

MINUTES OF THE

JANUARY 20, 2000

BOARD OF ADJUSTMENT MEETING

APPEARANCES:

BY BOARD MEMBERS

Stanley Misroch

Nancy Cardone

Glenn Wichinsky

Robert Basehart

Raymond Puzzitiello

Joseph Jacobs

CHAIR PERSON CHELLE KONYK

APPEARANCES BY

STAFF:

David Cuffe

Laura Beebe

Jon MacGillis

Mark Penney

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1 CHAIR PERSON KONYK: We're going to call the  
2 meeting to order. Call the meeting of the January 20, 2000,  
3 Board of Adjustment meeting to order. Start with a roll call  
4 and declaration of quorum.

5 MS. MOODY: Mr. Bob Basehart?

6 MR. BASEHART: Here.

7 MS. MOODY: Mr. Joseph Jacobs?

8 MR. JACOBS: Here.

9 MS. MOODY: Ms. Nancy Cardone?

10 MS. CARDONE: Here.

11 MS. MOODY: Mr. Raymond Puzzitiello?

12 MR. PUZZITIELLO: Here.

13 MS. MOODY: Mr. Glenn Wichinsky?

14 MR. WICHINSKY: Here.

15 MS. MOODY: Mr. Stanley Misroch?

16 MR. MISROCH: Here.

17 MS. MOODY: And Ms. Chelle Konyk?

18 CHAIR PERSON KONYK: Here.

19 I have before me proof of publication in the Palm  
20 Beach Post on January 2, 2000.

21 Next item on the agenda is remarks of the chairman.

22 For those of you who are not familiar with how the  
23 Board of Adjustment conducts its business, the meeting's  
24 divided into two parts, the consent and the regular agenda.  
25 Items on the consent agenda are items that have been  
26 recommended for approval by staff either with or without  
27 conditions, the applicant agrees with those conditions,  
28 there's no opposition from the public, and no Board member  
29 feels the item warrants a full hearing.

30 If the applicant does not agree with the conditions  
31 or there is opposition from the public or a Board member  
32 feels the item warrants a full hearing, the item will be  
33 pulled from the consent agenda and reordered to the regular  
34 agenda.

35 Items on the regular agenda are items that have  
36 been recommended for denial by staff or the applicant does  
37 not agree with the conditions or there's opposition from the  
38 public or a Board member feels the item warrants a full  
39 hearing. The item will be introduced by staff. The  
40 applicant will have an opportunity to make their  
41 presentation. The staff will make their presentation. At  
42 this point, we'll hear from the public. After the public  
43 portion of the hearing's closed, the Board members will have  
44 an opportunity to ask questions of the staff or the applicant  
45 and then vote on the item.

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

48 MR. MacGILLIS: You were handed out a corrected  
49 agenda this morning. The only difference is there's  
50 comments under the zoning director, and we've added the  
51 regular agenda item for the subdivision 96 item.

52 Under the zoning director comments, just to bring



1 CHAIR PERSON KONYK: Are there any changes to the  
2 agenda?

3 MR. MacGILLIS: No.

4 CHAIR PERSON KONYK: No. Okay.

5 First item on consent is BofA 2000001, Judy Ruddy,  
6 Timothy Shue, Greg Wittenberg & Reisa Rawls, to allow an  
7 existing pond to continue to encroach into the side interior  
8 setbacks.

9 Is the applicant present?

10 Would you come forward and give us your name for  
11 the record.

12 MS. RUDDY: Judy Ruddy.

13 CHAIR PERSON KONYK: The staff has recommended two  
14 conditions.

15 Do you understand and agree with those conditions?

16 MS. RUDDY: Yes.

17 CHAIR PERSON KONYK: Is there any letters?

18 MR. MacGILLIS: No letters.

19 CHAIR PERSON KONYK: Any opposition from the public?

20 (No response.)

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

23 (No response.)

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

26 MS. RUDDY: Okay. Thank you.

27

28 STAFF RECOMMENDATIONS

29

30 APPROVAL WITH CONDITIONS, based upon the following  
31 application of the standards enumerated in Article 5, Section  
32 5.7.E. of the Palm Beach County Unified Land Development Code  
33 (ULDC), which a petitioner must meet before the Board of  
34 Adjustment may authorize a variance.

35

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

37

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

42

43 YES. This variance application consists of two legal  
44 nonconforming 5 acre lots, Lots 703-1 & 703-2 in Loxahatchee  
45 Groves, Plat book 12, Page 29. The lots were platted in 1925  
46 as one 20 acre tract; however, in the 1970s were deeded into  
47 four 5 acre lots. The lots were divided prior to the  
48 adoption of the PBC Subdivision regulations and therefore  
49 replatting was not required. In addition, the Comp Plan  
50 designated this property as RR5 and the 1957 Zoning Code, in  
51 effect at the time the lots were subdivided required minimum  
52 of 5 acre lots. The lake was excavated sometime prior to





1 issue in October 1999 when the owners of Lot 703-1, Mr. Shue  
2 and Ms. Ruddy, submitted for a building permit for a single  
3 family house and were informed by the Building Division staff  
4 of the encroachment. The applicant was informed a variance  
5 for the encroachment would have to be obtained or the pond  
6 would have to be filled in order to establish the 15 foot  
7 side interior setback. It would not be feasible to fill the  
8 pond in since it would require hauling considerable fill into  
9 the site and not accomplishing an overall goal. Since the  
10 general intend of the 15 foot setbacks for ponds is to ensure  
11 adequate area for maintenance, land area to compensate for  
12 erosion and to allow room for someone to walk along the shore  
13 without fear of falling into the lake. Since this  
14 encroachment occurs towards the center of the lake, these  
15 general concerns are not an issue.

16  
17 Therefore, there are unique circumstances surrounding this  
18 lot that are unique to it and the other lots in the area.  
19 Ponds are a common feature of many rural residential lots in  
20 Loxahatchee Groves. The ponds were excavated prior to the  
21 County establishment of permitting and inspections by the  
22 County. The Zoning Code only made brief mention to ponds  
23 excavated on single family lots, such as the fill must remain  
24 on-site and the 25 foot setbacks.

25  
26 2. SPECIAL CIRCUMSTANCES AND CONDITIONS ARE THE RESULT OF  
27 ACTIONS OF THE APPLICANT:

28  
29 NO. The owners of Lot 703-1, Mr. Shue and Ms. Ruddy  
30 purchased the lot in October 1999 assuming in good faith that  
31 the pond was excavated according to codes and was not in  
32 violation. It was not until a building permit was submitted  
33 were they informed by the Building Division staff that the  
34 pond was encroaching their neighbors' lot. The owner of Lot  
35 703-2 has been aware of this situation and the need for a  
36 setback variance since their attempt to obtain a building  
37 permit in November 1997. Both property owners are now aware  
38 of the encroachment and have submitted this joint application  
39 to request the Board to approve the variance to allow the  
40 pond to remain as is without costly reconstruction and adding  
41 fill. The lake enhances both of these rural residential  
42 lots. The pond is located along the rear of the lot so it's  
43 away from the local street that provide access to these two  
44 lots. The pond meets all other setback requirements.

45  
46 Granting of this variance will allow both property owners to  
47 enjoy the pond as it currently exists. The owner of Lot  
48 703-1 had no part in the excavation and is simply trying to  
49 construct a home on the lot that will have a view to the  
50 pond.

51  
52 3. GRANTING THE VARIANCE SHALL CONFER UPON THE APPLICANT



1 applicants. The encroachment occurs towards the center of  
 2 the pond and therefore the concerns with safety and erosion  
 3 are not an issue.

4  
 5 Therefore, if the variance is granted, no special privilege  
 6 will be granted to the applicant. This is a unique situation  
 7 that is particular to this lot and pond.

8  
 9 4. A LITERAL INTERPRETATION AND ENFORCEMENT OF THE TERMS AND  
 10 PROVISIONS OF THIS CODE WILL DEPRIVE THE APPLICANT OF RIGHTS  
 11 COMMONLY ENJOYED BY OTHER PARCELS OF LAND IN THE SAME  
 12 DISTRICT, AND WOULD WORK AN UNNECESSARY AND UNDUE HARDSHIP:

13  
 14 YES. If the variance is denied, the applicant would have to  
 15 haul fill into the site to fill that portion of the pond that  
 16 encroaches the common property line. Other ponds have been  
 17 excavated in the county before the current ULDC requirements  
 18 were adopted that encroach property lines. Some have applied  
 19 and were granted variances for setback encroachment. The  
 20 fact there were no permitting or inspections required until  
 21 1992 in certain cases resulted in the contractor excavated  
 22 beyond the property line. As previously noted, at the time  
 23 the excavation occurred both lots were owned by the same  
 24 property owner, so the fact it crossed the common property  
 25 line might not have been an issue. It was not until the  
 26 owner of Lot 703-2 submitted for a building permit was the  
 27 encroachment discovered. The owners of lots 703-1 and 703-2  
 28 are required to correct the setback situation prior to the  
 29 final Certificate of Occupancy being issued for their homes.

30  
 31 5. THE APPROVAL OF VARIANCE IS THE MINIMUM VARIANCE THAT  
 32 WILL ALLOW A REASONABLE USE OF THE PARCEL OF LAND, BUILDING  
 33 OR STRUCTURE:

34  
 35 YES. As previously stated, the variance relief is only for  
 36 that portion of the lake that covers the common property line  
 37 of these two lots. The remainder of the lot complies with  
 38 the current ULDC setback requirement. The intent of the 15  
 39 foot setback is three-fold: To establish room to maintain  
 40 the lake from the shore, ensure a safe pedestrian access to  
 41 and along the lake and to compensate for future erosion.  
 42 Since the encroachment occurs toward the center of the lake,  
 43 all three concerns addressed by the required setback do not  
 44 apply in this particular situation.

45  
 46 Therefore, the variance application is the minimum necessary  
 47 to make a reasonable use of this existing pond.

