BASEHART: It will stay in consent.

MS. JUPE: Thank you.

#### **STAFF RECOMMENDATIONS**

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

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

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

**YES.** The subject property is located at 8231 Bridle Path, approximately 400 feet west of the Florida Turnpike and .4 miles north of Clint Moore Road, within the Palm Beach Farms Subdivision, in the AGR Zoning District. The subject 3,709 square foot single family residence was approved to be constructed on February 29, 1972 (B54070). It met the zoning code requirements at that time when it was completed. However, as the zoning designation in the subject area changed from A1 to AR, the current AGR, the subject residence became a legal non-conforming structure. Based on the current code requirements, the existing residence has two setback encroachments, one from the front base building line (15' from the front property line) and another from the westerly property line. The applicant is proposing a front covered entry which will remain within the existing setbacks. This front entry will extend 7 feet from the existing front facade with 3 open sides.

The land use and zoning designation was amended by the County for the subdivision where this lot is located. After the land use and zoning designations were amended many of the structures became legal non-conforming. The original dwelling was constructed at the A1 setbacks, which permitted a front setback of 30 feet and interior side setback of 10 feet. However, any improvements to this structure must now comply with the AGR 100 foot setback, if the



literal application of the code is applied. This will place a hardship on the applicant since the minor change to the existing front facade would not be able to be accommodated without this variance approval. The covered front entry will only extend seven feet beyond the existing front facade but stay within the existing setbacks.

Therefore, special circumstances and conditions **do exist** which are peculiar to this parcel of land which are not applicable to other parcels within the same zoning district. The SFD located on the subject lot was constructed in 1972 when the district was zoned A1 (Agricultural District). The existing setbacks are a result of zoning regulations under the A1 designation. Zoning in this district has since changed to AGR (Agricultural Reserve). Thus, the applicant's house is unable to meet AGR setback requirements as it was constructed according to A1 standards.

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. As previously mentioned, the zoning designation in the applicant's district was amended by Palm Beach County in 1998. When the original dwelling was constructed in 1972 it was permitted a front setback of 30 feet and interior side setback of 10 feet, which the existing house meets. The applicant is proposing to add a front covered entry to this 29 year old house that can only be accomplished if a variance is granted. As stated by the applicant in the justification, at present, there is no entry area nor coverage of the front entrance door. The proposed covered entry will enhance the facade as well as the functionality and aesthetic quality of the front elevation. The proposal will be consistent with the existing dwelling setbacks as well as reflecting the same architectural feature as the surrounding neighborhood. Therefore, if the variance is granted, the applicant can proceed with the addition that will support to the best use of the property and dwelling.

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 of the variances requested **shall not** confer upon the applicant special privileges denied by the Comprehensive Plan and this code to other parcels of land in the same district. The Comprehensive Plan permits

additions to single family dwellings in this district. Other properties in the AGR zoning district and general neighborhood have single family dwellings with similar front features. The proposed front covered entry to this existing legal non-conforming dwelling will not create an impact on the surrounding neighborhood. The hardship created on the applicant is the fact the land use and zoning classification were amended by the County resulting in the entire existing house encroaching into the current 100 foot front and 50 foot side interior side setbacks. To enforce the literal setbacks would preclude any reasonable renovations or improvements to the exterior of the dwelling. The applicant's modification is minimal and will simply allow them to enjoy their property to the greatest extent possible.

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 AGR zoning district were established were established for a minimum 5 acre lot. The existing residence was approved and constructed in 1972 when the setbacks were less restrictive than today's code. Due to the changes of the zoning designations in the subject area, the subject residence became a legal non-conforming structure. The proposed front entry to this property will be located within the existing setbacks, therefore, will not increase the existing non-conformity. It basically allows the applicant to cover the entrance door which currently has no overhead protection from the weather. In addition, the proposed entry will extend only seven feet beyond the front facade with 3 sides open. Therefore, if the variance is approved the existing uniformity along the street will still be maintained while the adjacent property values and existing separations will be maintained.

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 variance requested **is** the minimum necessary to allow a reasonable use of the parcel of land and to allow both the existing house to remain and the proposed front entry to move forward which will stay within the existing

setbacks. As previously indicated, the proposed front covered entry will stay within the existing setbacks with 3 sides open. Therefore, it is minimal enough to remain in keeping with the character of the other houses in the neighborhood. The applicant is proposing to change the appearance of the front of the house to bring it more in keeping with the 90's home style as well as the style of other homes in this rural subdivision.

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

**YES.** Granting of the variance **will be** consistent with the purposes, goals, objectives and policies of the Comprehensive Plan and the ULDC. The intent of establishing and maintaining front setback lines is to ensure consistency along the street. When the original dwelling was constructed in 1972 the land use and zoning permitted a 30 foot front setback and 10 foot side interior setback on this lot. However, the current AGR land use and zoning requires 100 feet. There are homes in this rural subdivision constructed at varying front setbacks because of the change in land use and zoning in this area over the past 50 years. The applicant's proposal shall add a 7' X 35' front covered entry to the existing house, which will stay within the existing setbacks. There will be no significant impact on the street by this proposed improvement to the dwelling.

Beyond the subject front property line to the south is a similar 5 acre residential lot with an existing SFD located approximately 110' from the subject house. In addition, a 12' paved road runs along the common property line with 6' on each side. Furthermore, a 30' ingress and egress easement is legally dedicated by the property owners on both sides. Beyond the subject westerly side property line is another 5 acre lot with the existing residence approximately 150' from the subject residence. Therefore, the existing setbacks are sufficient to be consistent with the original approval and the general intent of the current setback requirements for this community.

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 adjacent residence on the south side of the subject

property (abutting the front property line) is approximately 110' from the subject building. A 12' paved road runs along the common property line taking 6' from each side of the property. Another adjacent residence on the west side of the subject property is approximately 150' from the subject building. The existing residence is a legal non-conforming structure constructed approximately 30 years ago. The covered entry will not encroach beyond the existing setbacks. In addition, the proposed entry will be open on 3 sides with 7 feet extending beyond the existing front facade. Therefore, there will be no adverse impacts associated with the requested setback variances.

#### **ENGINEERING COMMENTS**

The requirement that the base building line be thirty (30) feet from the centerline of Bridle Path Road is hereby waived and established at the existing interior easement line per O.R.B 1907, PG. 1847, being fifteen (15) feet north from the south property line of the above described property and following the interior line of the forty (40) foot radius cul-de-sac at the southwest corner of said property. **(ENG:ON-GOING)**

#### **ZONING CONDITIONS**

1. By June 21, 2001, 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 front covered entry. **(DATE:MONITORING- BLDG PERMIT)**
2. By August 21, 2001, the applicant shall obtain a building permit for the proposed front covered entry to the existing single family dwelling. **(DATE:MONITORING - BLDG PERMIT)**
3. The proposed front covered entry to the existing dwelling shall be permitted and constructed consistent with the setbacks as shown in the submitted Site Plan (Exhibit 24, File BA2000-067). **(BLDG PERMIT)**

CHAIRMAN BASEHART: Next item is BOFA 2000-068, James B. Rukin. Is the applicant here?

MR. RUKIN: Yes.

CHAIRMAN BASEHART: Would you give us your name for the record?

MR. RUKIN: My name is James B. Rukin.

CHAIRMAN BASEHART: Okay. The staff is recommending approval of your variance with four conditions. Have you seen them and do you agree with them?

MR. RUKIN: Yes.

CHAIRMAN BASEHART: Is there any member of the public here to speak in opposition to this item?

(No response.)

CHAIRMAN BASEHART: Seeing none, are there any letters?

MR. MacGILLIS: No letters on this item.

CHAIRMAN BASEHART: Okay. Members?

(No response.)

CHAIRMAN BASEHART: Okay. We'll leave this 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.** 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 subject property is located at 6028 Lacewood Circle, approximately .3 miles east of Military Trail and 350 feet south of Lantana Road within the Lofts PUD, in the RM/SE zoning district. (Pet. 80-186). The land use designation is High Residential 8 (HR8) compatible with the RM zoning designation.

The subject 50'x 90' lot is a conforming lot supporting an existing zero lot line residence. The adjacent properties are in similar size and style of architectural features. The subject residence was constructed in 1985 with a building

permit number B85026058. As previously indicated, a 12'x 21' addition was illegally converted from a screen enclosure by previous property owners approximately 11 years ago. The current property owner was unaware that the converted screen enclosure was in violation of the setback since the property was purchased at the foreclosure in January, 2000. The problem was discovered after the property was surveyed for flood elevation in August, 2000. Upon finding this existing violation the applicant acted in good faith to contact staff to seek solutions to resolve this situation.

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.

As stated by the applicant in the justification, the current property owner purchased the property at a foreclosure sale on January 27, 2000. After a series of repairs to the property it was placed back on the market for sale. A sales contract for the property was signed and the flood elevation was questioned. After the property was surveyed for the flood elevation, a rear setback encroachment from the existing 12'x 21' addition was discovered. No building permit has been found by the staff nor the applicant permitting the conversion of the permitted screen enclosure to an enclosed living space. Apparently, this addition was illegally constructed by the previous property owners many years ago. However, no complaints from the neighbors have been reported to the Code Enforcement Division.

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 **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 subject property is located within Lofts PUD zoned RM/SE. The construction of the existing zero lot line residence is permitted by the Comprehensive Plan and ULDC. Abutting the affected rear property line is a 25' utility easement and a commercial-zoned property. As conditions for approval of this setback variance, the applicant has to obtain building permits and

pass inspections. The applicant is also required to obtain an approval from the Homeowners Association to allow the existing addition to remain at its current location.

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 previously indicated, the applicant purchased the property at the foreclosure without knowing the existing setback violation that was created by the previous owner converting the screen enclosure to a habitable addition. This is not a self-created situation but an inherited situation. Due to its lot location abutting a 25' utility easement and commercial-zoned property, the setback encroachment does not adversely affect any surrounding residential property owners. Therefore, the requested rear setback meets the general intent of the Code and if the variance is denied, it **would** work an unnecessary and undue hardship on the current property owners.

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 approval of variance **is** the minimum variance that will allow a reasonable use of the parcel of land, building or structure. The setback encroachment of the existing addition occurs along the rear property line where it abuts a 25' utility easement and a commercial-zoned property, which is currently vacant. When the adjacent commercial property is developed, the code will require an incompatibility buffer which will provide adequate buffer along 25' east of the subject rear property line to mitigate the setback encroachment. Additionally, this existing addition setbacks 9.65' and 11.6' from north and south sides respectively meeting the code requirements. Therefore, the separation between this addition and the adjacent properties on both sides is sufficient that does not adversely impact the neighboring property owners.

The property owner will be required to obtain a permit and inspections for the converted screen enclosure to a permanent room addition. This will ensure the addition complies with all applicable building code requirements.

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

**YES.** The subject property abuts a 25' utility easement along the rear property line and a commercial-zoned property, which is currently vacant. The converted addition meets the side interior setback requirements on the north and east sides. The setback encroachment occurs along the rear property line where no residential property is adjacent to. Therefore, granting the requested variances **will meet** the general intent of the Comprehensive Plan and this code, which is to ensure a minimum separation, privacy and compatibilities of uses as well as to protect adjacent property owners and protect property values.

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** negatively impact the surrounding area. As previously indicated, the existing addition setbacks 3.2 feet from the rear property line. Beyond the rear property line to the east is a 25' utility easement and a commercial-zoned property which is currently vacant. Therefore, no neighboring residential property owners are directly affected by this setback encroachment. In addition, the existing addition has been in existence for approximately 11 years and no neighbors' complaints have been reported to the Code Enforcement Division.

#### ENGINEERING COMMENTS

No comment. **(ENG)**

#### ZONING CONDITIONS

1. By February 21, 2000, the BA Zoning staff shall ensure the certified Site Plan has a notation on Lot 6, Block B of Lofts PUD indicating the approved variance and conditions. **(DATE:MONITORING-ZONING-BA)**
2. 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 (Ex. 9 & 10, File BA2000-068) presented to the Board, simultaneously with the building permit application including an engineer's certification for the existing addition attached to the rear of the house. **(BLDG.PERMIT:BLDG.)**
3. By September 21, 2001, the applicant shall obtain a building permit for the existing addition attached to the rear of the house. **(DATE:MONITORING-BLDG PERMIT)**



- 4. By October 21, 2000, the applicant shall request a final inspection for the existing addition attached to the rear of the house in order for the final C.O. to be issued. **(DATE:MONITORING-BLDG-C.O.)**

CHAIRMAN BASEHART: Next item BOFA 2000-070, Ewing and Shirley, Inc. Name for the record?

MR. EWING: Kent Ewing. I'm the agent for the client.

CHAIRMAN BASEHART: Okay. The staff is recommending approval of the variance with two conditions. Are you familiar with them?

MR. EWING: Yes, I am.

CHAIRMAN BASEHART: Do you agree with them?

MR. EWING: Yes, we do.

CHAIRMAN BASEHART: Okay. Is there any member of the public to speak in opposition to this item?

(No response.)

CHAIRMAN BASEHART: Seeing none, any letters?

MR. MacGILLIS: There was a phone call from Joseph Lilly. He was okay once it was --

MR. SEAMAN: He just wanted an explanation.

CHAIRMAN BASEHART: Okay. Any member of the Board have any reason to pull this?

(No response.)

CHAIRMAN BASEHART: Okay. It stays on consent.

MR. EWING: 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.

**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 located at

19985 Loxahatchee Pointe Drive, approximately 600 feet south of the Martin County border within the Loxahatchee Pointe subdivision, as recorded in Plat Book 59 at Pages 24 through 26, in the RM Zoning District. The Future Land Use designation is LR-2. The proposed lot is irregular in shape and located at the corner of Imperial Woods Road and Loxahatchee Pointe Drive. The lot is narrower at the front (65'+) and wider in the rear (95'+) requiring the home to be setback a greater distance from the street in order to meet interior setbacks along the south property line. Adding further constrictions to the site is a (20') twenty foot landscape easement traversing the property along the rear property line. Since the applicant wishes to construct a pool in the future, the proposed home is to be located a distance from the rear property line and landscape easement which will provide the minimal space to accommodate a typical 15'x 30' pool. In doing so, the applicant is requesting a street side setback (15' required; 13' proposed; 2' variance). The proposed residence will meet the remaining front, side interior and rear setbacks.

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

**NO.** The applicant purchased the lot in the current configuration and it is the last lot to be developed within the Loxahatchee Pointe subdivision. The subject property supports vacant land and the applicant is proposing to construct a 3,123 sf. single family dwelling and at a future date a swimming pool (15'x 30'). The subject property is surrounded by residential dwellings to the north, east and west of similar size; many with existing pools. To the south across Loxahatchee River Drive is an open space recreation area. The special circumstances and conditions, therefore, **are not** the result of actions 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** grant any special privilege on the property owner. The proposed single family residence will meet all setbacks with the exception of the street side setback. The applicant is proposing to shift the dwelling (2') feet into the setback in order to provide an approximate 50'x 42' buildable rear yard space. This will allow for a future pool to be constructed.