48  
 49 6. GRANT OF THE VARIANCE WILL BE CONSISTENT WITH THE  
 50 PURPOSES, GOALS, OBJECTIVES AND POLICIES OF THE COMPREHENSIVE  
 51 PLAN AND THIS CODE:

52



1 Since there was not permitting or inspections required by the  
2 County until 1992, many ponds were excavated into setbacks.

3  
4 As stated in Number 5 above, the general intent of the code  
5 will be clearly met if this variance is granted.

6  
7 7. THE GRANT OF THE VARIANCE WILL BE INJURIOUS TO THE AREA  
8 INVOLVED OR OTHERWISE DETRIMENTAL TO THE PUBLIC WELFARE:

9  
10 NO. Many lots in the rural residential subdivisions in Palm  
11 Beach County support ponds. If the ponds were excavated  
12 prior to 1992, there were no permitting or inspections  
13 required. Many of these ponds exist and unless someone  
14 submits to the county a building permit on the lot, the fact  
15 the pond does encroach the setback discovered. The pond has  
16 existed for at least 10 years or more without any complaints  
17 from either property owner or adjacent property owners. The  
18 pond is an amenity to both lots and the granting of the  
19 variance will simply allow it to remain without costly  
20 filling.

21  
22 ENGINEERING COMMENT

23  
24 Note that there is no evidence in Land Development Division  
25 records of subdivision approval required to create the two  
26 separate lots as shown. (ENG).

27  
28 ZONING CONDITIONS

29  
30 1. The property owner shall provide the Building Division,  
31 Inspection Section, with a copy of the Board of Adjustment  
32 Result letter, prior to issuance of a final Certificate of  
33 Occupancy for the Single Family Dwelling on Lot 703-1,  
34 PR97-033402. (BLDG PERMIT-INSPECTIONS)

35  
36 2. When the final Certificate of Occupation is issued for  
37 the single family dwelling the variance shall be vested and  
38 no extension necessary (CO)

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45  
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48  
49 CHAIR PERSON KONYK: Next item on consent is BofA  
50 2000002, Kilday and Associates, agents for Jewish Federation  
51 of Palm Beach County, to allow two proposed wall signs on the  
52 front facades of the existing porte crochères at the entrance



1 explanation.

2 CHAIR PERSON KONYK: Any opposition from the  
3 public?

4 (No response.)

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

7 (No response.)

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

10

11 STAFF RECOMMENDATIONS

12

13 APPROVAL WITH CONDITIONS, based upon the following  
14 application of the standards enumerated in Article 5, Section  
15 5.7.E. of the Palm Beach County Unified Land Development Code  
16 (ULDC), which a petitioner must meet before the Board of  
17 Adjustment may authorize a variance.

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

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

25

26 YES. The subject property is located at 8500 Jog Rd.,  
27 approximately 0.2 miles north of NW 22nd Avenue, and East of  
28 Jog Road, within the Aberdeen PUD, in the RS/SE/PUD Zoning  
29 District. The subject structure is a Community Center within  
30 the PUD Civic Pod, which supports an adult & child daycare  
31 centers, general office, exercise room & community center,  
32 private elementary school, outdoor recreation as well as a  
33 roller rink and four tennis courts.

34

35 There exists two identical attached porte-cocheres extending  
36 approximately 15 feet from the main Community Center  
37 Structure. On the top/front facade of each porte-cochere is  
38 a 18 square foot wall signage consisting of the following  
39 letters: "Alex & Esther Gruber Jewish Community Campus."  
40 (Both wall signs were completed in October 1998). The  
41 applicant would like to add the names of new donors to the  
42 existing wall signage on each porte-cocheres.

43

44 The subject building is of a unique architectural design.  
45 This design, in conjunction with how the sign code is  
46 interpreted with respect to wall sign standards of the ULDC,  
47 effectively limits the available sign area. The building  
48 frontage along Jog Road includes numerous sharp angles and  
49 wall surface areas. While the Code would permit a sign of  
50 over 345 square feet on the main facade if the building was  
51 flat and less imaginative, this would infringe upon the  
52 architectural integrity of the building. If the





1 NO. The special circumstances are not the result of the  
 2 actions of the applicant. As previously stated, the  
 3 interpretation of the Code pertaining to wall signage  
 4 considers porte-cocheres, then a variance would not be  
 5 required. However, the proposed location provides the best  
 6 visibility for the sign.

7  
 8 The origin of this request is derived from the recent,  
 9 much-publicized financial contribution under the name of  
 10 Henry and Ida Hochman to the Jewish Community Campus. The  
 11 applicant is attempting to add the benefactor's name to the  
 12 short but distinguished list of philanthropists in the most  
 13 appropriate location, which in this case are two  
 14 porte-crocheres that act as entrance points into the subject  
 15 building.

16  
 17 3. GRANTING THE VARIANCE SHALL CONFER UPON THE APPLICANT  
 18 SPECIAL PRIVILEGE(S) DENIED BY THE COMPREHENSIVE PLAN AND  
 19 THIS CODE TO OTHER PARCELS OR LAND, BUILDINGS OR STRUCTURES,  
 20 IN THE SAME DISTRICT:

21  
 22 NO. Granting these variances will not confer any special  
 23 privileges upon the applicant denied by the Comprehensive  
 24 Plan or this Code. Other properties in this district that  
 25 share the unique dimensional aspects of this site are subject  
 26 to the same variance process. Other buildings of this size  
 27 (56, 816 sq.ft.), but lacking the architectural relief of  
 28 this structure (i.e., porte-crocheres), are permitted wall  
 29 signs of far greater proportions. For example, if the facade  
 30 to this building were flat facades benefit because they can  
 31 measure their entire "length" to calculate their sign square  
 32 footage. The proposed wall signage is not commercial in  
 33 nature but is being proposed in order to recognize an  
 34 extremely generous benefactor to the Campus.

35  
 36 4. A LITERAL INTERPRETATION AND ENFORCEMENT OF THE TERMS AND  
 37 PROVISIONS OF THIS CODE WILL DEPRIVE THE APPLICANT OF RIGHTS  
 38 COMMONLY ENJOYED BY OTHER PARCELS OF LAND IN THE SAME  
 39 DISTRICT, AND WOULD WORK AN UNNECESSARY AND UNDUE HARDSHIP:

40  
 41 YES. A literal interpretation and enforcement of the terms  
 42 and provisions of the Code would deprive the applicant of  
 43 rights commonly enjoyed by other parcels of land in the same  
 44 district and would work an undue hardship upon the property  
 45 owner. Other parcels of land in the same district are  
 46 permitted larger, more obtrusive signs on their buildings  
 47 provided that they design with flat facades to allow a  
 48 greater sign face area. The applicant, however, designed a  
 49 building that blends with the high standards of the  
 50 neighborhood. There is no other locations which will  
 51 adequately acknowledge the new benefactor's names other than  
 52 on the two porte-crochere entrances. The proposed wall



1 request for (8) inch and six (6) inch letters totaling 39  
 2 square feet of signage is the minimum possible size which  
 3 will permit visibility of the sign on a building of this size  
 4 to pedestrians. The proposed wall sign is over 160 feet from  
 5 Jog Road, thus making it virtually unreadable for the  
 6 roadway. As previously noted, a wall sign of over 345 square  
 7 feet could be permitted on the building if the building  
 8 design was flat and unimaginative. Furthermore, the proposed  
 9 eight (8) and six (6) inch letters are identical to the  
 10 existing letters found on the signage.

11  
 12 Granting of requested variance is the minimum and will not  
 13 adversely impact the surrounding uses.

14  
 15 6. GRANT OF THE VARIANCE WILL BE CONSISTENT WITH THE  
 16 PURPOSES, GOALS, OBJECTIVES AND POLICIES OF THE COMPREHENSIVE  
 17 PLAN AND THIS CODE:

18  
 19 YES. Granting the requested variance will be consistent with  
 20 the purposes, goals, and policies of the Comprehensive Plan  
 21 and the ULDC.

22  
 23 The intent of the code is to ensure that wall signage is in  
 24 proportion to the facade of the building and not to adversely  
 25 impact on the general public's welfare. The applicant's  
 26 proposed signage is being measured according to the area  
 27 available on each porte-crochere, these porte-crochere  
 28 represent a small portion of the overall building facade.  
 29 Therefore, the proposed signage will be within adequate  
 30 proportion to the entire facade.

31  
 32 This request is in accordance with the ULDC in that it would  
 33 allow a creative and flexible sign design that protects the  
 34 aesthetic appearance of Palm Beach County.

35  
 36 7. THE GRANT OF THE VARIANCE WILL BE INJURIOUS TO THE AREA  
 37 INVOLVED OR OTHERWISE DETRIMENTAL TO THE PUBLIC WELFARE:

38  
 39 NO. Granting the variance will not be injurious to the area  
 40 involved or otherwise detrimental to the public welfare  
 41 because a larger, more obtrusive sign may be located on the  
 42 building, as is currently permitted by Code.

43  
 44 As previously stated, the proposed wall sign will be located  
 45 over 160 feet from the Jog Road right-of-way. There is a more  
 46 than a sufficient distance to mitigate any unwanted  
 47 obstructions visible from the road. The subject building is  
 48 also separated a sufficient distance from surrounding  
 49 structures to have a minimal impact upon the overall  
 50 neighborhood.

51  
 52 ENGINEERING COMMENT



1 2. By October 20, 2000, the applicant shall apply for a  
 2 building permit for the two signs that are the subject of  
 3 this variance (BA2000-002). (DATE:MONITORING-BLDG-INTAKE)  
 4

5 3. By February 20, 2000, the applicant shall  
 6 administratively amend the site plan for the Civic Pod to  
 7 reflect the sign variance for the two wall signs and the  
 8 conditions of approval. (DATE: MONITORING-ZONING:BA)  
 9

10 4. The building permit for the wall sign on the porte  
 11 cocheres at the entrance to the community center building  
 12 within the Civic Pod, shall not exceed a total of 39 square  
 13 feet of surface area, as per the variance application  
 14 BA2000-002. (DATE:MONITORING-bldg permit)  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24

25 CHAIR PERSON KONYK: Next item on consent is BofA  
 26 000004, Donald Hearing, agent for AT&T --  
 27 (Inaudible mumbling.)