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

**YES.** Granting the requested variance **will meet** with general intent of the code, which is to ensure a minimum separation, privacy and compatibilities of uses as well as to maintain uniformity along property lines, protect adjacent property owners, and protect property values. Granting the variance will not negatively impact the surrounding area. The landscape buffer easement along the rear property line places a hardship on the property owner. Setbacks are measured from inside the buffer, therefore, the applicant is shifting the house to provide more room to accommodate a typical sized pool. The subject lot is the last property along Loxahatchee Pointe Drive to be developed. The residence will conform to all other setback requirements with the exception of the one requested variance in this application. The variance will affect the south side of the property where a (5') five foot concrete decorative wall and landscaping separates the lot from the road. The variance, therefore, would have no adverse impacts on the adjacent properties.

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 **is** a minimum variance that will ensure a reasonable use of the property. If the variance request is granted, it would allow the applicant to position the residence on the lot to allow the minimal space for the installation of a future pool (15'x 30'). The proposed residence will conform to all remaining setbacks. The proposal will give no additional rights or privileges to the applicant not already enjoyed by existing residents.

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 which are to ensure a minimum separation between the proposed structures and the adjacent properties. As previously indicated, the variance **will not** have negative impacts on the adjoining property across Imperial Woods Road to the south. The proposed structures will be in harmony with the residential character of the neighborhood and

will not detract from the area.

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. The proposed residence and swimming pool are not an uncommon request. The requested variance will allow the property owner to promote their quality and enjoyment of life while the adjacent property values will be maintained and not be adversely affected, if the variance is granted.

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** negatively impact the surrounding area. The subject lot is the last property along Loxahatchee Pointe Drive to be developed. The residence will conform to all other setback requirements with the exception of the one requested variance in this application. The variance will affect the south side of the property where a (5') five foot concrete decorative wall and landscaping separates the lot from the road. The variance, therefore, would have no adverse impacts on the adjacent properties.

#### **ENGINEERING COMMENTS**

No comments. **(ENG)**

#### **ZONING CONDITIONS**

1. By March 21, 2001, the applicant shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan (Exhibit No. 10, BA2000-070) presented to the Board, simultaneously with the building permit application. **(DATE:BLDG PERMIT-BLDG)**
2. By September 21, 2001, the applicant shall obtain a building permit for the proposed single family residence in order to vest the side street setback of BA2000-070. **(DATE-MONITORING-BLDG PERMIT)**

CHAIRMAN BASEHART: The last consent item, BOFA2000-071, Robert or Linda MacLaren. Is the applicant here?

MR. MacLAREN: Yes, sir, Mr. Chairman.

MR. MacGILLIS: Staff has a minor change to this. Joyce will read it into the record.

CHAIRMAN BASEHART: Okay.

MS. CAI: Okay. There's a change on the amount of variance they're requesting. Instead of 17 on the original report we need 18, and I explained this to the applicant. The applicant had no problem adding one more space in Shared Parking Agreement.

CHAIRMAN BASEHART: Okay. Do you --

MR. MacLAREN: Yes, sir, that's correct.

CHAIRMAN BASEHART: Okay. Your name?

MR. MacLAREN: Excuse me. For the record, my name is Robert MacLaren and we represent the Boca Raton Community Hospital.

CHAIRMAN BASEHART: Okay. Do you agree with the conditions?

MR. MacLAREN: Yes, sir, we do.

CHAIRMAN BASEHART: Is there any member of the public here to speak in opposition to this item?

(No response.)

CHAIRMAN BASEHART: Seeing none, letters?

MR. MacGILLIS: No letters on this item.

CHAIRMAN BASEHART: Any member of the Board feels this needs to be pulled?

(No response.)

CHAIRMAN BASEHART: Seeing none, we will leave it on consent.

MR. MacLAREN: 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.

#### **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.** 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 subject property is located at 16313 Military Trail, approximately .3 miles south of Linton Boulevard on the west side of Military

Trail, in the CS Zoning District (Pet. 88-126). The land use designation is C/5 compatible with the zoning designation. The adjacent properties to the north, south and west are zoned Single Family Residential. The adjacent property to the west and south supports a place of worship, Baptist Church.

The applicant is proposing to expand the existing medical facility due to the critical needs of the community and to maintain the highest level of service. In order to provide the required parking spaces for both the existing and the proposed expansion, the applicant has reached an agreement with the adjacent church to lease 17 spaces from the existing church parking lot. This agreement provides an interim solution for the parking needed to accommodate both the existing and proposed facility. As previously indicated, the adjacent property to the west is currently zoned Single Family Residential. The applicant is planning to lease that property for constructing a permanent parking lot with 50 parking spaces for the subject facility. Various approvals are required due to the incompatible zoning and land use designations. This variance, if approved, will give the applicant the needed time to obtain all the required approvals for the proposed parking lot on the adjacent property to the west.

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.

As previously indicated, the property owner is expanding the existing medical facility. As a result, 12 parking spaces will be lost while additional parking spaces are needed to meet the code for the new addition. The applicant is proposing to lease the adjacent property to the west and to construct a parking lot to meet the required off-street parking requirement. However, the property has incompatible zoning and land use designations between the subject property and the adjacent property to the west. In order to comply with the parking requirement and meet the challenge associated with the existing site and land use constraints, the applicant is proposing to enter into a shared parking agreement with the church site to the south. This agreement would provide the applicant with the necessary parking spaces to proceed with approvals and construction of the parking lot. This variance will be valid for one year with the option of a one year extension by the Zoning Director, provided good cause is shown

why.

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 **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 proposed expansion of the existing medical facility is intended to provide expanded medical services while maintaining the highest service level to the community. The existing and proposed medical offices are permitted uses in CS Zoning District (Resolution R-89-1304). If the variance is granted, it will allow the applicant to expand the existing facility while maintaining the highest level of service.

The applicant is satisfying the general intent of the parking code. The applicant is entering into a "Shared Parking Agreement" with the adjacent property owners and will meet the required parking. The ULDC in the planned development permits shared parking agreement between uses on the same lot by right. However, since the parking lot will be utilized at the church site which is on another property, the applicant has had to seek the requested 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 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.

Even though the subject property does not provide the required 83 parking spaces, the applicant has reached an agreement with the adjacent church to the south to meet the total of 83 parking spaces required for this use. This agreement allows the subject facility to share the needed 17 spaces from the existing church parking lot during the medical facility's operational hours. Therefore, with the Shared Parking Agreement this variance request complies with the general intent of the code, which is to

ensure the provision of off-street parking facilities in proportion to the demand created is met.

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 approval of variance **is** the minimum variance that will allow a reasonable use of the parcel of land, building or structure. As previously indicated, the expanded facility will provide the required number of off-street parking spaces considering the 17 spaces are to be leased from the adjacent church site to the south. Staff recommends a condition of approval, which requires the Shared Parking Agreement be recorded and remain valid for one year until the parking lot is approved and constructed.

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

**YES.** Granting of this variance **will comply** with the general intent of the off-street parking code provisions. The intent of the Code is to ensure adequate parking spaces are provided in proportion to the demand created by each use. The ULDC requires parking to be calculated for any new building constructed. This site currently supports a 13,200 Sq. Ft. facility. 3,305 Sq. Ft. is proposed for the new addition with additional 17 parking spaces required.

The applicant states the following facts supporting the variance request:

1) The first floor of the proposed addition will be used for parking temporarily. This will keep the existing 12 parking spaces that would have been lost as a result of the new construction. After obtaining all the relevant approvals (i.e. rezoning, Comprehensive Plan amendment) for leasing the adjacent property to the west to construct a permanent parking lot, the first floor of the proposed addition will be converted as medical offices.

2) Record a "Shared Parking Agreement" in the Circuit Court between the subject property owners and the adjacent property owners of the church site to lease 17 existing parking spaces. These spaces will be used when the church is not being used. This agreement is intended to provide the parking needs for the proposed addition while allowing time for the applicant to obtain all the required approvals to lease the adjacent property to the west as well as to



receive County approvals to construct a permanent parking lot. The agreement is valid until all the required approvals are obtained and the permanent parking lot is constructed with 50 parking spaces. Staff will recommend the parking agreement becomes a condition of approval of this variance.

This variance is an interim solution to provide the required parking spaces for the expanded facility. The applicant is currently pursuing to lease the adjacent property to the west for a permanent parking lot. After all the required approvals are obtained for the proposed parking lot, it will provide both the existing facility and the proposed expansion with the required number of parking spaces to satisfy the Code. This variance, by conditions of approval, will expire at that time.

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 subject property is surrounded by a church to the west and south, to the north the Country Lake PUD while to the east a street, Military Trail. The applicant voluntarily established a Shared Parking Agreement with the adjacent church site to lease 17 off-street parking spaces during the new construction/expansion which would last one year. Staff requires a walkway to be provided between the subject property and the adjacent parking lot to provide easy access to the users of the medical facility. The leased parking spaces and those on site will meet the required parking spaces. Therefore, this parking variance will not impose any adverse impacts on the public (especially the center customers) nor the surrounding area. On the contrary, this variance will give the applicant the needed time to obtain approval of the proposed parking lot on the adjacent property to the west for the expanded facility. The proposed expansion of the existing medical center will benefit the general public, especially the patients with its more space for offices and facilities.

#### **ENGINEERING COMMENTS**

No comments. **(ENG)**

#### **ZONING CONDITIONS**

1. By June 21, 2001, 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 (Exhibit 9, BA2000-071) presented to the Board, simultaneously with the building permit application for the proposed addition to the existing medical facility.  
**(DATE:MONITORING:BLDG PERMIT:BLDG)**

2. By September 21, 2001, the applicant shall obtain a building permit for the proposed 3,305 Sq. Ft. addition to the existing medical facility. **(DATE:MONITORING-BLDG PERMIT)**
3. By December 21, 2001, or prior to the commencement of the construction of the proposed 3,305 Sq. Ft. addition to the existing medical facility whichever occurs the first, the applicant shall provide a walkway to connect the front entrance of the subject medical facility to the adjacent parking lot to the south where the 17 leased parking spaces are located. **(DATE:MONITORING:BLDG PERMIT)**
4. By December 21, 2001, the applicant shall contact the Zoning Division and Landscape Section or prior to utilizing the parking on the church site to verify the walkway has been installed according to Code. **(DATE:MONITORING:BLDG PERMIT)**
5. By March 21, 2001, the applicant share enter into a Shared Parking Agreement with the property owners to the south. This Agreement shall be submitted to the County Attorney's Office for review and approval prior to being recorded in the Public Records. A copy of the recorded Agreement shall be provided to the Zoning Division. **(DATE:MONITORING:COUNTY ATTORNEY-ZONING)**
6. This variance is valid for a period of one year, provided the Shared Parking Agreement remains in effect and valid. The Zoning Director may approve a one year administrative time extension, only if the applicant demonstrates good cause for delays in construction of the parking lot. **(ON-GOING)**
7. This variance will become null and void after the proposed permanent parking lot is approved and completed on the adjacent property to the west, which will provide the required number of off-street parking spaces for both the existing and proposed facility. **(ON-GOING)**
8. The applicant shall on or before December 21, 2003, inform the Zoning Division that the future parking lot is complete. Staff will then void this parking variance for this site. **(ZONING:BA)**

CHAIRMAN BASEHART: That completes the review of the consent agenda. I guess we're ready for a motion.

MS. STUMBERGER: I'll make a motion, Mr. Chairman, to approve the consent agenda items 1 through 6.

CHAIRMAN BASEHART: We have a motion by Ms. Stumberger.

MR. GERBER: Second.

CHAIRMAN BASEHART: Second by Mr. Gerber. Any discussion? All those in favor indicate by saying aye?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no?

(No response.)

CHAIRMAN BASEHART: Okay. The consent agenda is adopted. We'll just take about a minute here and give time for everybody that's done to leave.

CHAIRMAN BASEHART: We're ready to move on to the regular agenda. We have four items and one thing I want to say, in talking to some of the Board members before the meeting it looks like there could be a quorum problem if the meeting goes on too long. So I would encourage everyone to be brief and to the point in their presentation.

If anyone wants to speak on an item that is following someone else who has spoken and you have the same comments, just please indicate that rather than repeating them. I guess we're going to give extra credit for brevity.

So the first item would be BOFA2000-060. Jon, can you put it in the record?

MR. MacGILLIS: It's found on page two of your backup material. Anthony J. and Joan Torella.

It's to allow an existing metal shed and canvas covered carport to encroach into the required side interior and front setbacks, located at 476 Forest Hill Estates Drive, southeast corner of Gun Club Road and Forest Hill Estates in the RS Zoning District. Mr. Torella is here.

CHAIRMAN BASEHART: As a matter of fact, why don't we do this for everybody that intends to speak on either this item or anything else on the agenda. If you could all please rise and be sworn in.

Anyone who intends to speak today on any item?

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

CHAIRMAN BASEHART: Okay. And when you approach the microphone, if you'll give us your name and indicate

whether or not you've been sworn in, that will give us some indication for people that might come in after this time.

If you can step forward, please.

Jon?

MR. MacGILLIS: Just to give you a brief overview of what the applicants are requesting. There are three structures that you can see on the diagram on the board. Perhaps, Mrs. Torella, you can point them out there.

There's a carport, yes. That one there is encroaching into the front setback. That one is encroaching into the front setback and the side interior setback.

Then the shed on the side of the building there is encroaching into the side interior setback.

The one in the rear, according to our research, is in the setbacks and I'm not sure when the application came in if they were applying for a setback and going to move that one. But it has to meet a five foot setback as well. So there was no variance requested for that. So at this time that's not a consideration at this time.

CHAIRMAN BASEHART: Okay.

MR. MacGILLIS: Page five you can see the staff's findings on this application. Staff is recommending denial. We did speak to the applicant at length yesterday indicating our reasoning for the recommending denial. The applicant has not satisfied the seven criteria in order to be granted the requested variances.

Staff's analysis of the site has determined that there's nothing unique about this lot that isn't unique to any other lot in this subdivision. The lot meets all the minimum requirements as far as the lot size, depth and acreage. It's actually larger than the minimum lot size.

This is in staff's opinion a self-created hardship and the applicant did not obtain any building permits for constructing these structures. The two structures in the front are those typical canopy structures with the poles that you can purchase at Costco which is a canopy canvas with poles. And actually this shed on the side after speaking with Mr. Torella yesterday indicated that one actually has, I believe, a slab with what looks like a Ted's Shed that has been there for several years.

The applicant actually came to the Board of Adjustment as a result of being cited for, I believe, someone on the street turned them in for something else and then an officer was in that area and actually went down here and cited them for these structures in the front yard.

The two structures are used to protect the applicant's antique vehicles that he uses in benefits and drives in parades and stuff. I'm sure he has pictures here to show you they're very nice, old antique cars.

So -- a lot of the problem is created here is the fact that the applicant didn't get permits and he'll justify his reasonings why he believed he didn't need a permit because he was told that he could just put those

structures up in the front yard without permits.