28 Okay. Sorry. I skipped one.

29 BofA 000003, Land Design South, as agent for  
 30 Piper's Glen, Limited Partnership, to allow vehicular access  
 31 to commercial facilities, from an arterial or collector road.

32 Is the applicant present?

33 MR. BENTZ: Yes.

34 CHAIR PERSON KONYK: Your name for the record?

35 MR. BENTZ: Bob Bentz.

36 CHAIR PERSON KONYK: The staff has recommended two  
 37 conditions.

38 Do you understand and agree with those conditions?

39 MR. BENTZ: Yes, we do.

40 CHAIR PERSON KONYK: And any letters?

41 MR. MacGILLIS: I just had two phone calls of  
 42 general questions regarding the access point. I answered  
 43 them.

44 CHAIR PERSON KONYK: Any opposition from the  
 45 public?

46 AUDIENCE MEMBER: Yes.

47 CHAIR PERSON KONYK: Okay.

48 We'll pull this item and re-order it to the regular  
 49 agenda, then it will become the first item on the regular  
 50 agenda.

51 THE WITNESS: Okay.

52 CHAIR PERSON KONYK: Okay. Next item on consent is



1 MR. HEARING: Yes, we do.

2 CHAIR PERSON KONYK: Any letters?

3 MR. MacGILLIS: There was four inquires, most of  
4 them it was just clarification of what exactly Unity of Title  
5 was. I've answered those questions. And there are no  
6 letters.

7 CHAIR PERSON KONYK: Any opposition from the  
8 public?

9 (No response.)

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

12 (No response.)

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

15

16 STAFF RECOMMENDATIONS

17

18 APPROVAL WITH CONDITIONS, based upon the following  
19 application of the standards enumerated in Article 5, Section  
20 5.7.E. of the Palm Beach County Unified Land Development Code  
21 (ULDC), which a petitioner must meet before the Board of  
22 Adjustment may authorize a variance.

23

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

25

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

30

31 YES. This overall 10.13 acre site is located at the  
32 southwest intersection of Glades Road and Boca Rio Road in  
33 the IL zoning district. The site was approved by the BCC in  
34 1984 a Special Exception for a PID, Planned Industrial  
35 Development. The site was approved for office/warehouse use.  
36 The majority of the site is currently constructed and known  
37 as the Boca Rio Center. Currently, AT&T is proposing to  
38 construct a building on the vacant 1.7 acre portion of the  
39 site which is located in the western section of the site.  
40 This request requires the applicant to file an application to  
41 DRC to amend the current approved Site Plan on file. The  
42 applicant filed and application to DRC earlier this year,  
43 however, had to withdraw it after using up the limit on  
44 postponements. The applicant was required by DRC condition  
45 of approval that prior to DRC certification of the Site Plan,  
46 a Unity of Control would be executed on the entire 10.13 acre  
47 site. The applicant's client, AT&T worked with the Boca Rio  
48 Center property owners to secure this approval. However,  
49 negotiations broke off when an agreement could not be  
50 obtained between the two property owners. The applicant met  
51 with County officials to determine what other steps could be  
52 taken to meet the MUPD Unity of Control provision. Staff





1 building. However, the applicant has been unable to obtain  
 2 DRC certification until a Unity of Control is executed for  
 3 the entire property.

4

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

7

8 NO. The applicant's client AT&T purchased the property in  
 9 1998 with the intent of constructing a building on the  
 10 undeveloped 1.7 acre portion of the site. However, after  
 11 submitting a DRC application to amend the certified Site Plan  
 12 on file, the Zoning Division staff informed the applicant  
 13 that the previously approved PID did not equate to a MUPD  
 14 under the ULDC. Therefore, the applicant would be required  
 15 to execute a Unity of Control on the entire 10.13 acre site.  
 16 The applicant requested 6 months of postponements from DRC in  
 17 order to meet with the other property owner on the site to  
 18 resolve the Unity of Control requirement. However, the  
 19 applicant states that the negotiations were unsuccessful.  
 20 The applicant then met with County officials to determine if  
 21 there was any other recourse to solving this requirement.  
 22 Staff informed the applicant the only other remedy would be  
 23 to seek variance relief.

24

25 The applicant in good faith has moved forward to obtain all  
 26 the necessary approvals for the proposed modification.  
 27 However, they have been unsuccessful in obtaining the Unity  
 28 of Control for the entire site. Without the Unity of  
 29 Control or variance relief the project cannot move forward.  
 30 AT&T states this site is critical in order to meet the long  
 31 distance demands of South Florida. The site was chosen  
 32 because of its location and the fact it had a previous  
 33 approval from the BCC which would accommodate this use  
 34 without lengthy public hearings.

35

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

40

41 NO. The granting of this variance will not confer any  
 42 special privilege on the applicant. The applicant is moving  
 43 forward in good faith to obtain all the necessary approvals  
 44 in order for this use to be implemented. The BCC approved  
 45 the office/warehouse use on this property 1984. The proposed  
 46 office use by AT&T is consistent with the permitted uses for  
 47 this zoning district and approval. The intent of the code  
 48 provision that a Unity of Control be executed on the entire  
 49 site is to ensure that the various property owners construct  
 50 consistent with the site plan and maintain the common areas.  
 51 The majority of the site is constructed and only the 1.7 acre  
 52 portion that AT&T proposed to develop is currently vacant.



1  
2 4. A LITERAL INTERPRETATION AND ENFORCEMENT OF THE TERMS AND  
3 PROVISIONS OF THIS CODE WILL DEPRIVE THE APPLICANT OF RIGHTS  
4 COMMONLY ENJOYED BY OTHER PARCELS OF LAND IN THE SAME  
5 DISTRICT, AND WOULD WORK AN UNNECESSARY AND UNDUE HARDSHIP:  
6

7 YES. The applicant has met with the other property owner on  
8 the site to enter into a Unity of Control Agreement as  
9 required under the current MUPD requirements. An agreement  
10 between the two property owners could not be obtained  
11 according to the applicant. When the original 10.13 acre  
12 project was approved, there was only one owner of the entire  
13 parcel. When the parcel was sold to a second party, it  
14 should have gone through subdivision review. However, this  
15 did not occur. When the applicant submitted the AT&T  
16 application to DRC in 1999 the fact that there are now two  
17 owners on the site became a certification issue. AT&T's  
18 request to modify the Site Plan through DRC could not proceed  
19 until a Unity of Control is executed on the entire 10.13 acre  
20 site. The applicant's client has tried to negotiate with the  
21 owner of Boca Rio Center, however, have been unable to come  
22 to an agreement. AT&T has to move forward with construction  
23 of this proposed facility. After meeting with County  
24 Officials to what other options were available to them, it  
25 was determined that if a Unity of Control could not be  
26 entered into, then variance was the only recourse available  
27 to AT&T. The applicant states in their justification that  
28 this site AT&T is proposing to develop was currently occupied  
29 by the PBC Water Utilities with the same access, without a  
30 Unity of Control. To require AT&T to enter into a Unity of  
31 Control, when the other property owner will not agree, has  
32 placed an undue hardship on the applicant's client. No  
33 further approvals can be obtained until this issue can be  
34 resolved.

35  
36 With recommended conditions of approval and considering the  
37 majority of the site is built-out, this request is  
38 reasonable.  
39

40 5. THE APPROVAL OF VARIANCE IS THE MINIMUM VARIANCE THAT  
41 WILL ALLOW A REASONABLE USE OF THE PARCEL OF LAND, BUILDING  
42 OR STRUCTURE:  
43

44 YES. The granting of this variance will allow the property  
45 owner to proceed with the necessary approval, permits and  
46 inspections. The applicant will be required to obtain DRC  
47 certification of a revised Site Plan that reflects how the  
48 site will be constructed. This site will have its own  
49 drainage, parking, landscaping, et cetera, from the rest of  
50 the site. Only access and frontage is shared by the rest of  
51 the project. The MUPD provisions of the ULDC now apply to  
52 this previously approved PID. The MUPD provisions require



1 portion undeveloped is the 1.7 acre parcel that AT&T is  
2 proposing to construct a new building on. The AT&T use is  
3 consistent permitted use for this MUPD zoning district and  
4 provided the necessary DRC approval is obtained to modify the  
5 site plan the variance request will be consistent with the  
6 code.

7  
8 The ULDC Unity of Control provision was not a requirement  
9 when the original project was approved. The original project  
10 was under one ownership. Also, the Unity of Control  
11 provision was not adopted into the ULDC until the later  
12 1980s. However, when AT&T purchased the 1.7 acre parcel, a  
13 new subdivision plan must be filed. In order to file a new  
14 subdivision plan, the certified site plan has to be amended  
15 to reflect the proposed modifications to the 1.7 acre portion  
16 of the site that AT&T owns.

17  
18 7. THE GRANT OF THE VARIANCE WILL BE INJURIOUS TO THE AREA  
19 INVOLVED OR OTHERWISE DETRIMENTAL TO THE PUBLIC WELFARE:

20  
21 NO. Granting this variance will not be injurious to the  
22 surrounding area. The request by the applicant to file a  
23 Unity of Control on the site will not be injurious to the  
24 surrounding residents. As previously stated, the intent of  
25 the Unity of Control is to insure that when there are  
26 different property owners, they agree to develop the site  
27 consistent with the Site Plan and maintain all common  
28 elements. The majority of this site is currently  
29 constructed. The AT&T building will be constructed on the  
30 currently vacant 1.17 acre portion of the site. The  
31 applicant will be required to file a subdivision plan and  
32 plat after DRC approval is obtained.

33  
34 ENGINEERING COMMENT

35  
36 Land Development Division has no record of any subdivision  
37 approval being granted to divide the original property  
38 included in Petition No. 84-30 into the subject lot and the  
39 residual of the original zoning petition property. It  
40 appears that the original property was still under single  
41 ownership until some time after February 1, 1990, when the  
42 basic definition of "subdivision" was amended to be the  
43 division of property, into two (2) or more lots. Note that  
44 in order to subdivide property, all common access and  
45 drainage features designed to serve more than one lot must be  
46 established in appropriate tracts or easements maintained by  
47 a property owners association or by all benefitting lot  
48 owners under appropriate joint maintenance and use covenants.