And the side shed he indicated by the person he bought the shed from on 441 or somewhere that they said that they would take care of all the permits and stuff for him. So he believes that he did everything correctly when he put these structures up.

I just want to indicate that the two structures in the front yard actually have been moved back, I believe, in the last two months. They were actually further into the setback into their 10-foot easement in the front there that staff had requested -- or Code Enforcement -- that he move it out of there. So they've been moved once already.

Granting the variances is in staff's opinion not the minimum necessary variance. There's nothing unique about this lot that warrants giving special consideration to having two structures completely in the front setback. This rear yard is large enough to accommodate a garage to park these cars in if the shed that was taken off the side of the house, that's part of one of staff's recommendations, the two structures in the front could be removed and take the side shed down, you'd have a ten foot access into that back yard.

I mean, there are numerous structures in that back yard, more than you'd find in a typical yard, as accessory structures. So with the possibility of some redesigning, the applicant could move those two temporary structures that are in the front yard now to the back. So we do not feel this is the minimum necessary variance to make a reasonable use of this property.

Granting of the variance will not meet either the general or the literal intent of the Code. The intent of the Code is established setbacks to keep consistency in the neighborhood and to protect property values. By supporting this variance, the Board sends a message to the neighborhood by not obtaining building permits and putting structures in your front yard inconsistent with the general character of this neighborhood, we'd be setting a precedent for other people to request similar type of structures without first obtaining permits to erect them.

And it is staff's opinion that granting this variance would be injurious to the neighborhood in the fact that once again consistent with number five, sending a negative message to the community that by not obtaining building permits and getting a variance to vest something that was illegally constructed and does not meet either the general or literal intent of the Code. Therefore, staff has recommended denial of this application.

CHAIRMAN BASEHART: Okay. Mr. and Mrs. Torella, this is now your opportunity to explain your request for variances and to justify why they should be granted based on the seven criteria in the Code.

Our consideration of variances is limited to meeting the standards that have been put in the Code and actually in state law for consideration of variances. So this is your opportunity to speak.

MRS. TORELLA: Can I pass these out?

CHAIRMAN BASEHART: Yes. One thing we need to advise you, anything that is shown to the Board at this hearing will have to be kept and made part of the public record. Is that okay?

MRS. TORELLA: Mm-hmm. Some can, yes. These are the canopies.

MS. STUMBERGER: Will you accept these, Mr. Chairman?

CHAIRMAN BASEHART: Yes.

MS. STUMBERGER: And we'll make a motion.

MRS. TORELLA: These are the canopies.

CHAIRMAN BASEHART: As soon as she gives us her whole list here, we'll take them.

MRS. TORELLA: This is -- we have the best truck in the State of Florida. These are magazines of old cars, so we just want you to know that they're not an old car that is beat up.

CHAIRMAN BASEHART: Okay.

MRS. TORELLA: Show cars. These are some pictures of the front of our house where the canopy is and you can't even see them, actually. And we have letters from our neighbors across the street and next door to us. We're next door to a canal. There are no houses around us. And our neighbors do not mind them.

That's a car, that's a car, that's a car. These are the ones we are protecting from the elements of the weather. And this is the best truck in the State of Florida in Roger Dean's window. And that's it.

CHAIRMAN BASEHART: Okay. So we have some magazines, some articles, and a brochure on the canopies and pictures of vehicles.

Do we have a motion to accept them into the record?

MS. STUMBERGER: I make a motion to accept them into the record.

CHAIRMAN BASEHART: Okay. We have a motion by Ms. Stumberger.

MS. CARDONE: Second.

CHAIRMAN BASEHART: Second by Ms. Cardone. All those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Okay. These will all become part of the record. Why don't we start at this end and pass them down separately.

MR. TORELLA: I want to show no disrespect to the Board or anything like that, but I've been living on the block since 1975 with my four children.

And when I bought these sheds, the ones that are in the back, at that time everybody was buying them. We bought them in Lantana. The way when you go in to buy one, you would just give them the money and they said they would take care of everything. And those sheds back there have been in there for over 20 years. And the pool that was put in, that had a permit.

And for me to move the garages on the side, it's really on my property, and the other side belongs to Lake Worth Drainage. Where the shed is is on the side of my

house because everybody I see has garages on the side of their house, and that's all that it is. There's no cement. There's no electric. There's no plumbing.

It could be moved at any time and if I get this variance, I would like to sign a paper that if ever I have to move the two canvas canopies could be taken down and there will be no problem at all. For me to move everything in the back, I have a screen room back there also that this company came by 15 years ago and built for me. And they said they'll take care of everything. So it's not -- it makes me look bad on the summary like I'm just trying to not do the right thing, and I am trying to do the right thing.

And I would get permits for everything in my yard. I am the last house on the block and there's nobody there to see me or they wouldn't even know that the cars are there. As you can see by the pictures, they're all covered up and it doesn't make the neighborhood look bad because everybody in the neighborhood likes the cars. They come down with their parents when they come down on vacation to look at them to see how nice they are.

And at first they told me I was in the right-of-way, so I moved it out of the right-of-way. Then they told me I was in the drainage easement. Then I moved it again out of the drainage easement. Then they told me I was encroaching. I took everything and moved it again; everything there is on my property.

There's nothing -- and on the other side is Lake Worth Drainage's property. I'm not in Palm Beach County's -- if I was in the middle of the block and I had done this, then I would see that I was showing disrespect to my neighbors and then I wouldn't expect to get the variance. But being on the end of the block and the way everything is protected, I'm just trying to be fair and square, and I just hope everybody could understand where I'm at. I know where your position is, also.

MS. STUMBERGER: May I ask a question, please, sir?

MR. TORELLA: Yes, ma'am.

MS. STUMBERGER: When you keep saying "they"; you used "they" three times. "They" came out and told me to do this and I did it. Who are they and when did that happen?

MR. TORELLA: I'm talking about in the beginning when it started. The complaint wasn't against me at all on the block.

MS. STUMBERGER: Is this when you -- you referred to "they" told me to come out and move this and I did that.

MR. TORELLA: Yes.

MS. STUMBERGER: And "they" told me to come out and I did that. Who are the they?

Let's start with that question.

MR. TORELLA: No, I'm sorry. Code Enforcement.

MS. STUMBERGER: Code enforcement.

MR. TORELLA: That's what I meant by they.

MS. STUMBERGER: How long ago was that?

MR. TORELLA: Six months, eight months ago. And I've tried moving it; I moved it, I moved it and I --

MS. STUMBERGER: One other question I have for you. When the people put in the shed and all the other items there and they told you they would take care of the permits, you did not request a copy of these permits?

MR. TORELLA: No. They just gave me a bill.

MS. STUMBERGER: You said you received one for your pool.

MR. TORELLA: Yes.

MS. STUMBERGER: Didn't that make you think that maybe you should have a copy of the permit, at least, for the other things?

MR. TORELLA: I never -- I didn't think I needed one because they said they were going to take care of everything. They just gave me the bill when I bought the shed and that was about ten years ago.

I mean, if I had to get permits for everything, I would. It's not because I'm looking to be dishonest about getting the permits.

MS. STUMBERGER: I just have one question. Maybe Laura can answer the question. I don't know who's going to answer it.

When he says he did this 20 years ago, is there any kind of limitation if something has been there for "x" amount of years?

MS. BEEBE: It would have to be back into the 1950s before the building code was adopted.

MS. STUMBERGER: Okay.

CHAIRMAN BASEHART: Okay. Any --

MR. TORELLA: You can see by the pictures, you can see that it doesn't look like there's junk cars there or the neighborhood looks bad or anybody's complaining or I look like I'm making a nuisance on the block. I am the last house and then there's a drainage canal right there.

MR. PUZZITIELLO: One of the problems with those canopies that you have that I see is they would not meet the building code, so you could never get a building permit for them. With wind load standards and everything in the new building codes, those I doubt very much would meet any building code to pass it.

MR. TORELLA: Everywhere I drive I see them in people's driveways. I mean, everybody's got them and they got them in the same spot as I do. Only I've got mine on the side of the house; theirs is exposed to everybody. Mine is not exposed to anybody. You can see by the pictures. I only put them Christmas time --

MR. PUZZITIELLO: The first hurricane those will be in everybody else's yard. That's the whole purpose of the building code is to protect the health, safety and welfare of everybody.

MR. TORELLA: Because I do have everything on my property. I'm not encroaching anybody anymore and I'm not in the drainage easement, also. I out of everything.

MR. PUZZITIELLO: You are encroaching in the front yard and the side yard.

MR. TORELLA: I'm in the setback. I only have 15 feet from my house to that, but I've got 45 feet to the



drive, to the end of the road. From the beginning of the driveway to my house I've got 45 feet.

I'm out of the drainage easement and I'm not encroaching anything. What I have is on my property and I'm just willing to get permits for them and sign an affidavit.

MR. PUZZITIELLO: Well, the problem is you are encroaching into the front yard setback zoning requirement, and the side yard. That's why you're here.

So it's really -- you say that you're not encroaching in the drainage easement, that's true, but you are encroaching into a setback.

MR. TORELLA: And the garage shed. Everybody's got them on the sides of their house. That's on my property. I'm not doing any harm by it -- it isn't in the middle of the block or it would be next door to a neighbor. There's nothing there but water.

MR. PUZZITIELLO: That shed does have a cement floor?

MR. TORELLA: No cement. Nothing.

MR. PUZZITIELLO: It's just a Ted's Shed or something?

MR. TORELLA: Yes, exactly right. I mean, I did no kind of plumbing. There's nothing. It's anchored properly. They did everything. That's why I thought everything was okay.

And the canopies, they even tell you when you buy them that there's no permit necessary. Ten minutes on, ten minutes off because it's a canvas. It's like an umbrella. It's all basically what it is, is just one big umbrella. And I'm just asking for the variance and I would sign an affidavit that when I move that I would take them down and that's a promise, that I would sign for that, but I can't get these cars wet.

If I was in the middle of the block I wouldn't even think of coming here because I know I would be wrong, but I feel like I have a little point here. And my neighbors, they're with me, too, and they would feel bad, too, if I had to make these cars get rusty. And I got two letters from neighbors, one across the street and one next door.

MRS. TORELLA: May I?

CHAIRMAN BASEHART: Sure. Do we have a motion to accept these letters of support into the record?

MS. STUMBERGER: I'll make a motion to accept the letters of support.

CHAIRMAN BASEHART: Motion by Ms. Stumberger.

MR. PUZZITIELLO: Second.

CHAIRMAN BASEHART: Second by Mr. Puzzitiello. All those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

MR. GERBER: You said that when code enforcement came out you've already had to move these things?

MR. TORELLA: Yes.

MR. GERBER: So it's physically possible to move them, you recognize that?

MR. TORELLA: Yes, exactly.

MRS. TORELLA: Yes.

MR. GERBER: So what is your position as to why they can't be moved to the rear of the property in an area that's not encroaching on the setback?

MR. TORELLA: I can't move them to the back for the simple reason that there's a septic tank back there. I couldn't move anything and put it on the septic tank. There's a septic tank is right there. And then plus I had the screen room that's been put up 15 or 16 years ago, and that's in the way, too. So there's nowhere I can put it.

MR. GERBER: What are these other structures that are in the rear?

MR. TORELLA: This is the shed like this one and so is this one and they're all the same. So and these are wood and this is the pool. I got a permit and these -- the gentlemen came with the screen. They show you papers and make you fill out the papers. I filled out all the papers and they built it and that was a long, long time ago.

Other than that, I have all nice trees around here. I thought I was doing the right thing. I'm sorry for this inconvenience, but I just want to do this to protect my cars and I'm willing to take it down. I don't want it to be permanently forever.

I'm willing to take it down, I would sign an affidavit that if I was to move next year I would take them down.

MR. GERBER: Is it your position that the structures that you have in the rear cannot be replaced by relocating the ones that are encroaching on the setback?

MR. TORELLA: Right. I couldn't move this back here because right here is the septic tank. Right here. Right here is the septic tank (indicating). I can't move this back here. It's 10 x 24 and it's very, very heavy. I mean, I've got all my stuff in the garage in there. I mean, it is on my property.

You see the way the property line goes. I start right over here and then it comes wide. If it was straight I would have been fine, I wouldn't have been in anybody's problem. It's just the funny way the property runs. If it were to go this way, straight, I would be fine with everything.

MR. GERBER: I'm talking about the existing structures.

MR. TORELLA: This one.

MR. GERBER: I understand. But you referred to the septic tank here. I'm not talking about the septic tank. If you were to remove the other structures that are currently there and relocate the structures that are in violation to the rear --

MR. TORELLA: Yeah, but this is a screen room where, you know, my mother comes over and we have barbecues and stuff. It's been up there for 16 years. I just can't take it down. It would cost a fortune to move this to over here. It's very, very heavy. I mean it's --

MS. STUMBERGER: How many cars do you have presently?

MR. TORELLA: Pardon me, ma'am?

MS. STUMBERGER: How many cars do you presently have?

MR. TORELLA: Antiques? Five.

MS. STUMBERGER: Plus your own car?

MR. TORELLA: Yes.

MS. STUMBERGER: Plus your car?

MRS. TORELLA: No.

MS. STUMBERGER: So you've got six cars on the property?

MR. TORELLA: Yes. And we have four kids.

MS. STUMBERGER: That also have cars?

MR. TORELLA: No, no, no, nobody has them. Just these. That's the only cars. I'm saying I've got four kids and someday everybody's going to get one. That's why I've done that.

CHAIRMAN BASEHART: Okay. Do you have any other points to make?

MR. TORELLA: No, I'm just trying to be very honest with you and if I could have moved this, I would really move it. I feel that it's on my property and it's next to a drainage canal. And if it was over here I would understand it, but I just would really appreciate it if I could keep my garage because it is on my property, but it's not bothering anybody.

And these, like I said, I'll take them down any time. And any time there's a storm, it takes us ten minutes to take them down. And we've already done that. We've already taken them down and put them up. I can't leave these cars get wet. They'll get rusty and they won't be worth five cents.

MR. GERBER: Staff had suggested in their report the possibility of moving these to off-site storage. Have you explored that?

MR. TORELLA: We've inquired about that. It's \$189 per car, plus I have to pay tax -- not tax, but interest or whatever it is.

MRS. TORELLA: It's tax.

MR. TORELLA: It comes to over \$200 for each car. I don't make nowhere near that kind of money to do that.

MRS. TORELLA: Only the time is 5:00 a.m. to 9:00 p.m. In other words, if you went to a benefit at night time, you could only bring your cars in before 9:00. You're not allowed to bring the car into storage after 9:00.

Let's say I'm going to a cancer benefit or something with our cars. He can drive one and I can drive one, so we can bring two. And we will not be allowed to put the cars back into the shed on that particular night. So in the meantime, they would sit outside in the dampness or God forbid if it rains or something. You know, if kids are on the block or whatever, you know. We've already tried that way. We've got five cars and it would be well over \$1,000 per month.

MR. PUZZITIELLO: Is there any defense of the seven criteria which is really all we have to go on?

MRS. TORELLA: We live on a dead end street; we are the last house on the block. Next door is a canal.