49  
50 ZONING CONDITIONS

51  
52 1. The property owner shall provide the Building Division



1 compliance with all property development regulations. The  
 2 approved Site Plan shall reflect the BA variance approval and  
 3 conditions. (DATE:MONITORING-ZONING/DRC)  
 4

5 3. The applicant shall obtain all necessary approvals (DRC,  
 6 subdivision), building permits and inspections. The property  
 7 owner agrees to develop the site consistent with the site  
 8 plan and to be party to maintaining all common areas,  
 9 consistent with the intent of the Unity of Control. (ONGOING)  
 10

11 4. In granting this approval, the Board of Adjustment relied  
 12 upon the oral and written representations of the Petitioner  
 13 both on the record and as part of the application process.  
 14 Deviations from or violations of these representations shall  
 15 cause the approval to be presented to the Board of Adjustment  
 16 for review under the compliance conditions of this approval.  
 17 (ONGOING-MONITORING-ZONING)  
 18

19 5. In order to vest this variance, the applicant will have  
 20 to obtain DRC certification of the amended site plan for  
 21 Petition 84-30(A) reflecting the proposed layout of the AT&T  
 22 use on the 1.7 acre portion of the site, by October 20, 2000.  
 23 (DATE:MONITORING-ZONING/BA)  
 24  
 25  
 26  
 27  
 28  
 29  
 30  
 31  
 32  
 33

34 CHAIR PERSON KONYK: The items on the consent  
 35 agenda are BofA 2000001, BofA 2000002, BofA 2000004.

36 Can I have a motion to approve the consent.

37 MR. BASEHART: I make a motion that the consent  
 38 agenda, as modified, without 2000003, be approved.

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

41 Do we have a second?

42 MR. JACOBS: Second.

43 MR. MISROCH: Second.

44 CHAIR PERSON KONYK: Second by Mr. Jacobs.

45 All those in favor?

46 (Panel indicates aye.)

47 CHAIR PERSON KONYK: Motion carries unanimously.

48 So those people who are here for those items are free to  
 49 leave.

50 The first item on the regular agenda is BofA  
 51 2000003, Land Design South.

52 And if staff would like to introduce the item.





1 Associates who is the owners of this property, and request  
2 for a variance. The variance is to permit access to this  
3 residential -- or, actually, to this PUD commercial parcel  
4 which is located within the Piper's Glen PUD to Jog Road.

5 And just, very briefly, the access point that we're  
6 asking for today, which is part of the variance, is to  
7 provide an access connection onto Jog Road from the this five  
8 and a quarter acre parcel, which is located at the northeast  
9 corner of Piper's Glen Boulevard and Jog Road.

10 There are a number of residents that are here to  
11 speak on this item today. And I think probably the biggest  
12 issue here is maybe a lack of understanding by some of these  
13 community residents. I know some of them have seen this item  
14 before. This item has been through the public hearing  
15 review, a relatively lengthy review. To give you a long  
16 story short, this item recently came off the Board of County  
17 Commissioners where the Board of County Commissioners  
18 approved the access point onto Jog Road, as we are asking for  
19 a variance from this board.

20 However, we also need a Board of Adjustment  
21 approval as well as the Board of County Commissioners  
22 approval. So, even though the Board of County Commissioners  
23 of Palm Beach County, the policy makers of the county have  
24 approved this access point, we still need a variance from the  
25 Board of Adjustment. And this is why we are here today  
26 requesting this variance from this Board.

27 To give you a brief overview -- and I think  
28 probably one of the most important issues is it separates the  
29 issues that we have today. The issues that the neighbors, I  
30 think, have is we don't have any commercial here or we don't  
31 want the shopping center here or we don't want, you know, the  
32 trucks entering the center here. That is not the issue today  
33 at all.

34 In fact, and, though they may disagree with my  
35 initial comment here; but it is true, our request today is  
36 actually going to make the situation better for the community  
37 residents that live in Piper's Glen Boulevard because we are  
38 pulling vehicles off of their internal roads within their  
39 community and are putting them onto a secondary access point  
40 onto Jog Road.

41 Let me give you a little bit of history on the  
42 overall development and tell you how we've gotten here today.  
43 And it does span twenty years. So it is a little -- somewhat  
44 of a long history on this property.

45 This parcel is, again, five and a quarter acres in  
46 size, and it is located at the northeast corner, as I  
47 mentioned, of Piper's Glen Boulevard and Jog Road. It is  
48 part of the larger Piper's Glen PUD. This PUD was approved  
49 twenty years ago in 1980 for, I believe, about six hundred  
50 and sixty acre and a couple thousand residential units.

51 At the time of the approval of that residential PUD  
52 and also today, in fact, you could designate within a



1 years ago. But the codes that we have today are not really  
2 applicable to this particular situation.

3 This parcel, again, is already zoned commercial in  
4 the county code. It already has an approved site plan for  
5 this property for this drawing right here, which is for --  
6 for all practical purposes, the same site plan for the most  
7 part that we have. So the issue today is not should there be  
8 commercial here or it is not a site planning issue because,  
9 again, the site plan is approved. The zoning is approved for  
10 this parcel.

11 In fact, it is less of an intense of a use than  
12 what could have gone on this property. A couple years ago  
13 there was an application to do a Winn Dixie, for example, on  
14 this property that was about ten thousand square feet greater  
15 than the request that we have received approvals for today on  
16 this particular parcel.

17 The variance request, once again, is one issue that  
18 we have before you today. And that is to provide a secondary  
19 access point into this admittedly dinosaur of a project from  
20 twenty years ago. Although, that's not that many years ago,  
21 certainly we have many code changes in that time period. And  
22 the issue is to provide, again, an additional access point,  
23 again, into this commercial parcel onto Jog Road to provide  
24 access to this parcel of land.

25 As I indicated to you a few minutes ago, this item  
26 has been through the ringer of reviews. It first went, of  
27 course, to staff; the county engineer's office and the county  
28 zoning department to review the access issue of providing an  
29 additional access point onto Jog Road. Both Palm Beach  
30 County zoning and engineering department recommended to the  
31 Zoning Commission and the Board of County Commissioners of  
32 Palm Beach County that we add the additional access onto this  
33 property.

34 Why did they recommend that? They recommended it  
35 for a variety of reasons. First off, the original intent of  
36 the PUD commercial parcel was to provide a very limited  
37 amount of commercial to serve a particular residential  
38 planned unit development and have it internal to the overall  
39 development itself. Here, we already have a parcel that's  
40 not internal. It's on the intersection of two major roads.  
41 And we can't put up a sign and say, the only person that  
42 comes here -- and you have to live in Piper's Glen to come to  
43 this commercial center. That's not the case. We all  
44 recognize the fact that people that live within this corridor  
45 along Jog Road will be accessing and utilizing this  
46 particular commercial development.

47 Prior to this variance and the County Commission  
48 review of this item, there was one access into this property  
49 off of Piper's Glen Boulevard. Piper's Glen Boulevard is a  
50 non-planned collector road. In other words, it is a  
51 residential street. It is designed to service the  
52 residential community of Piper's Glen Boulevard or PUD. It is



1           The request that we have today takes about fifteen  
2 to twenty-five percent of the traffic off of Piper's Glen  
3 Boulevard, which was never designed to provide access to a  
4 type of commercial parcel such as this and keeps it over on  
5 Jog Road where the cars will already be.

6           The secondary access point is very limited. It is  
7 a right-in/right-out only access. There's no median cuts.  
8 In other words, if you're coming from the north going south,  
9 you cannot turn directly into that access point. You still  
10 must go down to the intersection and enter the property off  
11 of Piper's Glen Boulevard. So it's really going to capture a  
12 limited amount of the vehicles entering and exiting this  
13 property. But whatever it does capture, it's going to remove  
14 and pull off of Piper's Glen Boulevard, which, again, is a  
15 residential street serving a residential community.

16           So recognizing the fact that we have an approved  
17 commercial parcel, the zoning and engineering staff of Palm  
18 Beach County recommended approval to the Board of County  
19 Commissioners and the Zoning Commission for the approval of  
20 the access point onto Jog Road. The Zoning Commission  
21 unanimously approved the access onto Jog. The Board of  
22 County Commissioners also approved the access on to Jog Road.

23           Today, as you know, we're before the Board of  
24 Adjustment for a variance request where we were on the  
25 consent agenda, again, recommended for approval by the County  
26 staff, again, engineering and zoning, for the additional  
27 access point to create a safer condition on this property to  
28 provide multiple access points into this retail center to  
29 improve the circulation of this property, to eliminate the  
30 stacking problem that we have on Piper's Glen Boulevard and  
31 to remove some of the vehicles off of its interior  
32 residential street, recognizing the fact, once again, that we  
33 have, again, a dinosaur of a project, one that really was  
34 approved twenty years ago under a different set of criteria  
35 but has to comply with today's requirements of the county  
36 code. That is why we are asking for the variance.

37           Technically, under today's code, not only could we  
38 not have access here, we could have no visibility from Jog  
39 Road. We could have no frontage on Jog Road. So, once  
40 again, this is simply a carry over of an old parcel. And we  
41 simply are trying to make it a better circulation system on  
42 the property itself.

43           Until conclusion, in addition to all the previous  
44 staff reports which I have a mentioned earlier on approvals  
45 we have received from the various different boards, we do  
46 agree with the conditions of approval that have been placed  
47 on this project by the staff for the variance request that we  
48 have before you today.

49           If there's any questions, I'll be more than happy  
50 to answer them. And, again, as a final reminder, the issue  
51 is not on the zoning. It's not on the site plan. It's on,  
52 simply, the issue of better circulation into this facility



1 they have access from Military Trail. They extend through El  
2 Clair Ranch Road, Jog Road, all the way over to Hagen Ranch  
3 Road. So it's a very, very, very long linear PUD. And the  
4 core serving that whole community is Piper's Glen Boulevard.