MR. TORELLA: The shed is next to a canal. We belong to a non-profit organization. We go to Hospice, cancer patients. The old people like to see the cars and they come out in their wheelchairs and everything and I belong to a non-profit organization where there's 75 members, and we all go and do all these things for free. And every year that Ronald McDonald -- and that's what we do. We don't make any money. This is all we have is my cars.

MRS. TORELLA: They're show cars.

MR. TORELLA: That's all I want to do is keep them under there and I would really be happy.

MRS. TORELLA: I have one other thing I may ask. Is there a law that says that you can put it up and take it down in one day? Is there something to that effect?

CHAIRMAN BASEHART: Laura?

MS. BEEBE: Not that I'm aware of.

MRS. TORELLA: Okay. Thank you. That's all I have to say.

CHAIRMAN BASEHART: Okay. Any members of the Board have any additional questions?

(No response.)

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

(No response.)

CHAIRMAN BASEHART: Seeing none, we'll close the public hearing and we're ready for any further discussion Board members may want to have and a motion.

MS. STUMBERGER: I just have one question. I just didn't remember. Were there any letters or phone calls of opposition?

CHAIRMAN BASEHART: We have two letters that support them.

MS. STUMBERGER: Yeah, I wondered if there were any in opposition.

MR. MacGILLIS: I don't know. I didn't get -- this item was actually supposed to be on the November agenda, and so we never got any -- there were no calls. Actually, there was two letters. It says they're attached here.

Lake Worth Drainage District, apparently we sent something to them, because we sent the application to them because they are the adjacent property to the south where the shed is. They said no impact. Since it's on their property, the setback is not encroaching they're not going to have any impact on their property.

Another one from John Mark Wallick (ph), but nothing to say he approved it, but he was one of the ones the letter was sent to.

MR. GERBER: I do have another question of the applicant if that's permissible?

CHAIRMAN BASEHART: Go ahead.

MR. GERBER: I didn't know if we were past that point. Not knowing how you preserve cars like this, I'm going to have to ask you here for a bit of information on

this.

I've seen obviously people have these almost like tents surrounding their car. It's a wrap that goes around the car itself to protect it. What I see here, your canopy it's an exposed structure. So if things came in side ways it would be still --

MR. TORELLA: They also have the covers over them that you're explaining to me.

MR. GERBER: You do both?

MR. TORELLA: I have them also.

MR. GERBER: Why isn't the singular cover on the vehicle itself sufficient in your mind?

MR. TORELLA: Because it goes through and it draws dampness and the sun and the rain on there will make little bubbles in the paint, and before you know it it will make little rust spots. After six months or eight months, the cars all need paint jobs. You know, I've worked all my life for these cars. That's my problem.

MRS. TORELLA: They're very expensive paint jobs. They're not the normal car being painted for \$400.

MR. TORELLA: You can see by the pictures.

MR. GERBER: Thank you.

CHAIRMAN BASEHART: Any other questions? Okay. Then I guess we're ready for a motion. Somebody?

MR. PUZZITIELLO: I guess I'll make a motion. I make a motion for denial for a couple of reasons.

One of the reasons is there are so many structures on this site and so much encroachment, it's not a minimal encroachment that we're usually looking for. And I do not believe that they have met the seven criteria, and that is what we are ruled by is the seven criteria. And I do make the staff recommendations as part of the record.

CHAIRMAN BASEHART: We have a motion by Mr. Puzzitiello. Do we have a second?

MR. MISROCH: Second.

CHAIRMAN BASEHART: Second by Mr. Misroch. Any discussion?

(No response.)

CHAIRMAN BASEHART: Seeing none --

MR. MacGILLIS: I just have one comment. That staff actually looking over at the shed that's on the east side where the -- our major concern with that was that he didn't get a building permit. But after talking to him yesterday because there was another staff member working on this report who is no longer here. Our concern with that was he didn't get a building permit and he explained to me yesterday it was Ted's Sheds or whatever one of those companies that comes in and puts it in, and typically that's the story we hear after because they do not get permits for a lot of people that come in and do it.

Since that's on the side, I mean, it's going to be very difficult to move and he can get a building permit for that one to get it tied down, and the fact that there's a canal on the south side of that, and the Lake Worth Drainage System says they don't have a problem

with it, I don't know if the Board would consider granting him that considering that he gets a building permit for it, but the two in the front yard.

MR. PUZZITIELLO: I would be willing to amend my motion that we grant the side shed, the easement under the condition that he does get a building permit, and if there's any deficiencies he brings them up to code.

CHAIRMAN BASEHART: That's the 3.9 foot variance?

MR. MacGILLIS: Yes.

MS. STUMBERGER: Just one question, Jon. How long would it take to get that permit?

MR. MacGILLIS: I'll put a condition by April 20, 2001, the applicant shall obtain a building permit for the metal shed located on the south side of the property line.

MS. STUMBERGER: Okay. I would support that if you make that a part of the motion.

MR. TORELLA: Sir, being that this is right in my driveway, is it okay if I have this?

MR. PUZZITIELLO: That's still a canopy.

CHAIRMAN BASEHART: Approval of that is not in the motion. The motion by Mr. Puzzitiello is to approve the east side setback variance for the metal shed, but to --

MR. PUZZITIELLO: South side.

CHAIRMAN BASEHART: South side. I'm sorry. But to deny the other three variance requests. Is that your motion?

MR. PUZZITIELLO: Yes.

MR. MISROCH: I second it as I did before and the amendment.

CHAIRMAN BASEHART: Okay. Motion for partial approval as indicated by Mr. Puzzitiello and seconded by Mr. Misroch.

Any discussion?

(No response.)

CHAIRMAN BASEHART: Seeing none, all those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Motion carries unanimously.

Do you understand what happened? The shed on the side of your house can stay, but you need to get a permit for it by April of 2001. And the other structures will have to be moved. Okay.

MR. TORELLA: Thank you.

#### **STAFF RECOMMENDATIONS:**

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

#### **ANALYSIS OF ARTICLE 5, SECTION 5.7.E.**

**VARIANCE STANDARDS**

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

**NO.** This 10,700 square foot lot is located within the Plat of Forest Estates, Plat Book 26, Page 112. This residential subdivision is located approximately 6.25 miles east of Jog Road and on Gun Club Road. The property is located at 476 Forest Estates Drive. The property has an LR-3 land use designation with an RS zoning classification. There are two major streets within this subdivision, Forest Estates Drive and Cypress Avenue. The lots are typical in size (approximately 130 by 80) and support single family homes. The applicant is located on Lot 16, which is the last lot located on Forest Estates Drive. This street provides legal access to approximately 30 properties. Lot 16 abuts Forest Estates Drive to the east, L.W.D.D Lateral 5 to the south, lot 17 to the north and single family dwelling on Lot 1183 in the subdivision to the east. The lot supports a 1,560 square foot home, pool, spa, and 7 accessory structures located in the front and rear yard.

The lot has no unique constraints that warrant the setback variances for the illegally erected structures.

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

**YES.** This **is** a self created hardship in that the applicant is over utilizing this residential lot. The survey of the property reveals numerous accessory structures in the front, side and rear yard. Typically, a single family lot supports one or two accessory structures. Staff recommended to the applicant alternative options to consider that would not require variances. Staff suggested removing some of the structures in the rear yard (screen porch) or shed and the metal shed in the side yard. This would provide room for the canopy and access to the rear yard. Also, staff recommended off-site storage of the vehicles, since the existing garage on the house was converted to living space. Other residents in PBC who can not accommodate boats, cars, et cetera in the side or rear yard must find alternative off-site storage. The applicant informed staff that neither of these solutions are viable and that the variance process was their only avenue.

Therefore, the applicant must explore other site modifications or off-site storage to accommodate the storage needs for the antique cars.

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.** Staff's analysis of the request and justification found **no justification** for the approval of the requested variances. The structures were all illegally erected without permits or inspections. When someone proposes to construct a structure they must comply with County regulations in order to ensure the safety, health and welfare of the residents of PBC. To ignore the building and zoning requirements and then seek variance approval to correct the error is a special privilege. Especially, when the applicant cannot satisfy the seven criteria necessary in order to be granted the variances.

The granting of these variances is not warranted and would clearly provide a special privilege to this property owner. Other PBC residents must comply with setbacks and permitting requirements prior to construction. The applicant states his neighbors have no concern, however, if other residents in this community get the impression that if you illegally construct buildings in the setbacks without a building permit and then can be corrected by the granting of the variances this would set a precedent. The variances are not consistent with the general requirement for why we have established regulations to be applied consistently and fairly to all residents. Therefore, the granting of these variances will provide a privilege to this 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:

**NO.** The applicant erected many accessory structures on this property without first obtaining permits. Furthermore, the structures are within established setbacks. The applicant now claims that the structures cannot be relocated on the rear of the lot or to meet the setbacks. Staff recommended to the applicant to explore off-site storage. The applicant informed staff this is not a viable solution to his situation.



Therefore, to deny the applicant the right to keep three illegally constructed accessory structures in the setbacks **would not** deprive him of any legal rights. The lot supports many other accessory structures in the rear yard that the applicant needs to remove or redesign to accommodate the antique vehicles. The applicant has enjoyed the use of these illegal structures until the Code Enforcement Division cited him for the illegal structures.

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

**NO.** Granting the setback variance **is not** the minimum variance necessary to make a reasonable use of this residential lot. As previously stated this lot supports a single family dwelling, pool, decks, sheds, spa, et cetera. The removal of an illegal erected structures in the front and side interior setbacks is not an unreasonable request. The property owner stated they have lived at this address since 1975. Therefore, the applicant was clearly aware of the limitations of the lot in terms of buildable lot area for storage area to accommodate their antique cars. The rear yard currently supports six or more accessory structures, far more than one would find on a typical residential lot this size with within PBC. The applicant can redesign the lot to accommodate a storage area in the rear yard or look for off-site storage, as other property owners must do in a similar situation. The use of the single family dwelling and permitted existing structures is a reasonable use of the property. To grant variances for illegally erected structures is not a reasonable request or use of this residential lot.

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

**NO.** Granting the requested variances **will not** meet the literal or general intent of the ULDC setback provisions. Setbacks are established for all residents to adhere to prior to erecting a structure. Establishing minimum setbacks ensures consistency in the community, helps maintain property values and protects the separation between the street and adjacent properties. For a property owner to ignore the required setbacks and erect structures within them without permits and then seek variances will not meet the intent of the Code. Although there is existing vegetation in the front yard that provides screening to the structures, the fact

remains the applicant has other design options and is not requesting the minimum variances to make a reasonable use of this property.

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

**YES.** Granting the variance **would be** injurious to the surrounding area. The applicant was cited by Code Enforcement in 1999 as the result of a complaint for violations on the property. The granting of these variances would only foster a community perception that if you do not meet established code (building in setbacks, no building permit) you can seek a variance to correct the issue. Although staff has received no responses on the 300 foot courtesy notice mail-out related to this variance, the granting of these variances will not improve the quality of living in this subdivision.

**ENGINEERING COMMENT**

No Comment (**ENG**)

**ZONING CONDITION(S)**

Staff is recommending denial of this request. If the Board chooses to recommend approval, staff requests the right to recommend conditions of approval.

CHAIRMAN BASEHART: The next item is BOFA 2000-061, Robert Bentz, as Trustee. Is the applicant here? Your name for the record?

MR. LELONEK: Joe Lelonek with Land Design South.

CHAIRMAN BASEHART: And you've been sworn in?

MR. LELONEK: Yes, sir, I have.

CHAIRMAN BASEHART: Okay. Jon, can we have this one -- or actually this one is Joyce. Can you enter this into the record?

MS. CAI: Robert Bentz as Trustee to allow a reduction in the number of required parking spaces located to the side or rear of buildings within a proposed MUPD. It is located at 6405 and 6465 Sims Road, NE corner of Jog Road and Sims Road, approximately one mile north of Atlantic Avenue within the proposed

Spalding MUPD in the MUPD Zoning District.

Okay. If you turn to page --

MR. MacGILLIS: You may want to let Joe. He can do his own introduction on this.

MR. LELONEK: That will be fine. Good morning. Again, Joe Lelonek with Land Design South.

To save time I will be brief on some of the descriptions and what we're asking for for this parking variance.

CHAIRMAN BASEHART: There is extra credit for that.

MR. LELONEK: We like that. There's a graphic here that staff has provided. I will have available the same graphics in a little more green format, but the same graphics illustrating the parking reduction that we're requesting here.

We had previously approved a shopping center of approximately 25 acres in size having close to 200,000 square feet of retail space and medical office space at the intersection of Lake Ida and Jog Road in western Delray Beach.

As part of the approval, we had a requirement that we provide 20% of parking for each use to the side and rear of those uses. It's an old part of the Code that's been around for a number of years, actually since 1992 since the Code was adopted, that was set up to provide the intent of getting more parking closer to a use so that you could have less distance for people have to walk to those different uses. Also to provide more of a centralized type of building arrangement so you have parking all the way around the building.

The Code section stuck in the Code for a number of years -- I believe it's now changing to reduce the amount of parking spaces that are required to the side and rear. But in the reality in the retail markets out there that philosophy or that parking code has not worked very well.

What happens in a retail center, such as the one we're designing here, which is more of a strip type of center with a more single type of a face is the parking that's provided on the rear or the side of the unit becomes unused, becomes trash collectors, becomes areas that the Police Department have to frequent to make sure that nothing is going on.

This center here is a linear strip. It's one of the reasons we got an approval on this strip a couple of years ago to convert it to commercial. It was previously residential. It was a thin little strip with about a half a mile frontage on Jog Road, and as a result of the Comp Plan change a number of things were done.

One was concerning the residents behind the center. We provided a large 50 foot buffer with a six foot high berm and a six foot high wall. We also tried to orient all the activity nodes for the center to the front of the property towards Jog Road. I won't bore you with all these details, just enough to give you the flavor of what we're trying to provide here.

If you look at the top graphic, that's what we got approved about two or three months ago through site

plan approval showing what the Code requires -- 20% of the parking to the side and rear of that space. You notice the lakes are a little bit smaller and there is a fairly large expanse of pavement and parking area to the back and rear and sides of that building.

What we're proposing on the lower portion of the graphic is to get relief from that Code provision to actually provide a very limited amount of parking behind the building solely for employees only.

A couple of reasons we're doing this. One is we're expanding the lake areas on the site to provide more open water retention for the site instead of doing a lot more french drains and so forth. From an engineering standpoint that's a better configuration, better design. It also brings that activity center, the parking area that's unused, brings it to the front of the site away from the residences.

We're also, as you can see, some of the buildings get smaller. Now that's not part of this variance nor are a lot of the small little changes on the plan like maybe adding a dumpster here or removing a sidewalk that goes to no parking and so forth.

What we're really asking for today is a reduction in parking from the rear of these buildings, both to increase the amount of lake area, get rid of the nasties as I say next to residential properties, and to provide a nicer design that's more usable for the residents.