5 Across the street to the south is the Piper's Glen  
6 -- or the Westchester Golf Course, which is the country club  
7 for that golf course community. Immediately to the east of  
8 our community, is a residential development called the  
9 Enclave. The Enclave is a residential community that was  
10 constructed, I'd say, four or five years ago approximately.

11 AUDIENCE MEMBER: Two years.

12 MR. BENTZ: Two years. I'm sorry, two years ago.  
13 And I was corrected, obviously.

14 And, in fact, our firm, actually, was involved on  
15 the Enclave development.

16 AUDIENCE MEMBER: It's not finish either.

17 MR. BENTZ: In any case, it's a small  
18 development. In fact, this Enclave development originally  
19 was a -- I believe it was a nine hole pitch and put golf  
20 course. It was part of the Westchester Country Club. They  
21 came back in, modified it, and actually put residential units  
22 on that property.

23 Keep in mind it was approved two years ago, three  
24 years ago, whatever. This commercial, again, was approved  
25 twenty years ago.

26 CHAIR PERSON KONYK: We can't have any comments  
27 from the public right now.

28 MR. BENTZ: Did I answer your --

29 MR. WICHINSKY: Yeah. One more question and I'm  
30 going to refer to you also, Mr. Basehart, maybe he can peak  
31 my memory. The variance request that you're proposing is  
32 very similar, I believe, to something that's been before the  
33 Board before with the Mission Bay PUD, with their commercial  
34 property access point off of 441.

35 Do you remember that one, Bob?

36 MR. BASEHART: Actually, we've had a lot of them  
37 over the years. This old code provision is -- you know, it's  
38 created this kind of a problem in numerous cases. We had one  
39 in Jonathan's Landing. We had some in Wellington. We had  
40 Mission Bay.

41 MR. BENTZ: Logger's Run.

42 MR. BASEHART: Logger's Run. I mean, we've looked  
43 at this particular situation a lot of times before.

44 MR. BENTZ: And, by the way, about, I guess, maybe,  
45 two years ago, a year and a half ago, there's only about  
46 three or four of these situations that exist, that these  
47 dinosaurs -- although I keep referring to them as -- in Palm  
48 Beach County that are left. And, as I say, a year and a half  
49 ago, two years ago, the County Commission went back and  
50 modified the Unified Land Development Code to limit what you  
51 can do in these PUD commercial parcels. They limited the  
52 amount of square footage you can put there. They limited the





1 like, seventeen hundred acres, a couple hundred acres of  
2 commercial, the code was changed to allow the amount of PUD  
3 commercial to be based on the projected population of the PUD  
4 with a cap of three acres.

5 So now, the most you can get in a PUD, if it was a  
6 very large one, would be three acres. They also don't allow  
7 you to -- now you have to be completely internal, which, you  
8 know -- like, in Logger's Run, you know, which butted up  
9 against State Road 7, they had commercial on Glades Road and  
10 State Road 7 and Wellington on Forest Hill Boulevard and  
11 Logger's Run on Palmetto Park Road. That wouldn't be allowed  
12 anymore today.

13 CHAIR PERSON KONYK: Thank you.  
14 Staff?

15 MS. BEEBE: I don't believe he was put under oath.

16 MR. BASEHART: Did you raise your hand at the  
17 beginning of the meeting?

18 MR. BENTZ: No. But everything I said was the  
19 truth.

20 CHAIR PERSON KONYK: Let's just swear anybody that  
21 intends to speak on this item. Would you please stand and  
22 raise your right hand, and we'll swear you in.

23 (Audience speakers were duly sworn by the Court  
24 Reporter.)

25 CHAIR PERSON KONYK: Okay. Staff?

26 MR. MacGILLIS: Staff is recommending approval of  
27 this. As Mr. Bentz indicated, it was on the consent agenda.  
28 Our facts of finding are found on page thirty-two. And not  
29 to repeat what Mr. Bentz has gone over, staff does agree with  
30 his reasoning of the justification; and staff supports it.

31 It is a -- has a long history of development. It  
32 was approved twenty years ago under different code  
33 requirements. The condition of approval that was put on this  
34 site back which this project was approved only allowed access  
35 onto Piper's Glen Boulevard.

36 The applicant did go back to the Board. Staff was  
37 supporting it. The Board of County Commissioners did support  
38 taking that condition off, prohibiting them from even  
39 applying for a variance. So he's come back in here now to  
40 apply for the variance.

41 The circulation, we've provided you with two site  
42 plans on the project. On page thirty-six, which -- the  
43 proposed site plan is on the top, which shows the access  
44 point that he's proposing on Jog Road, which is towards the  
45 north part of the parcel. And, of course, access on Piper's  
46 Glen, which is towards the east property line along Piper's  
47 Glen.

48 As you can see, the circulation that's going to  
49 occur now will be much better. You're not going to have all  
50 the traffic ingressing and egressing at that one Piper's Glen  
51 access point, as Mr. Bentz indicated. There's possibly a  
52 stacking problem and you're having all the traffic coming out



1 looking at the history of this project, the fact that the  
2 project was permitted to be approved on a major intersection,  
3 the condition precluded him not from having the access point,  
4 but since he's gone back to -- recently to the Board, the  
5 Board supported this access point. Engineering reviewed it  
6 and zoning and feel that the improved circulation is  
7 significant enough that it warrants staff support and it's  
8 been met. The general intent of the code will be met.  
9 Because the original intent of that condition -- of the code  
10 provision when it was implemented was clearly not to allow  
11 large commercial tracts because underlying land use and  
12 zoning of this parcel is residential. It's not commercial.

13 However, in the '80s, a lot of the projects were  
14 approved because some of the planned unit developments were  
15 in existence prior to '73 when the PUD regulations were  
16 adopted. So the commercial was already there. It wouldn't  
17 be allowed today, so I think that something that we're going  
18 to have to take into affect that we're going to actually --  
19 from staff's perspective, a much better project, safer for  
20 the people using and the residence in the area.

21 CHAIR PERSON KONYK: I'm curious. What is going  
22 to be on this site? I know it doesn't matter. I'm just  
23 curious.

24 MR. BENTZ: Sure. This is a retail L-shaped  
25 building which, from what I understand, I believe is a  
26 hundred-percent pre-leased. There's a strong demand for --  
27 this is probably the fastest-growing area, as I know many of  
28 you know, in Palm Beach County right now along this corridor  
29 of Jog Road. It's south of Woolbright and north of Atlantic  
30 and Lake Ida.

31 This is a retail, L-shaped building. I know that  
32 there's a hairdresser in there. I know that there's a bagel  
33 shop that's leased space in there. I don't know what the  
34 other tenants are. The out parcel -- I call it an out parcel  
35 -- or leased parcel is proposed to be a drug store, an  
36 Eckerd's Drug stores.

37 CHAIR PERSON KONYK: How unusual.

38 MR. BENTZ: I know. Unique.

39 MR. MISROCH: I have just one question. The turn  
40 lane for a truck going south along Jog to get into that  
41 proposed additional entrance, what sort of turn lane do you  
42 have? The width and the how could a truck negotiate that  
43 turn without taking a wide sweep on Jog, which might  
44 interfere with traffic?

45 THE WITNESS: If the vehicle's going south?

46 MR. MISROCH: Yeah. The ones that will have to use  
47 that -- could use that entrance directly.

48 MR. BENTZ: It's probably -- again, most of you  
49 know, Jog Road was two lanes.

50 MR. MISROCH: I know.

51 MR. BENTZ: And today it's being widened to a  
52 six-lane, median-divided highway, which is the ultimate build



1 there's also no ability to do a median cut there. It's too  
2 close to the intersection and not enough stacking --  
3 MR. MISROCH: What I'm curious about is a truck  
4 making deliveries there making that turn.  
5 THE WITNESS: The turn here, you mean?  
6 MR. MISROCH: No, in the entrance.  
7 MR. BENTZ: Going north?  
8 MR. MISROCH: Yes.  
9 MR. BENTZ: Okay.  
10 MR. MISROCH: What sort of turn lane do you have;  
11 and, if some of these trucks take a wide sweep when they're  
12 going to make that kind of a turn, would he be interfering  
13 with north bound traffic when he does that?  
14 MR. BENTZ: The opening is thirty feet wide. A  
15 typical travel lane is ten feet wide. So it's roughly three  
16 travel lanes wide approximately to enter and exit the  
17 property. What the county commission requested and placed a  
18 condition on us -- I mean, they analyzed it fairly well.  
19 They put a condition saying that, if it was possible -- there  
20 are some major utility lines that do run up and down the east  
21 side of Jog Road. And their request of us and their  
22 condition to us was that, if those -- if we don't interfere  
23 with those power lines, they asked us to install -- put a  
24 condition on us to install a right-turn lane, not because it  
25 was needed. It is not required because of the peak turning  
26 movements, but simply as just an additional item to have.  
27 However, it's not clear whether that will be  
28 installed or not because of the fact that those utility lines  
29 that are currently along the Jog Road. Keep in mind Jog  
30 going north is three lanes wide. And I guess the  
31 easterly-most lane, I believe, is -- maybe Dave can correct  
32 me. Is it extra wide? The easterly lane? Or not? A bike  
33 lane or not?  
34 MR. CUFFE: It's probably fourteen feet.  
35 MR. BENTZ: Probably fourteen feet wide. So --  
36 MR. CUFFE: But I couldn't guarantee that.  
37 MR. BENTZ: So I guess the bottom line and maybe to  
38 answer your question us, you have three lanes of traffic,  
39 possibly a turn lane there to help and allow those vehicles  
40 to move right into the site.  
41 You still, of course, have the Piper's Glen  
42 Boulevard access. And, honestly, the people that service  
43 this site will come on a weekly basis. And they will become  
44 familiar with how to serve the property. Although it's our  
45 intent to pull as many vehicles as we can off of Piper's Glen  
46 Boulevard, we do acknowledge it's still -- that may be one of  
47 the primary service routes entering and exiting the property.  
48 So that's probably where the majority of the larger vehicles  
49 would enter.  
50 MR. MISROCH: Okay.  
51 MR. BASEHART: It would seem to me that, you know,  
52 because of the way the site is laid out, the service core for



1 -- if you're serving the rear of this facility, it's clearly  
2 the straight access into the property and then back out  
3 again. That would be the logical service route for the  
4 south.

5 MR. MISROCH: That answers it. Thank you.

6 CHAIR PERSON KONYK: We'll hear from the public  
7 now.

8 Get we get your name, for the record.

9 Your name, for the record.

10 MR. HOLZMAN: My name is Bob Holzman,  
11 H-o-l-z-m-a-n. I'm a resident of the Enclave. I did not  
12 expect to be speaking today, so my remarks will be  
13 extemporaneous. I will try to keep them brief and not as  
14 lengthy as the preceding gentleman.

15 Just to correct the situation here, the  
16 miscommunication. We do not object to this parcel being used  
17 as commercial property. That's not our major objection. We  
18 recognize that it's -- that it's allotted that kind of a  
19 treatment. What we do object to is -- I might say that we  
20 prefer that it not be used as a commercial property. But we  
21 object to the entrance and exit and other miscellaneous items  
22 off of Piper's Glen.

23 We approve of the access to the property coming off  
24 of Jog because we would prefer that most of the traffic be on  
25 the Jog entrance and exit. Go back and --

26 CHAIR PERSON KONYK: We're not here to hear about  
27 Piper's Glen. That's already approved. We're only here to  
28 hear about the Jog. So, basically, by objecting, you're  
29 telling -- the only basis for an objection that you-all would  
30 have is if you don't want the exit and the entrance from Jog  
31 Road.

32 If we deny this variance, you're only going to have  
33 the exit and the entrance from Piper's Glen. We have no  
34 control over the Piper's Glen exit or entrance. We have  
35 control, from this Board's standpoint, of the entrance and  
36 exit on Jog. We only have the authority to either approve  
37 the variance and allow the access from Jog Road or to deny  
38 the variance and to deny access from Jog Road. So I  
39 appreciate your concerns about Piper's Glen Boulevard, but  
40 they doesn't concern this Board.

41 MR. HOLZMAN: If I may?

42 As I sat here, I listened to many comments being  
43 made about the entrance on Piper's Glen, why it was located  
44 where it is, because they did not want stacking. You  
45 listened to that. I would appreciate you listening to us  
46 too. I understand. I understand what you're saying --

47 THE COURT: I understand you want to have a  
48 voice, but it's nothing that we can do anything about.

49 MR. HOLZMAN: I would like to state this and for  
50 the record --

51 CHAIR PERSON KONYK: Okay.

52 MR. HOLZMAN: We did not have the opportunity of





1 use, what's going there, how it's going there. The only  
2 thing that we have any jurisdiction over is whether or not  
3 they have access on Jog Road. And that's unfortunate maybe  
4 for all of you; but we have this come up -- you know, with  
5 the expansion in Palm Beach County -- I personally have lived  
6 here over twenty years. Bob's lived here for a hundred  
7 years, et cetera. We all lived here way back when before any  
8 of this was developed, back when we wouldn't even have  
9 imagined there being development on Jog Road. And the  
10 problem is is that, when these communities are being  
11 developed today, they're being developed under approvals that  
12 were made twenty or twenty-five years ago. Unfortunately,  
13 for all of you, you didn't -- you -- maybe --

14 MS. BUTLER: The developer never told us that.

15 CHAIR PERSON KONYK: Well, you know, it's not the  
16 developer's obligation. I mean, all this is public record.  
17 Before you buy a parcel of land, it's really your obligation  
18 to find out what's going on around you. And this was  
19 approved in 1980. There's nothing we can do to stop it. And  
20 it was approved with only the Piper's Glen access.

21 So now we're giving you some relief by allowing a  
22 variance to be heard that will give an access onto Jog Road.

23 MR. HOLZMAN: And we appreciate that.

24 CHAIR PERSON KONYK: That's great. We're glad to  
25 hear that.

26 MR. BASEHART: And just to add to what Chelle's  
27 saying, this is the Board of Adjustment. We're not the  
28 zoning commission. We don't -- our charges is not to make  
29 land use decisions on whether or not a use can go onto a  
30 piece of property.

31 MR. HOLZMAN: I understand.

32 MR. BASEHART: We also don't have site plan  
33 approval authority. The only thing that we can do and what  
34 we're charged with limiting our consideration to is whether  
35 or not a specific request for specific relief from a specific  
36 requirement of the code should or should not be granted. So  
37 the only thing that we can consider here today is whether or  
38 not to grant the variance to allow the driveway on Jog Road.

39 We can't say, but we're going to require you to  
40 close the one on Piper's Glenn because -- in fact, in  
41 compliance with the code, without the variance would require  
42 that that's the only place you could have a driveway. And we  
43 can't require them to close that driveway in return for  
44 relief to allow it on Jog Road. That's not what our decision  
45 is. Our decision is simply whether or not there's  
46 justification to grant the variance to allow the driveway on  
47 Jog, and that's the limit of what we can consider.

48 MR. HOLZMAN: Well, I think you've made that amply  
49 clear.

50 CHAIR PERSON KONYK: Thank you.

51 MR. HOLZMAN: I do have a question.

52 CHAIR PERSON KONYK: Okay.



1 whether or not commercial should go here was made over twenty  
2 years ago. That, I think is slightly longer than the appeal  
3 period which is, I think, thirty days.

4 MR. BASEHART: I don't know that, you know, there's  
5 any legal resource other than to potentially sue Palm Beach  
6 County for, you know, allowing commercial there.

7 CHAIR PERSON KONYK: I have a question. Maybe Bob  
8 can answer it. This was zoned for commercial twenty years  
9 ago. The only thing that you've changed -- what have you  
10 changed here, other than the variance request for Jog Road  
11 entrance? What else has been modified?

12 MR. BENTZ: Actually, we have some new conditions of  
13 approval requiring us to install more landscaping.

14 CHAIR PERSON KONYK: Okay. But I'm saying, as far  
15 as the commercial site is concerned --

16 MR. BENTZ: There's nothing changed.

17 CHAIR PERSON KONYK: -- there's nothing that's been  
18 changed? There was zoning changes on this parcel?

19 MR. BENTZ: The only thing that's changed is it's  
20 gotten more restrictive.

21 CHAIR PERSON KONYK: I understand that. But as far  
22 as the commercial being allowed, the commercial was allowed  
23 twenty years ago?

24 MR. BENTZ: Twenty years ago.

25 CHAIR PERSON KONYK: Nothing's changed as far as  
26 that? I mean, you didn't have to go in and get a different  
27 zoning class in order to put the commercial there --

28 MS. BUTLER: They changed where on Piper's Glen  
29 that entrance --

30 CHAIR PERSON KONYK: But that has nothing to do  
31 with whether or not there's commercial on the site. And that  
32 was my question.

33 So what I'm leading to here is, if there had been a  
34 change in zoning required for this property to go forward,  
35 that would have been your time to come forward and object to  
36 the commercial. Let's say it was residential being changed  
37 to commercial. That's when you could have objected. But  
38 this is has never been before zoning for those reasons.

39 MR. HOLZMAN: We went through this a year ago, I  
40 think, when Winn Dixie was involved. At that opportunity, we  
41 had a voice in the matter; and we got certain -- in case Winn  
42 Dixie was able to proceed, they gave us certain concessions  
43 as to where the entrance would be and what have you. At this  
44 point in time, we have not had an opportunity of expressing  
45 ourselves. So no concessions and there was input from us.  
46 This was just a fact of this is what they're going to do, and  
47 they're going to do it --

48 CHAIR PERSON KONYK: Your voice would have been at  
49 the county commission meeting when they approved this.  
50 That's when you would have had the voice.

51 MR. HOLZMAN: I guess we weren't aware of that.

52 MS. BUTLER: Why weren't we notified?



1 MR. HOLZMAN: We have none.  
2 CHAIR PERSON KONYK: None.  
3 MR. BASEHART: Why don't we let Laura answer that.  
4 MS. BEEBE: At this point, it's already been  
5 approved by the Board of County Commissioners and zoning  
6 commission. I don't know that there is any resource that you  
7 have.  
8 MR. HOLZMAN: Well, that's very comforting.  
9 MS. BEEBE: This has already been approved.  
10 MR. HOLZMAN: Thank you very much. We appreciate  
11 your time.  
12 CHAIR PERSON KONYK: Thank you.  
13 MR. HOLZMAN: Have a good day now.  
14 CHAIR PERSON KONYK: Thank you.  
15 MS. BUTLER: Linda Butler Enclave at Westchester.  
16 Since this is fait accompli, as it appears to be, I  
17 think what everyone was trying to say when I originally saw  
18 these plans, the entrance to Piper's Glen was not back here  
19 against the wall. This is only a ten-foot buffer. And then  
20 we have everybody's patio and back yard right there. It's  
21 only a ten-foot buffer from here.  
22 What the plans originally had was the entrance over  
23 here. This is what we're objecting to.  
24 CHAIR PERSON KONYK: Bob, is that correct? She's  
25 saying the entrance was right by Jog Road.  
26 MS. BUTLER: It was right here.  
27 CHAIR PERSON KONYK: Isn't that too close to the  
28 intersection?  
29 MS. BUTLER: They were going to put a right-hand  
30 lane in there, we were told by the site planner.  
31 CHAIR PERSON KONYK: What's the requirement for  
32 the distance from an intersection?  
33 MS. BUTLER: This is ten feet from our back yards,  
34 and this is what we object to, is the health hazard of the  
35 carbon monoxide and whatever else is emitted out of the cars  
36 and trucks going back and forth here. It was supposed to be  
37 here. So, since this is a fait accompli, we are now -- I'm  
38 presenting you with opposition to that variance on Jog Road  
39 until we get some say into where this entrance is going on  
40 Piper's Glen.  
41 MR. BASEHART: So your justification is that you  
42 want to hold that driveway hostage for moving the other one?  
43 MS. BUTLER: You bet. We have no other recourse.  
44 MS. MILLER: We don't have any recourse. We're  
45 going to be breathing everyone's fumes --  
46 MS. BUTLER: Carbon Monoxide and everybody else's  
47 fumes and dirty trucks and whatever. So here are my  
48 objections -- opposition.  
49 MR. JACOBS: It seems to me that you should be  
50 speaking in support of the variance because the effect of the  
51 variance is remove a certain amount of traffic --  
52 MS. BUTLER: Well, these trucks are going in this



1 I live in Country Greens at Westchester. And this is really  
2 -- it's not the Piper's Glen PUD. It is the Westchester PUD.  
3 And I am here to talk about why we're today, which is code.  
4 Code, which refers to the opening that Bob is requesting on  
5 Jog Road.