Now if you'll notice, the design hasn't changed very much as far as the north/south direction. North is towards me. Jog Road is on the south side of it, the lower portion of the graphic. Most of the uses here are in a close proximity to parking. Whether it be a quick jog out to Jog -- this is a skinny property again, as I mentioned -- a quick jog out to Jog to the last parking space here, here or anywhere along the front.

If you were to park in the back of this facility, say in the parking that we had previously provided here, you end up having to walk all the way around the building. It's very unusable or I'll say less than user friendly for a lot of these people using this facility.

That is the primary reasons for our being here today asking for this variance. We feel that it is justified, we feel that it makes sense for the market on this type of a retail center. We're asking for your pleasure today in just approving this variance to allow us to design this much preferred design on the south bottom portion of this graphic.

I'm happy to answer any questions you may have.

CHAIRMAN BASEHART: Before we go to the public, is there additional staff input?

MS. CAI: I think Joe did a good history and background. I just want to add a few more things from my -- staff's standpoint.

At the time when the final site plan was approved, the parking to the rear and side was required by 20% at that time. Then the Code was revised to 10% after he got final approval. So these variances, I used the current Code's 10% which means 50% less than what was

previously required. And that gives them 50 feet less. Okay.

So from there they request for another 6% reduction which goes from 4%. There's a number of 18 spaces. So, I mean, our staff feels that previously they provided 91 parking spaces. They really didn't have any problems. Now even with the 50% less requirement, they you know, they ask for a variance. So I think it is self-created.

Second thing I'd like to point out is, even though it's not directly relevant to the standards, I want the Board to realize that they placed the main structure is a 50,000 square feet, No. 1 retail structure, the new one?

MR. LELONEK: Yes.

MS. CAI: Along the east property line which is abutting the residential area, 14 feet closer to that parking lot which is a concern of the neighboring property owners.

Plus, they add more dumpsters behind the structure number 3. I think that will create more noise impacts than the pedestrian -- I mean than the cars.

So staff feels that they got approval and they meet the code requirements just two months ago. So I think they have an optional alternative than to implement these variances. So I think you have alternative solutions by not issuing this variance.

That's all I wanted to add.

CHAIRMAN BASEHART: Okay.

MR. LELONEK: Just a quick response to those issues. As far as the building location, there are a lot of issues that will happen between now and when you actually get a final permit for a lot of these users.

The main box user here is 50,000 square feet does not change. The configuration that got a little bit narrower and a little bit deeper just to accommodate a defined user's type of configuration.

The effect on that is actually you don't affect as many people in a north/south direction. You get a little bit closer to the property line, but we still have not eliminated the 50 foot buffer. We have not eliminated the configuration that we had in the back and the 15 feet that we're talking about is minor compared to the overall setback that we're still maintaining which is much increased. I believe it's more than double the required setback in the rear.

So even though it's not part of the variance I just want to make sure the record is clear.

As far as the dumpsters, I would rather have more in the center than less, to be honest with you. We all know, we've gone behind commercial centers and on those busy days before the trash pick-up, you see trash scattered all over the ground around the dumpsters, and the more you have, the more contained it is, and I feel that that is still a good type of addition to have at the center.

With that, I'll let you open up for any questions or allow the public to speak.

CHAIRMAN BASEHART: Okay. First of all, let's

open this up to the public. This is a public hearing. Is there any member of the public that would like to speak on the request? Your name for the record, sir?

MR. SUCHOFF: Yes, I'm Robert Suchoff, S-U-C-H-O-F-F. I'm a board member and officer of the Huntington Point community which is to the south of the subject's shopping center.

We at Huntington Point have a 1,096 senior units have been working very closely with our neighbor, Delray Villas, which is more directly impacted because they are on the east and they are --

CHAIRMAN BASEHART: Before you go on, you have been sworn in?

MR. SUCHOFF: Yes, I have been sworn, right.

Delray Villas -- I unofficially speak on their behalf as well because I've been working with Frank Behrman who is one of their top officers and some of their board members. They are, as I say, directly impacted by this. All this work was done by Mr. Lelonek and Mr. Bentz and the shopping center people in close cooperation with the residents around.

The idea of reducing the number or eliminating the number of parking spaces behind is to prevent noise, and we understand that the dumpsters do create some noise, but we are more concerned with the possibility of rats and trash and so on which would be a terrible problem, and we've been told the dumpster timing can be controlled. It's the lesser of evils as far as dumpsters  
a r e c o n c e r n e d .

I would also like to point out, and I am going to be brief -- I'm finishing -- that we are all in this area senior citizens. We're going to attract a lot of senior citizens. We very much appreciate the fact that there will be less traffic -- less pedestrians -- let's say the length of that -- to go from the car. I'll rephrase it.

To go from our car to the entrance of the shopping center is a major concern. If we are forced at a busy time to park behind the building and have to go all the way around, not everybody has handicapped stickers. We would rather be closer to the entrance.

We are very much for the approval of this request. Thank you.

CHAIRMAN BASEHART: Okay. Any other member of the public? We've got two.

MR. STEINHOUSER: My name is Arthur Steinhouser and I just recently moved to Delray Villas.

CHAIRMAN BASEHART: Have you been sworn in, sir?

MR. STEINHOUSER: Yes, I have. About three months ago.

And the way it's been proposed to most of the people living there, I've been to a number of the board meetings, was that this was going to be very beneficial to us. Well, there are 37 homes right in the back where they intend to move the building further back.

Let's say it takes five minutes to empty a dumpster. I don't know whether you're familiar with the garbage system, but if the truck is about 11 foot high and the dumpster is about five foot high, even if you

have a 12 foot wall, you're going to see this garbage being lifted up in the air. The noise is going to be unreal.

If you've ever emptied your own garbage and left it outside and had to put something out there about a half an hour later after being in the sun, you know what the odors are. And I do not believe by adding more dumpsters or reducing the area in the back where people will be walking and parking so that you can move a building back further is going to help the people in the back there. Thirty-seven homes are going to be where their bedrooms are, it's going to be terrible. It's going to be -- dumpsters do not help the rat conditions, the mice conditions or the palmetto bugs. I absolutely feel that this is wrong to do.

MS. STUMBERGER: Sir, let me just ask you a question. You live in Delray Villas.

MR. STEINHOUSER: Yes.

MS. STUMBERGER: Do not -- they have dumpsters all over the place inside the facility, do they not, where you people take your trash to and they pick them up and they dump them?

MR. STEINHOUSER: We're talking about trash. We're talking here about restaurants, we're talking about possibly a small supermarket or --

MS. STUMBERGER: But do you not see that where you live?

MR. STEINHOUSER: No, I'm only there, as I said, three months. And I know they have one dumpster that somebody was complaining about.

MS. STUMBERGER: But my question to you is when they come through there, you just said they pick it up and they dump it over and you see that dumpster go over, which only lasts a matter of a minute or so.

But I think my question to you is more like this. Where you live in Delray Villas, it's a multi-family community.

MR. STEINHOUSER: Yes.

MS. STUMBERGER: You do have dumpsters within the confines of the facility?

MR. STEINHOUSER: I think there's only one dumpster.

UNIDENTIFIED SPEAKER: Not in the community. I'm sorry.

MR. STEINHOUSER: Okay. As I said, I just moved in. It takes more than a minute to put the lift under it and then lift it up and dump it --

MS. STUMBERGER: I'm quite familiar with that. I'm quite familiar with how that works.

MR. STEINHOUSER: Okay. I understand there was one dumpster there that somebody complained about. I have no idea, I haven't seen any dumpsters there. Everybody has individual garbage pails. If there's building going on, trash like that, I guess they would have a dumpster or something.

MS. STUMBERGER: I just don't -- me, personally, I don't see much difference between the dumpster being hauled and lifted which takes a relatively short period of time, as opposed to the garbage truck that comes down

my street like it comes down yours, and they're banging and throwing cans and everything two or three days a week, anyway.

MR. STEINHOUSER: You're talking about something that's made out of plastic, which is relatively very low, or a great big metal drum.

MS. STUMBERGER: I'm not going to debate it with you. I just really wanted to know what you had, with what you had within your facility. Thank you.

MR. PUZZITIELLO: Are you opposed to taking away the parking spots behind the building?

MR. STEINHOUSER: That's right, because you're going to be moving the building back only 14 foot, but I wouldn't like to sit 14 foot closer to a garbage truck.

MR. PUZZITIELLO: So you would rather have the parking lot lights?

MR. STEINHOUSER: Of course.

CHAIRMAN BASEHART: Let me ask a question.

MR. STEINHOUSER: For safety purposes. You're still going to get the trash thrown back there. You're just going to compact it into a smaller area.

CHAIRMAN BASEHART: Let me ask a question. The closest part of the shopping center to the property line is the anchor. Is that moving closer to the property line? It looks to me on the plan that it's about the same.

MR. MacGILLIS: It's 14 feet closer.

MR. LELONEK: It's about 14 feet closer.

CHAIRMAN BASEHART: It is? Okay.

MR. PUZZITIELLO: But number three is further away then, right?

CHAIRMAN BASEHART: Right.

MR. LELONEK: Number three is further away. At a minimum it's 79 feet. The minimum setback, I believe, is 30 on a commercial center of this size. So we are more than double that required setback.

MR. PUZZITIELLO: You're at how many feet from the setback?

MR. LELONEK: We're at 79 right now.

MR. PUZZITIELLO: You have a 50 foot buffer --

MR. LELONEK: We have a 50 foot buffer which has a six foot high berm and a six foot wall by condition.

MR. PUZZITIELLO: A six foot high wall on top of the six foot berm?

MR. LELONEK: That is correct.

MR. PUZZITIELLO: So you're at 12 foot.

MR. LELONEK: That is correct. And as far as the dumpsters that are located on the property, we do have a condition as far as the hours of operation, loading and pick-up.

We also have a condition that says we must be at least, I believe it's 100 feet off the property line for any dumpsters or any other trash collection facility. So we've gone through this through the public hearing process.

I know that there are still concerns and will be until we get the operation going, but I think what we need to focus on today is parking. How do we get rid of



the nasties, the additional nasties away from the adjacent property, and looking what the benefits are with the increased size lakes and so forth.

MR. PUZZITIELLO: Your dumpsters didn't go close to the property line, did they?

MR. LELONEK: The dumpsters? I believe the bays that everybody is talking about as far as the dumpsters, the original ones were located right over here (indicating). The compactor stayed in the same location. The dumpsters just moved in a south direction towards this small employee parking area here (indicating).

CHAIRMAN BASEHART: So there's really no difference in the dumpsters' situation --

MR. LELONEK: They multiplied, but they really haven't moved. I think on the north side if you look at it, they've actually gotten a little farther away. This is the location on the north side of the facility. It moved to the west a little bit and tucked in closer to the building.

So from an aesthetic standpoint if you're back there, it's actually not a sea of dumpsters out in the middle of the parking lot. It's moved closer to the building.

CHAIRMAN BASEHART: Okay.

MR. STEINHOUSER: I would like to just say that the enlargement of the lakes, the more humidity that you have there, those lakes are nothing more than a retention center. Water increases the volume of noise.

You wouldn't like to have that same dumpster across a lake which is going to magnify the noise, as you would on land.

CHAIRMAN BASEHART: Thank you. Next speaker?

MR. NEWMAN: My name is William Newman. I live in Delray Villas. My house does face the rear and --

CHAIRMAN BASEHART: You've been sworn in?

MR. NEWMAN: Yes, from when I first came in.

As far as the dumpsters go, I feel there may be a need for it; I don't know. The thing is if there's some way they can enclose it like in a building, like they do in other developments. To answer that lady's question, we don't have any dumpsters in our development. The only dumpster that's nearby is in our recreation center which is not part of Delray Villas 4, 5. We have regular garbage pick-up.

And the 37 homes that go around the perimeter of the property, these are all master bedrooms that are in the rear. So the noise is a big problem for us, especially in the morning. What happens during the day, I don't care about the noise.

That's all I have to say because I don't want to add to what the other gentleman just said.

MR. PUZZITIELLO: What's your opinion about the parking area?

MR. NEWMAN: Excuse me?

MR. PUZZITIELLO: Do you object to it?

MR. NEWMAN: I don't object to the parking.

MR. PUZZITIELLO: You object to not having parking lots back there?

MR. NEWMAN: I don't, no, because as far as I'm

concerned, I was in retail, the employees should park in the back and the front parking space should be for the customers. That's my opinion.

MS. STUMBERGER: So let me just get this straight in my mind. What you just said was that if there was noise during the day you don't really care about that; that doesn't bother you from a dumpster?

MR. NEWMAN: Right.

MS. STUMBERGER: So if what this gentleman said in fact was true, that they would make arrangements as to the times when this would be emptied --

MR. NEWMAN: As long as it wasn't --

MS. STUMBERGER: -- if it was during the day time, then you're not objecting?

MR. NEWMAN: I'm not. I'm only concerned with the morning time, but perhaps they can build some kind of enclosure.

MS. STUMBERGER: Right, I understand.

MR. NEWMAN: So that the dumpsters are enclosed to keep the odors in their perimeter.

MS. STUMBERGER: Sure. Thank you.

MR. NEWMAN: Thank you.

CHAIRMAN BASEHART: Okay. Jon?

MR. MacGILLIS: Just two comments. Where staff is coming from with a denial on this, the Board has to understand that as Joyce pointed out, the ULDC was just amended on this Code provision. I mean it was 10%. People were coming in getting variances from that, so we went back -- or 20%. We changed it to respond to industry.

When Land Design South came, we told them that's not the intent of the Code. An MUPD is you're supposed to have the parking in the back and you're supposed to be cutting arcades through those buildings and designing the buildings so it's pedestrian oriented.

You don't -- they should stop designing these types of buildings where they're not responsive to pedestrians. You put all the parking in front of the building. There's no cut-through through the buildings, and then people come in and ask for a variance. And they say, well, no one is going to use the parking in the back, but if you've seen a mall where they do these archways and colonnades through it when it's not built, and that was some of the -- if you say it's not going to be utilized, you haven't built this building yet, you need to design it with an archway between the anchor and the store to the right there, the other part of the mall.

And they go, no, that's not an option and people aren't going to use this parking.

Well, if you don't design it, people aren't going to use it.

And our problem is we just amended the Code and came down to 10%. Now we have somebody coming in wanting 6%. It's not justified, it's not warranted.

And the second part is is that this Petition did just go in front of the Board of County Commissioners. It's an MUPD, there are strict conditions put on it. The Board and staff spends hours and hours on the reports

that go out, what the neighbors rely on as far as the architecture of this building, the setbacks, the landscaping, the amenities of the water bodies, the -- I don't know; they had focal points and other stuff, clock towers and fountains and gazebos and everything that the Board -- BCC and everybody at that hearing thought that stuff is going in.

Now they come in to the BofA and ask for a variance to move this building back, and you've seen a design here where they've got the exact design on the bottom and one on the top, then how can we justify that this is the minimum necessary variance to make a reasonable use of this property when there's a design right there on the top that works and it meets the BCC's approval and all the neighbors and everybody who came to that public hearing when this original approval came in.