6 On the original site plan from Shalloway of  
7 8/11/87, one of the conditions, number three on there, said,  
8 shall not have access from Jog Road. Okay? When this  
9 problem came -- and I should say also I'm a member of COBRA.

10 CHAIR PERSON KONYK: You're not speaking for COBRA  
11 though --

12 MS. MILLER: No. I'm not speaking for COBRA.

13 CHAIR PERSON KONYK: -- you're speaking for your  
14 own community?

15 MS. MILLER: I am speaking here from my community.  
16 I have a letter here, if you'd like. I'm speaking --

17 CHAIR PERSON KONYK: Okay. That's fine. I just  
18 wanted to clarify that.

19 MS. MILLER: -- for County Green, hundred and fifty  
20 homes. Right.

21 We are concerned with traffic on Piper's Glen with  
22 all of the building going on there. I'm living there almost  
23 thirteen years; so, yes, I have seen a lot. You know,  
24 progress going on; and we're aware of that.

25 But we are here to talk about the opening and the  
26 revision of code. During the summer of 1998, I had contacted  
27 the county commissioners and said, we're very concerned about  
28 this. It said that there shall be no opening on Jog Road.  
29 So they had Ann Hochter of code revision division make a new  
30 proposal, which was passed on October 1st of 1998, stating --  
31 and the commissioners approved this -- there will not be an  
32 opening and access onto Jog Road. So this really is in  
33 violation of the code that they passed. So why are we here  
34 asking for this again?

35 Now, at the hearing, the last hearing, I was there.  
36 I spoke about this. There are two. And, I said, there are  
37 four communities, PUDs, that have commercial community  
38 centers in them. That's what this is. It's a commercial  
39 community center. It's really supposed to service the  
40 residents of Westchester.

41 We're aware that surrounding communities will be  
42 coming there too. But, in granting this variance, you will  
43 have communities that are south of us -- and, you know, Jog  
44 Road corridor is building up in leaps and bounds. You will  
45 have these people be coming down Jog Road in order to go into  
46 there. But, when they want to leave, they're going to leave  
47 off Piper's Glen because they want to go back south. So you  
48 are bringing excess traffic over to Piper's Glen over there  
49 at that corner.

50 Now, I had spoken with Ken Rogers too. And, I  
51 said, you know, you're using different guidelines at the  
52 front of Military Trail and Piper's Glen. You have one set





1 recognition. So that is what they're looking to attract, and  
2 that will bring extra traffic into Piper's Glen. So this is  
3 what I'm here to say.

4 CHAIR PERSON KONYK: Thank you. I appreciate it  
5 very much.

6 Bob, how many feet is it from Piper's Glen to that  
7 entrance on Jog?

8 MR. BENTZ: Approximately three hundred and fifty  
9 feet.

10 CHAIR PERSON KONYK: And there's no possibility of  
11 a Median cut so the people can travel south on Jog ?

12 MR. BENTZ: I'm sorry. Your question was: How far  
13 from here to here?

14 CHAIR PERSON KONYK: No, the other way.

15 MR. BENTZ: I'm sorry. I apologize.

16 Probably about the same. Probably about four  
17 hundred feet.

18 CHAIR PERSON KONYK: That can't have a median cut?

19 MR. BENTZ: No. I mean, it would Only benefit, of  
20 course, if there was a median cut there. But, because of the  
21 stacking lanes along Jog Road to enter into Piper's Glen  
22 Boulevard, there's not the ability to put in another median  
23 cut there.

24 Another note. I mean, we were requested by Palm  
25 Beach County to move the access point as far as we have to  
26 the east to allow as much stacking, as you can understand,  
27 for vehicles that are entering off of Piper's Glen Boulevard.

28 CHAIR PERSON KONYK: Right. And what's the  
29 stacking requirement? How many cars?

30 MR. BENTZ: Well, the turn lane -- keep in mind the  
31 turn lane that goes south from Piper's Glen Boulevard onto  
32 Jog Road. So that turn lane is about half of our frontage  
33 and the last half of another turn lane entering into our  
34 center. So, really, there would be -- if this was moved, you  
35 would be trying to turn left across that stacking area for  
36 cars exiting onto Jog Road. So that would be an obvious  
37 conflict.

38 CHAIR PERSON KONYK: Right.

39 MR. BENTZ: So, from a traffic circulation  
40 perspective, I mean, we must agree with the engineering  
41 department that it does make the most circulation sense to  
42 move it to the east to provide that stacking opportunity.  
43 Because, if it was moved again, you know, west there would  
44 not be the opportunity to put in a lane for vehicles  
45 entering.

46 CHAIR PERSON KONYK: Thank you.

47 Any questions from the Board?

48 (NO RESPONSE.)

49 CHAIR PERSON KONYK: Anyone prepared to make a  
50 motion on this item?

51 MS. BUTLER: Excuse me?

52 CHAIR PERSON KONYK: Yes.



1 on top of property values. As of this moment, if this is not  
2 changed, these people have just lost their property value.

3 CHAIR PERSON KONYK: Is there any other buffer  
4 plans than what's existing, Bob?

5 MS. BUTLER: Supposedly, what they told us --

6 CHAIR PERSON KONYK: Well, let's have Bob just tell  
7 us right now on the record under oath.

8 MS. BUTLER: But he doesn't always tell the truth.

9 CHAIR PERSON KONYK: Bob, tell me what's going to  
10 be there as a buffer.

11 MR. BENTZ: Okay. Actually, it's not going to be  
12 -- is a twenty-foot-wide landscape buffer.

13 CHAIR PERSON KONYK: The width is. What's the  
14 height?

15 MR. BENTZ: The width.

16 There is a six-foot high concrete block wall, a  
17 masonry wall which is going to run the entire length of the  
18 Enclave property line along here.

19 In addition to that, when we were before the county  
20 commission, the county commission required us, as a condition  
21 of approval, to increase the number of trees to fifteen feet  
22 on center along that property line.

23 And, as just an observation, this plan here  
24 actually has already been approved by Palm Beach County  
25 without that access with the lesser buffer along there.  
26 Because we wanted the additional access point and we went  
27 back to the county commission to get that, they took the  
28 opportunity to also beef up that buffer. So, not only are we  
29 reducing the number of trips that are going to impact upon  
30 that community, they also increase the size of that buffer  
31 for the residents.

32 Effectively everything we're doing is benefiting  
33 the community to the east of this project, so...

34 CHAIR PERSON KONYK: Thank you.

35 Any further questions?

36 MS. MILLER: Could I just add one thing?

37 CHAIR PERSON KONYK: Certainly.

38 MS. MILLER: There was one other thing at the last  
39 BCC hearing. There was another variance granted.

40 CHAIR PERSON KONYK: No variance was granted at  
41 the BCC hearing.

42 MS. MILLER: No. It said that it was supposed to  
43 be a ten-thousand-square-foot facility over here where  
44 supposedly the drug store is going to be.

45 CHAIR PERSON KONYK: Okay.

46 MS. MILLER: That's how the code was reworded in  
47 October 1, 1998. And they did ask for it to go to fifteen  
48 thousand, so there were two things -- two requests that you  
49 had at the last hearing. One was the opening on Jog and to  
50 increase that to fifteen thousand.

51 CHAIR PERSON KONYK: It didn't change it from  
52 residential to commercial?



1 MR. BASEHART: I'd like to make a motion that give  
2 a variance to 000003 be approved as recommended by staff as  
3 requested to allow the driveway on Jog Road. I believe that  
4 the applicant, as confirmed by the staff, has met the  
5 criteria for the granting of the variance. And I'd like to  
6 reiterate where the driveway goes or if a driveway goes on  
7 Piper's Glen Boulevard is not something that can be dealt  
8 with by this Board because that driveway is not being  
9 requested for a variance, and it meets code.

10 I'd also like to point out is that whether or not  
11 -- and you can see from the previously approved site plan --  
12 whether or not there was a driveway there on Piper's Glenn  
13 Boulevard wouldn't change the fact that that would be the  
14 service core for a commercial development. Whether or not  
15 there's a driveway at the far east end of the property on  
16 Piper's Glen Boulevard isn't going to change the orientation  
17 of the center, and there would always have been a service  
18 core, and that's where the delivery vehicles would have gone.

19 To move that driveway further west would only  
20 require a circuitous route to get there on the part of  
21 traffic on the site. I think, over all, the addition of the  
22 driveway onto Jog Road dramatically improves the situation,  
23 the performance -- the traffic performance of the facility  
24 for not only the center itself but for the benefit of the  
25 surrounding community. And that's the basis for my motion.

26 CHAIR PERSON KONYK: So your a motion is for  
27 approval of the variance BofA 20000003. And let me just  
28 briefly summarize that the staff report will become part of  
29 the record?

30 MR. BASEHART: Yes.

31 CHAIR PERSON KONYK: And your motion is for  
32 approval.

33 Do we've a second?

34 MR. PUZZITIELLO: Second.

35 CHAIR PERSON KONYK: Second by Mr. Puzzitiello.

36 Any discussion?

37 (NO RESPONSE.)