It's not like five years ago. It was in to the Board several months ago. I mean, this stuff should have been worked out then. If they didn't want the parking, they should have designed the building differently then. But to come back in here now and ask this Board to grant a variance when we just amended the Code, in staff's opinion it does not meet the seven criteria.

So I want it clear on the record why we're not supporting this variance, and we went over it at length. That's why it was postponed last month because we did sit down with the Zoning Director who was intimately involved with the overall approval of this thing and looked at, you know, was this variance warranted.

And it's clearly our opinion it does not meet the seven criteria.

CHAIRMAN BASEHART: Okay. Anything further to say before the Board considers it?

MR. LELONEK: Just one quick comment on that line. In all fairness to Mr. MacGillis, this property has been going through the planning process. Actually it's been in the planning process from Comp Plan to final site plan approval for about two years, and we have continuously been working with the residents behind this center. If you look at the plans, the design is almost identical.

What are the benefits here? The increased amount of lake. We're actually reducing square footage on this plan. So there's a lot of things that are going to happen that are going to change it. I would imagine over the next six months, 12 months before all the permits are pulled for this property, there's going to be additional changes, additional square footage lost, a reconfiguration of a building here and so forth. That's the nature of the retail business.

In response to the additional parking and why the changes and why the Code is written, well, this is a retail shopping center that's going to meet the requirements and the needs of the industry. How many shopping centers have everybody that we've gone to where there's some parking to the side or rear of the building and we choose not to park there because first of all, we're worried that it's behind the building, is there anybody to keep us safe. It's farther to walk from the

primary entrance. That's the nature of the business here.

We do have a linear site, a very linear site that's extremely skinny. So when you look at the layout of this, we do have a configuration where you've got the closest spaces, the most easily configured spaces out in the front of the center. It makes sense for us to have a reduction in the parking in the rear.

So this is a positive variance all the way around. I understand the concerns the staff raised about the new code language that's gone into effect, but it doesn't work for every situation. Thank you.

MR. GERBER: I can understand the concerns you've raised as to why you've made the changes that you've done, but to me they seem as if they were pretty basic changes which would have been basic back then as they are now. Why weren't they raised back then?

MR. LELONEK: As part of the MUPD requirements, as far as all the submittals you would take through a zoning process, we had this site approved with a larger amount of square footage than we are -- at least our clients are telling us we're going to need right now. That is typical. You want to make sure that you've got the maximum amount that you could potentially use on the site approved before you go through the final process because it's easier to remove square footage than it is to add it.

So when we went through the process, you can look on the site plan. The retail bays -- retail number three, I believe it is, on the south side of the major anchor is a lot deeper than you would probably need in a shopping center. We've reduced that down, we're showing what actually what the market is looking for right now. So those are changes that are going to naturally come through the process.

We wanted to make sure that the residents, the Zoning Commission, the Board of County Commissioners saw what the maximum envelope was and right now what we're trying to do is the small tweaks, design changes and so forth that make the center better.

CHAIRMAN BASEHART: Okay. Any other questions?

I'd just --

MS. CAI: Excuse me, Mr. Chair. I need to address a few more problems.

CHAIRMAN BASEHART: Okay.

MS. CAI: I just want to emphasize a few things. The first I will emphasize is the reason why staff recommends denial is because staff's saying they do not meet with the general intent of the Code which is to provide increased parking to the rear and the side and also to integrate the different uses within a short distance.

The second is even though they reduce square footage, however they also reduce the number of parking spaces for the entire development. If they comply with the parking requirement, they can add more landscaping area in the front because they were -- like 18 overall

and the 24 parking spaces, move the 24 parking spaces to the rear and the side, so they can get more space in the front to add more trees and landscape. That will benefit the general public.

Another thing is staff did the research. What we found is a similar variance for MUPDs for the past few years, so we are afraid that if we approve it, it will open the -- it will be the precedent to all the similar MUPDs, and this agent has worked, you know, and designed with many developers.

So I think this is self-created because they laid out these buildings in such a way to create a hardship. But I think it's self-created. They have another alternative to create a colonnade, arcade or you know, or a way that they can have a cut-through. So that's what I want to say.

CHAIRMAN BASEHART: Okay.

MR. GERBER: I have one other question. You say the reason that it's been changed is because you're reducing the square footage, but by reducing the square footage you lessen the number of required parking spaces.

So to me I'm trying to see the relationship between shifting parking spaces at that point from rear to front.

MR. LELONEK: It's a combination of everything. If you look at the clearest changes on the plan, we've added retention area in the back. That's the clearest change on the plan. The amount of square footage that's dropped, a parking loss or shifts or push and pulls, those are minor.

The biggest influence if you look is the open space, the retention area in the back.

MR. GERBER: So isn't that the reason why?

MR. LELONEK: That's the primary reason, yes.

MR. GERBER: And the reason for increasing that retention area is just purely for flooding?

MR. LELONEK: Engineering standards. If you don't have a large area of on-site retention that's open water, what you have to do is go into a French drain system which is underground piping. It's not as efficient and it doesn't work as well, so forth, so this is a better engineering solution as well.

MR. GERBER: Again, isn't that something that could have been known back then as opposed to now?

MR. LELONEK: A lot of times you don't know all the intricacies until you get the approvals and really start designing the engineering system on a project. A lot of that is not done up front.

You have some ballpark numbers, but then once you start getting your topo, your final plans and so forth, then you get into final engineering.

CHAIRMAN BASEHART: I guess before we go on, I'd just like to make a couple of comments. I deal with this, being in the business that I am, I deal with this issue in this code provision all the time.

Actually, as far as I can tell, Palm Beach County is the only jurisdiction in the area that has the requirement to put a percentage of your parking behind a commercial facility, and in fact, most places that I go,

they want you to minimize the amount of parking and then minimize the amount of constant activity behind a center, especially if it's adjacent to a residential area so that you can minimize the impact on that adjacent residential area.

The other thing, of course, is parking is a critical -- parking and exposure is a critical issue to retailers. I can recall having discussions here at the County with staff about I think initially back in the early '90s when this was adopted, the intent was to try to have the building centralized on a piece of property and then afford as much access completely around the building so that the parking can be balanced and people would have a minimal amount of distance that they had to walk to commercial facilities. I don't know about you, but I could probably use more walking.

But the issue is that that concept is unacceptable to retailers because if the motoring public driving by the site can't see the store and the entrance, then they won't go there. So I think there's been an evolution and I'm happy to see that the County has reduced the amount of parking that needs to go on the side and the rear. Personally, I think there should be no requirement for side and rear.

But then when you get to functional issues, you know, as unnecessary as many of us feel that that provision in the code is, it works -- it can be accommodated in cases where you have more of a square site or a larger site where you can have an L-shaped center and you can have tenants facing two streets, then actually a lot of the parking field that you provide can count as side and you can meet the code.

In a case like this, I see that's, you know, that it would be very difficult to do without reducing the amount of available parking in front of the facilities to below the standards that most retailers want.

The fact is is that most people won't park behind a center even if there's a colonnade so that they can maybe conveniently walk to the front of the center to go into the stores because you worry about vandalism, you worry about assault and this is particularly true with women who do most of the shopping. It's also a concern for people that maybe have invested a lot of money in a car and they don't want to take the risk of vandalism.

So I think from a functional point of view in the retail market, that provision is something that is not acceptable. Like you said, if you can accommodate it because of the configuration of the site, fine, but in a case like this I think it presents a real hardship. That combined with, I think what is a competing interest, that of minimizing the impact on adjacent residential activity.

If a substantial portion of the parking for a center is placed behind center, closer to the residential area and it's actually used, which I don't think functionally happens, that means that on the basis of an entire work day you have constant activity, as opposed to using the back for a service corridor where there's only infrequent activity.

So for those reasons I believe that the applicant has met the test, but I can't make a motion, I'm the Chairman. But I'll just make that statement and we'll see what happens.

Anybody else have any comments?

MS. CARDONE: Yes, Mr. Chairman, I do. I'm not going to vote for approval of this. I'm going to vote for denial of this.

There have been several arguments that have been brought before us and some have made it interesting about dumpsters and the size of the buildings. That is not what we're here for. We're not asked to vote on a variance for dumpsters, nor are we asked to vote on the variance for the size of the lake or the size of the building. How they design that is up to them as long as they conform to the code.

What we're being asked is very specific, and although the philosophy of a retail center may also be a very interesting discussion, we don't set policy. The Board of County Commissioners sets policy. I see our job as looking at seven criteria and then making a judgment about whether they have been met or whether they have not been met.

It is very clear that under the seven criteria we are charged to look at that it has not been met. I agree with what staff has to say and I'm glad for the background that they have provided us on this particular situation, and that's why I will vote for denial of this.

CHAIRMAN BASEHART: Okay. Anybody else have comments? Seeing none, we're ready for a motion.

Anybody?

MS. STUMBERGER: Yes. I'll make a motion to approve based on the numerous amount of comments that Mr. Basehart made that we met the seven criteria, that he felt it's too numerous to mention.

However, I would like to see something done with the dumpster so that it doesn't look like a dumpster and it's covered, like the gentleman's concern was. And the hours set for -- so it doesn't happen during the night or early, early in the morning.

CHAIRMAN BASEHART: I think there was testimony that the Board put time limits on when delivery --

MS. STUMBERGER: Is there?

MR. LELONEK: There are hours of operation and hours of delivery and pick-up as well.

MS. STUMBERGER: Fine, then I'm satisfied with that.

CHAIRMAN BASEHART: And the Code requires that dumpsters be fenced and screened. Has that been done?

MR. LELONEK: The dumpsters will be in a fully enclosed type of feature. Whether it be a -- it will probably be a concrete block structure, it has to have solid gates on the front so they will be enclosed. That's a code requirement. We can't get around that.

MS. STUMBERGER: Okay. Does that satisfy your question, sir?

UNIDENTIFIED SPEAKER: Are you talking to me?

MS. STUMBERGER: No, I'm talking to the gentleman

in the blue sweater.

MR. NEWMAN: Well, if the walls are high enough

--

MS. STUMBERGER: Well, the whole dumpster is going to be -- the whole entire dumpster itself is what he's saying is going to have concrete walls and doors on it, okay? That's my motion.

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

MR. PUZZITIELLO: I'll second it.

CHAIRMAN BASEHART: Second by Mr. Puzzitiello. Any further discussion?

(No response.)

CHAIRMAN BASEHART: Why don't we have a roll call vote?

MS. MOODY: Ms. Nancy Cardone?

MS. CARDONE: No.

MS. MOODY: Mr. Raymond Puzzitiello?

MR. PUZZITIELLO: Yes.

MS. MOODY: Ms. Meril Stumberger?

MS. STUMBERGER: Yes.

MS. MOODY: Mr. Stanley Misroch?

MR. MISROCH: No.

MS. MOODY: Mr. Jonathan Gerber?

MR. GERBER: No.

MS. MOODY: Mr. Bob Basehart?

CHAIRMAN BASEHART: Yes. We have a 3-3 tie.

Does that mean the variance fails or does it mean it has to come back here when we have a full Board?

MS. BEEBE: It means that this motion fails.

MR. MacGILLIS: It fails unless the maker of the motion comes back with a revised one -- it's going to have to come back next month is what our bylaws say.

CHAIRMAN BASEHART: Okay. Well, as an alternative if somebody could make a motion for denial we could vote, but that would probably end in a tie as well.

MR. MacGILLIS: Or you could do the approval with something different to get one of the people that's opposed to it to join.

CHAIRMAN BASEHART: This is true. Well, we could try to approach it that way. Is there any modification to the motion that any member that voted to not support the motion feels would be adequate to change their mind? (No response.)

CHAIRMAN BASEHART: Seeing none, we've got a 3-3 tie; it comes back next month?

MR. MacGILLIS: Yes. The bylaws say it's postponed. We changed that in the bylaws two years ago or a year ago. It's going to have to come back next month.

MR. GERBER: So the record is clear, being that I'm an alternate and you have a quorum without my presence being here, just to explain my reasons for voting no and why I don't think it can be changed is because I do think that when you have the original approval and the retention areas were what they were, you were going to go with the parking spaces, and when you increase a retention area, you sacrifice the parking



spaces.

Although I have great sympathy for Mr. Basehart's argument regarding retail, as I like him know and am very familiar with what the needs are with that. We are not a policy making body and the 10% is the policy. And I would have liked to have seen you all come up with a different way to satisfy the policy as opposed to trying to seek a variance on the policy.

That's my comment.

MR. LELONEK: The policy, and I understood the policy. The staff is incorrect in one of their statements.

There have been other variances approved for this. At least one that I'm aware of, it's a project down in west Boca on Palmetto Park Road. It's a new Publix Center was built about five years ago. Our office was the office that came through with the parking variance reduction, reduction for the side and rear parking requirement here. If you look at that center, all the parking is in the front. That's what the needs are. It's a very good example of how the Code doesn't work.

This is a similar situation. Could we keep the parking back there and do French drains and so forth? Yes. Does that benefit the residents behind? No. Does that benefit the intent or policy of the Code? No.

The one thing that would benefit this center is let's move those parking spaces out to the front. Let's increase the amount of green retention area back there and let's make a nicer design. That's part of what your purview is, is seeing situations that are a little bit out of the ordinary and having the ability to come in and request a variance of a code that is 1,500 pages long that cannot configure every single possible alternative that there are out there in designs. That is your responsibility.

Yes, policy is one thing, but you have the ability to make decisions that make sense.

CHAIRMAN BASEHART: And another issue, I don't want to beat this thing to death, but another issue that becomes a problem I run into a lot is that one of the provisions of the MUPD is that you can only have the minimum number of parking spaces. You can't have surplus parking spaces, just the minimum required by the Code. The standards for most retailers are actually greater than the County's standards.

So what happens is you come into an MUPD, the retailers consider the site marginal because you can't have enough parking, the County won't let you have enough parking, which is kind of the opposite of the way it used to be years ago. Then you say you've got to take 10% of that inadequate amount of parking and put it behind, you know, it becomes a killer. And I've seen a lot of good retail operations reject sites because of those reasons.

MR. GERBER: I agree. I don't particularly think that the policy has gone far enough. I think it does need to be reduced further, but I think it is what it is, unfortunately, for the developer's standpoint in this case.

MR. LELONEK: Well, you have the ability on a situation by situation basis that if it makes sense to reduce it, you have the ability to do that. That is the purview of the Board of Adjustment.

MR. GERBER: I recognize that. As I said before, my concern was the timing.

CHAIRMAN BASEHART: Okay. We'll see you next month.

MR. LELONEK: Thank you.

#### STAFF RECOMMENDATIONS

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

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

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

**NO.** The subject 25.82 acre property is located at 6405 and 6465 Sims Road, on the N.E. corner of Jog Road and Sims Road (aka Lake Ida Road), approximately one mile north of Atlantic Avenue, within the proposed Spalding MUPD, in the MUPD Zoning District. (Pet. 99-092). On April 27, 2000 the site was granted an approval of a rezoning from Agricultural Residential (AR) to Multiple Use Planned Development (MUPD) (R-2000-0591). On August 9, 2000, the applicant received final site plan approval from Development Review Committee (DRC).

There is **no unique** characteristics or approvals related to this site or proposed structures that warrant a 4% (req. 10%) of the required parking to be located at the side or rear of Retail Structures No. 1 thru 3. It is a conforming parcel with normal land uses. The overall Spalding MUPD development was approved by the Board of County Commissioners (BCC) subject to numerous conditions to ensure that the proposed development does not result in adverse impacts on the surrounding properties. To protect the easterly neighboring residents of Delray Villas from aural and visual impacts from this development, the BCC required that the applicant provides a 50 foot landscape buffer strip as well as a 6 foot high continuous berm and a 6 foot high opaque concrete wall. The final Site Plan certified on August 9, 2000 meets the required

parking location requirement, which provided 91 spaces to be located to the rear of the Retail Structures No. 1 through 3.

The applicant indicated in the justification that the parking to the rear and side of the buildings would increase vehicular activity and noise behind the building, adjacent to the neighboring residents. However, as previously mentioned, the applicant proposed to move the 50,000 square foot retail structure 14 feet closer to the residential neighborhoods than previously approved. In addition, 4 more dumpsters were added behind the affected buildings and a 240 foot long foundation planting along the rear of the Retail Structure No. 1 was eliminated by the applicant. These changes, in fact, may impose a negative impact on the neighboring residents. The noise generated from the loading and trash collector's trucks is much louder customer's cars. Staff believes that the applicant has several alternative design options to work through site layout to eliminate or reduce the variance amount.

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

**YES.** The variance is **self created**. As a land development agent for many years, the applicant is fully aware of the design methods and ULDC code requirements. For this particular case, all the concerns from the adjacent property owners were heard and well considered prior to the final approval of the development order by BCC at the April 27, 2000 hearing. The final site plan was certified on August 9, 2000 reflecting conditions of approval as well as all other applicable rules and regulations. The applicant has designed many similar MUPDs in the past years and never had a hardship in complying with this MUPD parking location requirement. In fact, the applicant did provide an adequate percentage (22%) of side/rear parking spaces on the final site plan, which was approved by the Development Review Committee 2 1/2 months ago. No hardship on parking locations was indicated throughout the entire review process of this development. What's more, the applicant is required a 50% less than the previously required for the side/rear parking location due to the code revision adopted on September 28, 1999.

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, BUILDING OR STRUCTURES, IN THE SAME DISTRICT:

**YES.** For the past years, no similar variance was ever applied. To grant this variance **would be** a special privilege. The applicant **has not** demonstrated that this variance is not self created or there is any unique features to this parcel or proposed buildings that prohibited the construction of this multiple use commercial development. Therefore, if this variance is granted, the property owner **would be** granted a special privilege that has not been granted to other parcels under similar situations. The applicant needs to explore alternative design options to either eliminate or reduce the variance request.

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

**NO.** In fact, 2 1/2 months ago, the final Site Plan proposed by the applicant was certified by the Development Review Committee for complying with all the applicable code requirements and conditions of BCC approval for development order. Therefore, if this variance is denied, it **will not** deprive the applicant of rights to develop the subject parcel, neither will it work an unnecessary and undue hardship. The applicant can use the approved Site Plan or modify the Site Plan to reflect the proposed changes while still meet the code requirements.

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 requested variance **is not** the minimum necessary to make a reasonable use of the property or proposed structures. The applicant has approved design options with no need for a variance. As previously indicated, the applicant provided 91 spaces behind the Retail Structures No. 1 through 3 and was approved by the DRC without indication of a hardship. The hardship on placing 41 spaces, 50% less than the previously required, at the side or rear of those affected structures **is not** justified by the applicant.

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 intent of the ULDC parking location requirement for MUPD. The required 10% of the required parking spaces to be located at

the side or rear is intended to accommodate employees' parking as well as to better integrate different land uses within short walking distances. The granting of this variance will not meet the literal or general intent of the MUPD parking location requirement.

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

**NO.** The granting of this variance **would be injurious** to the property owners to the east. The changes made by the submitted Site Plan in this application are substantial as compared with the approved Site Plan. They may cause an adverse impact to the adjacent residential property owners to the east. The Retail Structure No. 1 was placed 14 feet closer to the east property line with 4 more dumpsters added behind the Retail Structures No. 2 and 3. Foundation planting behind the Retail Structure No. 1 was eliminated by the applicant. All these changes will impose negative impacts on the neighboring residents of Delray Villas.

**ENGINEERING COMMENT**

No Comment. (ENG)

**ZONING CONDITIONS**

No conditions, staff is recommending denial. However, if the Board chooses to approve this petition staff would reserve the right to suggest conditions of approval.

CHAIRMAN BASEHART: Let's take a five minute break, a court reporter break.

(Whereupon, a short recess was had.)

CHAIRMAN BASEHART: Back in session. Next item on the agenda is BOFA 2000-065, Frank P. and Bethany Ranzie. Is the applicant here?

MR. RANZIE: Yes.

CHAIRMAN BASEHART: This is also Joyce's. Can you introduce the item, please?

MS. CAI: Thank you. BOFA 2000-065, Frank P. and Bethany Ranzie, to allow an existing fence in the front

yard to exceed the required fence height for an existing single family dwelling. It is located at 16297 92nd Lane North, approximately 1000 feet east of Banyan Boulevard and 300 feet north of Murcott Boulevard within unrecorded Royal Palm Beach Acreage in the AR Zoning District.

Okay. The applicant constructed a new house in 1997 and about a year later he proposed to construct a fence along the two sides and along the front property line. It was a mistake for issuing the permit for those fences. While the error which wasn't noticed, it's a height of 6 feet indicated, you know, for the front yard in the permit and the applicant constructed as owner/builder, those fences, and at the time the code inspectors went for a final inspection they discovered that extra height of two feet -- I mean, two feet exceeding the code requirements. So they failed the final inspection.

Then the applicant came to apply for a variance to allow the additional two feet in height for the fence in the front yard.

We also check the approved site plan.

We noted that there was some confusion created partially by the applicant, which he showed -- if you can see page number 32 with the approved site plan, you'll see two circles on the right side. There's one indicating along the side saying wood stockade fence, 6 feet high, there's a line and an arrow pointing to the side. On that side is the location approximately -- it's beyond the front yard. And then he -- there's another circle with a line saying concrete block columns with 3 x 3 footers, 4 feet height. The line, the arrow indicating the front property line.

So I think at the time the building tech reviewed it, she may have made a mistake that the 6 feet is pointing to the side, which she should have, you know, make him indicate the front yard, which is 65 feet from the setback line should be permitted to 4 feet high. So now staff with this application looked at the seven criteria. And unfortunately we didn't find it met the seven criteria, and we recommend denial.

Staff concluded that the applicant has another alternative that would eliminate the need for a variance, such as he can plant trees, install hedges and simply cut the fence back to 4 feet high. And the privacy concern, like I said, trees and shrubs can be installed to provide additional buffering and screening. And this could accomplish the same goal and would not require a variance.

So we considered this a self-created situation so staff recommends denial of the application.

CHAIRMAN BASEHART: Thank you. Is the applicant here?

MR. MacGILLIS: Yes, and for the record we do have the building staff here if you have some questions. Barbara Pinkston Taylor is the supervisor from the building division and Alice -- I believe is the zoning tech or building tech who reviewed the plans. If you have specific questions of what she interpreted the plan

to be and how the permit was issued.

MR. RANZIE: My name is Frank Ranzie, R-A-N-Z-I-E, and I'm the homeowner.

CHAIRMAN BASEHART: Have you been sworn in?

MR. RANZIE: Yes, I have, sir.

CHAIRMAN BASEHART: And Barbara and Alice, have you all been sworn in?

MS. PINKSTON TAYLOR: I have not.

CHAIRMAN BASEHART: Okay. You want to swear her in?

MS. PINKSTON TAYLOR: Why don't you just swear us all in?

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

CHAIRMAN BASEHART: Okay.

MR. RANZIE: If I may, I think this case is a little different than what you've been hearing all day. I am one of the people like yourselves that follows the rules.

I came into this building without a drawing. I came here with nothing but my survey plan and asked the questions, how do I go about building a fence. I was instructed by a gentleman downstairs. You probably would know him; I don't know his name; white hair, white beard.

CHAIRMAN BASEHART: Stu.

MR. RANZIE: Yeah, he's over in the owner/builder section. He was very helpful to me when I built my house as well. I did owner/builder. He said you could draw it right on your plan.

So as Joyce pointed out, on 32, I asked him how do I do that. He said draw some straight lines, some "x's" and that'll indicate where the fence is and where you want your block columns, make them solid, very basic. So I followed his instructions right there at the table downstairs.

I clearly see three lines. I disagree with the five line confusion that's happened over here. If you look, there's only three lines that are clearly drawn with arrows pointing to anything. There are no other lines with arrows pointing at anything that I drew.

And the one is right next to wood stockade fencing, six feet height pointing at that entire side. That's the side in question, not the front, not the columns. I was issued the permit without hesitation by the Department. It had no setback requirements on it. Setback section was blank.

I ordered the material, \$3000 in wood, built it myself in my spare time, and well, I did what I was told. That's pretty much it. I mean, there's a lot more involved in the system, but I'm dissatisfied with it at this point. But I built this fence based on what I was approved for.

MS. STUMBERGER: You were told to do by whom? Where did you take your direction from? Downstairs? Is that what you're saying?

MR. RANZIE: Yeah, the man I just described to you. He told me how to draw this.

MS. STUMBERGER: And you got a permit?

MR. RANZIE: Yes, ma'am. I received a permit and

it was approved exactly as you see it and I built it exactly as you see it. I'll keep it simple.

CHAIRMAN BASEHART: Okay. Appreciate that.

Alice, do you have anything you'd like to add?

ALICE: Well, Mr. Ranzie is right. He did have the four feet marked in front and the six foot marked on the side. It was just an oversight on my part that I didn't scale it out and label it on his application.

But he has pictures, it really makes the property look attractive and there were no complaints from the neighbors or anyone that they objected to it. He's on a very quiet road and it's not a residential zone where it would obstruct the view. It's very attractive as far as I'm concerned, and he just did what he was told and got his permit.

CHAIRMAN BASEHART: Okay. Barbara, do any of the other staff have anything you want to add or you just want to see if there are questions?

MS. PINKSTON TAYLOR: We'll just see if we have some questions.

CHAIRMAN BASEHART: Okay. Since there were no other members of the public that indicated that they would like to speak, let's just go to the Board.

Any Board members have anything?

MS. STUMBERGER: Yeah, I want to ask a question. It's my day.

I don't even understand why he's here, why we're denying it. He came in and he did, am I correct, what was the right thing to do, what he was --

MR. MacGILLIS: No, that's not -- he didn't do the right thing.

MS. STUMBERGER: Was he instructed by us downstairs?

MR. MacGILLIS: No. I mean, when somebody comes in and applies for a permit, it's supposed to meet code and that's clear in the staff report that it wasn't because he drew it six feet and he didn't draw another line and say four feet in the front.

It's staff's responsibility when they see an error on something before you issue it you go -- if there is a question here. You know, this fence can't go all the way six feet to your front property line; you understand that? Yeah, I do. Well, I'm going to cross it out and I'm going to put six feet and then draw a line and say the rest of it is four feet so there's no misunderstanding. That's the point that didn't happen. But staff doesn't have --

MS. STUMBERGER: But what this lady has just said was it was an oversight on her part.

MR. MacGILLIS: It's an oversight in the fact that Alice didn't go in and correct the error that was made originally by --

MS. STUMBERGER: Right. We have some shared responsibility here?

MR. MacGILLIS: Exactly. I mean, that's where it comes down to. But I mean, building staff is here and that's what kind of puts us in an awkward position because -- actually building came to zoning and said we're going to apply for a variance. They felt awkward



because they missed it, but it's staff's position and it always has been if an error is made, the responsibility is shared both ways.

If you looked at the permit, it was submitted incorrectly. It should have been clear that his intent was only 4 feet or he reads the code or they should have handed him a section of the code that said it wasn't done and it's an oversight.

MS. STUMBERGER: Let me ask you this now. He said it cost him \$4,000 and an awful lot of labor. I mean, what do we expect him to do by denying this? Pull everything up and redo it again?

MR. MacGILLIS: To take the two feet off the top of the fence.

MR. RANZIE: Can I comment?

MS. STUMBERGER: I guess so. I'm not the Chairman.

MR. RANZIE: I'm glad they prepared this report because I was led to believe the entire time through talking with Alice and other people here in this building that this wasn't going to be a problem. So I wasn't prepared to defend this today.

However, on page 29 where they make the statement that the building permit in error created some confusion, in my type of business, if there's confusion why was the permit issued? Why wasn't it clarified before I received the permit? Why didn't someone contact me and telephone me and say, sir, this isn't clear, what are you actually trying to accomplish here? I don't know the codes. They're the experts; I'm not.

CHAIRMAN BASEHART: How was it caught? Was it at the inspection that it was caught or how was it --

MR. RANZIE: It didn't get caught until it was done a year later and the guy came for my final. That's how it got caught. I didn't know.

CHAIRMAN BASEHART: All right. Any other -- do you have anything else to add? Any other member of the Board have any questions? Then I guess we're ready for a motion.

MR. GERBER: Mr. Chairman, I make a motion we approve BOFA 2000-065.

MS. STUMBERGER: I'm going to second that motion.

CHAIRMAN BASEHART: Would the maker like to make reference to this criteria?

MR. GERBER: Yes. Specifically the reason why I'm in favor of this item is because on the various criteria, one of the examples of response is given specifically to number two, special circumstances and conditions that do not result from the actions of the applicant. One of the examples given is a staff error in the interpretation of the code and/or review of the application.

Unfortunately, that may have occurred here and I know it's a very difficult job that staff sometimes has, and sometimes mistakes happen. I'm not in any way pointing a finger. It's just that, it happened, and I don't think that this gentleman should bear the responsibility financially for that.

CHAIRMAN BASEHART: Okay. We have a motion and

we have a second. Is there any other -- oh, Mr. Gerber made the motion. Meril, did you --

MS. STUMBERGER: Yes, I seconded it.

CHAIRMAN BASEHART: Okay. Ms. Stumberger made the second. Any discussion? Okay.

All those in favor of the motion, indicate by saying aye.

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Motion carries unanimously.

MS. CAI: Staff would reserve the right to add a condition to this approval.

CHAIRMAN BASEHART: Okay. Why don't you tell us what the condition is and we'll see if that's acceptable to the motion.

MS. CAI: I have two conditions. The first one is by January 21, 2001, the applicant shall provide the building inspection section with a copy of the Board of Adjustment approval letter and a copy of the Site Plan presented to the Board simultaneously with a request for a final inspection on the existing fence along the front and side property line.

The second is, by March 21, 2001, the applicant shall obtain approval of the final inspection on the existing fence along the front and side property line.

CHAIRMAN BASEHART: Okay. Is that all acceptable to the applicant?

MR. RANZIE: Can I just make sure I understand it? Basically, I'm just going to get the approval from the Board and then go ahead and request a final inspection? That's it?

CHAIRMAN BASEHART: You'll get a letter signed by Jon indicating the Board's decision and then you need to provide that to the Building Department and you need to schedule and receive a final inspection, and you need to present a copy of the plan that the Board reviewed.

MR. RANZIE: Yes, sir.

CHAIRMAN BASEHART: Okay. It's acceptable?

MR. RANZIE: Yes.

CHAIRMAN BASEHART: Did I cover it?

MR. MacGILLIS: Yes.

CHAIRMAN BASEHART: Okay. Do you want to incorporate that in your motion and conditions?

MR. GERBER: Yeah, I'll incorporate that in my motion.

MS. STUMBERGER: I'll incorporate that in my second.

CHAIRMAN BASEHART: Okay. All those in -- well, I guess -- with the change in condition, let's have a vote on whether the Board accepts those two conditions.

All those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: That carries unanimously.

MR. RANZIE: Thank you.

CHAIRMAN BASEHART: Okay.

**STAFF RECOMMENDATIONS**

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

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

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

**NO.** The subject property is located at 16297 92nd Lane North, approximately 1000 feet east of Banyan Boulevard and 300 feet north of Murcott Boulevard, within unrecorded Royal Palm Beach Acreage, in the AR zoning district. The future land use zoning designation is RR-10 compatible with the AR zoning district. It currently supports a single family dwelling. On August 27, 1999, a building permit (B99022841) was issued to the applicant as an owner builder for the wooden fences along the front and side property lines. the Site Plan drawn by the owner builder was confusing in its delineation of the proposed fence location and fence height.

The required front setback for the subject house is 65 feet measured from the base building line. Therefore, 65 feet (30%) long fences out of the total 215 feet (100%) along both sides of the property lines are allowed for a maximum of 4 feet in height by code. The additional 2 foot height was discovered by the Code Enforcement officer during final building inspection on August 2, 2000. As a result, the applicant failed the final building inspection and is applying for a variance to allow it to remain.

The applicant's main justification is that the wooden fences were completed before the error was found by the building inspector. Based upon evaluation of this application, staff concluded that this property has no unique characteristics that would warrant special interpretation and application of the fence height limitation. There are other means to accomplish the applicant's desired goal for privacy/enclosing lot without the need for a variance. As previously stated, the applicant can create

privacy with planting trees and/or shrubs along the side property lines. This will provide instant visual screening from the adjacent property while complying with the code. 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 surrounding neighborhood to exceed the fence height limitation in the front yard.

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

**YES.** This **is** a self created situation. As previously indicated, there was a confusion leading to the Building Division's misinterpretation of the applicant's intent and issuing the permit in error. Had the Plan clearly delineated a 6 foot fence in the front yard, the Building staff would not have issued the permit. As shown on the Site Plan prepared by the applicant, there are 5 lines describing the fence including the height (4 feet) and a line with an arrow pointing to the base building line. There are another 3 lines of the description of the fence including the height (6 feet) and a line with an arrow pointing to the side property line to the place where is beyond the front yard. Therefore, it created some confusion for the Building staff to determine the fence height. The additional fence height not allowed by the code was discovered by the Code Enforcement officer during final building inspection. Consequently, the existing fences failed final inspection and required to be brought into compliance with code.

A fence height which adheres to the regulations in the ULDC (4 feet high in the front yard) is sufficient for maintaining adequate privacy in the front yard. There exists no outstanding circumstances, physical or otherwise, on or off the property which necessitates the existence of a 6 foot high fence. The applicant can install trees along easterly and westerly property lines where the fence has to be limited to 4 feet. This can accomplish the same goal and would not require a variance.

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.** Granting of the variance **will** grant a special privilege on the property owners. As previously indicated, studies showed that the 4

foot high fence is adequate to provide privacy needs as well as encourage resident interaction and association with one another. The ULDC provisions establish minimum regulations for residential lots to promote a sense of community and interaction between neighbors. If the variance is granted this would be a privilege to the property owner that the other property owners might try to pursue.

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

**NO.** The intent of the code provision to establish minimum fence height is to 1) eliminate visual barriers in the front yards; 2) ensure air and light to travel between the properties but not obstructed by solid barriers (fence); 3) deter visual barriers that isolate neighbors from each other; 4) create situations where crime can occur since neighbors cannot watch each other's properties from the street. Granting this variance request is contrary to the intent of the code provision. The literal interpretation and enforcement of the fence height requirement **will not** deprive the applicant of rights of fencing the property. The required 4 foot high fence in the front yard is sufficient to the subject property and **would not** work as an unnecessary and undue hardship.

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 approval of this variance request **is not** the minimum variance that will allow a reasonable use of the parcel of land, building or structure. A 4 foot high fence in the front yard (65 feet from the base building line or 30% of each side property line) is reasonable and adequate enough to serve as a privacy barrier between properties. 150 foot or 70% of the side property lines are allowed to be fenced up to 6 feet high. Therefore, denial of this variance request will still allow a reasonable use of this residential property. With the installation of trees and/or shrubs 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 fence height requirement. As previously indicated, the intent of the code requirement is to provide limited fence height and 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.

The intent of the Comprehensive Plan is to encourage residential development to improve and maintain living standards for people to better enjoy their community. Permitting a 6 foot high fence in a front yard fosters neighbor isolation which is not consistent with the purposes, goals, objectives and policies of the Comprehensive Plan and the ULDC.

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

**NO.** Granting the variance will negatively impact the surrounding area. The ULDC currently allows a fence height at 6 foot along the side yards and 4 foot in the front yard. The intent of this code provision is to protect the interests of both parties on opposite sides of the fences. As previously indicated, the applicant can achieve the same goal of buffering the two lots by installing trees and shrubs in the area adjacent to the fence without the need for a variance. Hopefully, this would help foster a better neighborhood relationship.

**ENGINEERING COMMENT**

No comment. (ENG)

**ZONING CONDITIONS**

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

CHAIRMAN BASEHART: That gets us down to the last item on the agenda and I see on the agenda that it's an appeal filed by Mr. Hertz, and I don't see him here. Under the circumstances --

MS. STUMBERGER: Did he withdraw it?

MR. MacGILLIS: Just for your information, Mr. Hertz also submitted an application to the zoning review section to go to the BCC to request waivers from the tower setbacks. So he was simultaneously doing both. So he's lost this denial. He's already in the process to go to the Board to request the waivers which he's indicating in this appeal that he believes the Zoning Director is interpreting it wrong and it shouldn't even apply to him on this tower issue.

CHAIRMAN BASEHART: Okay. Would your suggestion be that we postpone this or that we take an action on it?

MR. MacGILLIS: I mean, he was clearly notified. They called -- his office called two days ago for the staff report. It was sent to him and he clearly knows that it's here. I mean, I don't --

CHAIRMAN BASEHART: All right. In light of that, has everyone read the staff report?

MS. STUMBERGER: Yes.

CHAIRMAN BASEHART: Does anyone want to make a motion to either support or reject the staff's interpretation?

MS. STUMBERGER: I'll make a motion to deny --

MR. MacGILLIS: Just one second. I'll go and ask Bill what he wants to do.

CHAIRMAN BASEHART: Okay. I think you can tell him that what it appears is that the Board is ready to support the staff.

MS. BEEBE: We should probably hear staff first.

CHAIRMAN BASEHART: We've all read the report.

Do you want to make a presentation, Bill?

MR. WHITEFORD: Well, I mean, Cliff's not here and he knew about the meeting. I double checked to make sure that he was fully aware. This was something that we've been going back and forth over for months, and I'm surprised he's not here. Either he conceded, which I'm going to assume or --

CHAIRMAN BASEHART: That's what I like to do. If nobody says anything, I'd like to claim victory.

MR. WHITEFORD: Exactly. Or I'm going to think that something terrible has happened but we haven't heard from his office or anything else.

CHAIRMAN BASEHART: Before you talk, you haven't been sworn in.

MS. STUMBERGER: And let me just tell you what's happened so far, Bill. Bob asked if we all read the staff report, which we said we did, and I've already made a motion to deny it and take staff's position.

MR. WHITEFORD: That's fine by me. I mean, hopefully it was clear enough in the staff report what exactly the issue was and --

CHAIRMAN BASEHART: I think the staff report was well written and the issues pretty clear to me.

MR. WHITEFORD: In all fairness to Cliff, we attached his information so that his argument was fully presented as well.

MS. STUMBERGER: Right.

CHAIRMAN BASEHART: If you want to make just a

couple minutes presentation, but you have to be sworn in.

MS. BEEBE: Are you going to make a presentation?

MR. WHITEFORD: All I did --

MS. BEEBE: I want to clarify something on the record. So if you do want to go under oath rather quickly that he was appropriately sent a notice.

MR. WHITEFORD: Okay, sure, I'll go under oath.

CHAIRMAN BASEHART: You want to swear him in?

(Whereupon, Mr. Whiteford was sworn in by Ms. Springer.)

CHAIRMAN BASEHART: Your name for the record?

MR. WHITEFORD: Bill Whiteford, Palm Beach County Zoning Director.

MS. STUMBERGER: Wait a minute. There's a motion on the floor to deny, taking staff's position. Do I have to withdraw that motion?

COURT REPORTER: I don't know if there was a second. There wasn't a second.

CHAIRMAN BASEHART: Why don't we just say the motion dies for lack of a second to give Mr. Whiteford an opportunity to present?

MS. STUMBERGER: That's exactly what happened.

MS. BEEBE: Just the first question. Did he receive an appropriate notice of hearing?

MR. MacGILLIS: His office did call Tuesday, I believe it was, and they requested the staff report and we faxed it to them. So he did receive the staff report. And he knew clearly when because I had numerous conversations with him in the last month and he clearly knew today was the day of the hearing.

MR. SEAMAN: And I might add that there was an e-mail sent to him saying that the staff report would be a v a i l a b l e D e c e m b e r 1 5 t h .

CHAIRMAN BASEHART: Okay. I believe that the record is clear that he was aware of the meeting. Okay. Bill.

MR. WHITEFORD: I'll give you a very short presentation or you saw the staff report. The issue was whether or not a tower can have a second 20% increase. Basically, it boils down to something very, very simple.

The code does allow a one-time 20% increase to a tower, allowed by staff, and without regard to meeting the separation or setback standards of the code. It's very clear.

There's another section of the code. This is the section that Cliff was arguing, that he thought applied in his case which we said it does not apply, and actually for two reasons.

The first is simply because the first 20%, you see those two 20%'s on here? The first scenario doesn't apply to Cliff's situation because his tower when it was built and approved under this code is required automatically to accommodate a second user. Code requires that of any tower approved under today's standards. So the first 20%, and I even brought a big old red pen, I was going to scratch out and show you that the first 20% doesn't even apply to Cliff's situation.

The second 20%, actually my opinion is that



section of the code doesn't apply to him at all. At that point you can draw a big old "X" through it. He doesn't fall under that scenario. Even if you wanted to say that it did apply to him, that 20% and this 20% are exactly the same. It's what he got.

There's no language down here in this section of the code which says without regard to separation or setback requirements. And we took the position that even if he was allowed the second 20%, that was your decision, he was allowed two 20% increases, he would have to meet the separation setback requirements.

And in his particular case, to do that he would have to get a waiver from the Board of County Commissioners and that's what he's trying to avoid.

CHAIRMAN BASEHART: Okay. Anybody have any questions or comments?

MR. WHITEFORD: I do have a staff recommended motion on the second page of our report.

MR. GERBER: I had one question because I'm in favor of denial based on the staff report, but for a different reason than you articulated.

I was under the impression from the staff report that Mr. Hertz's client comes down within 2B, but fails 2B because it would be subject to standard building permit review, but he's saying he's not subject to that. I mean, once it's built, it's existing, right? So he comes under 2B?

MR. WHITEFORD: Well, you could take that position and we don't because it was at the time the tower was approved, it was actually a proposed tower.

He fails to fall under that section of the code because he doesn't even meet this first criteria in this paragraph because he has no need to ever accommodate a second user because the code requires him when they get an approval under this ordinance to have a second user from the get-go. You could just basically draw a big "X" through that section of the code. It doesn't apply to him at all.

But if you took the position that it did, I could "X" out with my red marker the first 20%. That gives him one 20% increase which is the same thing he already got under another provision of the code.

MR. MacGILLIS: He's in his office right now. We just called him. I just wanted to see if he was on his way to come here.

MS. STUMBERGER: He's not coming?

MS. MOODY: He had it on his calendar for next week. He's wanting to request a 30 day postponement.

MR. MacGILLIS: As I said on the record, it was clear that the e-mails went to him, we talked to him yesterday.

MR. WHITEFORD: I've talked to him many, many times about this issue. I'm surprised that he made the mistake.

I will also tell you this, too, that the tower in question, out of an abundance of caution on Cliff's part, what they did do was they did submit a waiver application in the back. We have one. It's moving forward in the event you made a decision that this does not apply and

you sided with staff. He's in the process of actually requesting a waiver from the Board of County Commissioners.

CHAIRMAN BASEHART: Okay. Cliff's been around a long time.

MS. STUMBERGER: He knows.

CHAIRMAN BASEHART: He's been here at this Board of Adjustment many, many times and in the 25 years I've been around here, the Board has always met on the third Thursday of the month.

MR. WHITEFORD: I mean, I'm not going to pressure you either way, but I think he knew.

MS. STUMBERGER: Mr. Chairman, I'm going to make a motion here if you don't mind.

I'm going to make a motion to deny. Staff recommends that the Board of Adjustment uphold the decision that the required separation setback standards apply to height increases approved in accordance with section 6.4.D.22.D of the ULDC.

MR. PUZZITIELLO: Second.

CHAIRMAN BASEHART: Motion by Ms. Stumberger is to support the staff's position as she said into the record. And we have a second by Mr. Puzzitiello.

Is there any further discussion?

(No response.)

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

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no?

(No response.)

CHAIRMAN BASEHART: Show the motion carries unanimously.

CHAIRMAN BASEHART: Before we recess, the next item on the agenda -- the last item on the agenda is the approval of the attendance record. At the November meeting we had two absences, Mr. Jacobs was absent for business reasons and Mr. Wichinsky was absent also for business reasons.

Do we have a motion to accept those absences as approved?

MS. STUMBERGER: I'll make a motion to accept the approved absences.

CHAIRMAN BASEHART: Motion by Ms. Stumberger.

MS. CARDONE: Second.

CHAIRMAN BASEHART: Second by Ms. Cardone.

All those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Okay. That carries unanimously.

Do we have a motion for adjournment?

MS. STUMBERGER: So moved, Mr. Chairman.

MR. PUZZITIELLO: So moved.

CHAIRMAN BASEHART: We have a unanimous motion for adjournment, so we're adjourned.

(Whereupon, the meeting was adjourned at 11:10 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. (Bunny) 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 meeting and that the  
foregoing and annexed pages, 1 through 77, comprise a  
true and correct transcription of the Palm Beach County  
Board of Adjustment Meeting.

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 12th day of January, 2001.

\_\_\_\_\_  
Sophie M. Springer, Notary Public.