38 CHAIR PERSON KONYK: All those in favor?

39 MR. MacGILLIS: There's conditions.

40 CHAIR PERSON KONYK: There's no more conditions?

41 MR. MacGILLIS: No.

42 CHAIR PERSON KONYK: Okay. With the two conditions  
43 which you already said you understand and agree.

44 So your motion includes the conditions?

45 MR. BASEHART: Yes, it does.

46 CHAIR PERSON KONYK: And we have a second.

47 All those in favor.

48 (PANEL INDICATES AYE.)

49 CHAIR PERSON KONYK: Motion carries unanimously.

50 MS. MILLER: May I just ask something?

51 CHAIR PERSON KONYK: Sure.

52 MS. MILLER: Of those two conditions that Bob



1 to be issued because variances are only good for one year.  
2 And that's a condition; and then, secondly, that the final  
3 site plan that's presented to the DRC, commercial tract shall  
4 be consistent with the plan that was submitted to the Board  
5 of Adjustment.

6 CHAIR PERSON KONYK: You have a question?

7 MS. BUTLER: Yeah. I do.

8 Since I have handed the gentleman oppositions to  
9 this variance -- in other words, it was just an exercise in  
10 paperwork?

11 MR. BASEHART: No.

12 MS. BUTLER: We all oppose --

13 CHAIR PERSON KONYK: See what that does --

14 MS. BUTLER: -- and you just approved it.

15 CHAIR PERSON KONYK: That doesn't mean that we --  
16 just because you oppose doesn't mean that we have to deny it.

17 MS. BUTLER: That's what I'm saying.

18 CHAIR PERSON KONYK: Your opposition puts you on  
19 record as opposing it. Actually, when you first stepped  
20 forward and said that you opposed, your opposition creates  
21 the necessity for a full hearing rather than just being  
22 approved on the consent. So, technically, you could have put  
23 those letters of opposition forward at the very beginning.  
24 But your just standing up and saying you oppose was enough  
25 for us to pull it. So that's what it does.

26 MS. BUTLER: I offered to give them to the lady --

27 CHAIR PERSON KONYK: You have to do it in the  
28 process of the hearing. But the point is is you your  
29 opposition pulls it from the consent. Consent we could have  
30 just voted on it, and we would have never heard your  
31 arguments, and we would have never heard his or the staff's  
32 justification. Once you oppose, the item's pulled from the  
33 consent and reordered to the regular agenda, and then we have  
34 the full hearing.

35 MS. BUTLER: You know, just as a courtesy,  
36 wouldn't you have thought that with a community so close an  
37 area where they wanted to develop, which we had no opposition  
38 to it because everybody bought knowing it would be commercial  
39 -- that, as a courtesy, they would have included us, perhaps,  
40 in the site planning? No? You just do it.

41 CHAIR PERSON KONYK: It's very difficult to please  
42 everyone. And I think that Bob has demonstrated in the past  
43 that he does as much as he can to try to consider the  
44 community's concerns.

45 MS. BUTLER: Why did you put the driveway --

46 MR. BENTZ: I'd like to respond.

47 CHAIR PERSON KONYK: Okay.

48 MR. BENTZ: It's been two years almost that we have  
49 been working with COBRA in the local residential communities  
50 around this area. I know Rita miller has been part of that  
51 working with the community. And we have met with I don't  
52 know how many groups over how many months over the last two





1 understand you submitted a petition signed by people who were  
2 not --

3 MS. BUTLER: No. It's letters opposing approval of  
4 a variance.

5 MR. BASEHART: The fact is is that the  
6 consideration of variance is not a popularity contest.  
7 Something doesn't get approved or denied based on how the  
8 opposition and support stacks up. It's based on, you know,  
9 the technical issues and the criteria in the code for the  
10 granting of a variance.

11 And, often times, these things become a matter of  
12 competing interest. I understand that the people that live  
13 along the west edge of the Enclave would rather have the  
14 driveway further to the west.

15 MS. BUTLER: That's what was originally shown us --

16 MR. BASEHART: I understand that.

17 MS. BUTLER: -- when I went upstairs before I  
18 closed on my house --

19 MR. BASEHART: I understand that.

20 MS. BUTLER: -- that it was closer up there. This  
21 is a new change.

22 MR. BASEHART: Can I speak -- can I speak, please?

23 The fact is is that, I guess, at the time the  
24 original plan was submitted for that site, the county's  
25 access management standards weren't as strict as they are  
26 now. I don't know. Today, they like to keep driveways to  
27 facilities like this four or five hundred feet from an  
28 intersection where possible where the property isn't wide  
29 enough to accomplish that. You know, then what they require  
30 you to do is to move the driveway as far away from the  
31 intersection as possible.

32 I think overall in terms of the interest of the  
33 motoring public and all the people that use that intersection  
34 and all the people that use that shopping center, it's far  
35 better to have the driveway where the county's required it to  
36 be from a safety and a functional point of view.

37 And that interest, of course, competes with the  
38 interest of people that live along the east edge of the site,  
39 you know. But I think in terms of the balance of interest,  
40 the community is far better off with the driveway where it's  
41 been planned.

42 But, nonetheless, that's not our decision. That's  
43 not what was on the agenda this morning, only the Jog Road.

44 MS. BUTLER: I understand. I appreciate you  
45 answering.

46 CHAIR PERSON KONYK: And the other thing is, we  
47 rely on staff because, in order for the staff to recommend an  
48 item on consent or recommend an item for approval, they have  
49 gone over the seven criteria. There's seven specific  
50 criteria that all have to be met in order for someone to be  
51 able to get a variance. So staff has assured us that all  
52 seven criteria have been met.



1 project manager, which I was. If people called me and said  
2 you wanted a copy of the report, secretary faxes it to  
3 people. Or I -- I went over it with some -- several ladies  
4 on the phone how called and asked me. I went through the why  
5 we were recommending approval on it.

6 But that's the whole purpose of these is a courtesy  
7 note to let you know. And it says right on there, if you  
8 have any questions, please call us.

9 MS. BUTLER: Courtesy --

10 MR. MacGILLIS: Right.

11 I, unfortunately, didn't get any calls from these  
12 people who are in here, that I know of, because I returned  
13 all the calls that I got from the concerned residents. So  
14 that's why it was on the consent.

15 MS. BUTLER: They're signed.

16 MR. MacGILLIS: Right. If we had got this back  
17 before, this item wouldn't be on the consent agenda. It  
18 would have on the regular agenda item, and Mr. Bentz would  
19 have been notified a week before the meeting that we were  
20 getting letters from concerned residents. But, since I  
21 didn't get these, the only two that I got, I addressed them  
22 to the lady; and she was okay with what I said to her.

23 MR. HOLZMAN: We just received ours two days ago.

24 MR. MacGILLIS: That's the mail system. We mail  
25 them out the same day the legal ad --

26 MR. HOLZMAN: No. It was the wrong address.

27 MR. MacGILLIS: Well, we use the latest tax  
28 collector's lift from downtown. That's what we use.

29 CHAIR PERSON KONYK: Right. But that wouldn't  
30 have changed the fact that -- all that would have done was  
31 gotten you a regular hearing, rather than an item approved on  
32 consent.

33 We're done with this. Sorry.

34 AUDIENCE MEMBER: Could I ask a question? I just  
35 have a question.

36 CHAIR PERSON KONYK: All right.

37 AUDIENCE MEMBER: I know it's buyer beware but --

38 CHAIR PERSON KONYK: Correct.

39 AUDIENCE MEMBER: -- it there a requirement or is  
40 it just honesty, I guess, or integrity that a developer  
41 should say that ten feet from your back yard -- I don't have  
42 a back yard there, so --

43 CHAIR PERSON KONYK: Right.

44 AUDIENCE MEMBER: But ten feet from your back yard  
45 there will be --

46 CHAIR PERSON KONYK: Obviously, when they were  
47 building those homes, they didn't know that the entrance was  
48 going to be ten feet from the back yard.

49 My only suggestion to anybody buying a piece of  
50 property anywhere in an area that's being developed as  
51 quickly as our area is being developed is don't ever buy a  
52 piece of property next to a piece of vacant land because the



1 CHAIR PERSON KONYK: I appreciate the fact that  
2 you-all came out today. And we have another hearing here  
3 and --

4 MS. BUTLER: Thank you.

5 CHAIR PERSON KONYK: I think down the road, you'll  
6 be happy that the Jog Road entrance is there. And maybe  
7 people will find it more convenient hopefully.

8 MS. BUTLER: Maybe we can work with Mr. Bentz on  
9 the site.

10 CHAIR PERSON KONYK: Thank you and have a great  
11 day.

12  
13 STAFF RECOMMENDATIONS

14  
15 APPROVAL WITH CONDITIONS, based upon the following  
16 application of the standards enumerated in Article 5, Section  
17 5.7.E. of the Palm Beach County Unified Land Development Code  
18 (ULDC), which a petitioner must meet before the Board of  
19 Adjustment may authorize a variance.

20  
21 ANALYSIS OF ARTICLE 5, SECTION 5.7.E VARIANCE STANDARDS

22  
23 1. SPECIAL CONDITIONS AND CIRCUMSTANCES EXIST THAT ARE  
24 PECULIAR TO THE PARCEL OF LAND, BUILDING OR STRUCTURE, THAT  
25 ARE NOT APPLICABLE TO OTHER PARCELS OF LAND, STRUCTURES OR  
26 BUILDINGS IN THE SAME DISTRICT:

27  
28 YES. There are special conditions and circumstances that  
29 exist on this parcel of land that warrant special  
30 consideration when applying the literal interpretation of the  
31 code provision related to access to a commercial pod in a  
32 PUD. The Piper's Glen PUD was approved in 1980, (Petition  
33 80-212) pursuant to the 73-2 Zoning Code. However, since  
34 this is an undeveloped parcel it must be developed under the  
35 current ULDC PUD provisions. This 5.14 acre PUD commercial  
36 pod was shown on the Master Plan since 1980 in this  
37 particular location at the north east intersection of Jog  
38 Road and Piper's Glen Blvd. The Master Plan was approved  
39 with only one access point into the commercial pod from  
40 Piper's Glen Blvd. The ULDC provision restricting access,  
41 frontage or visibility to a arterial or collector road (Jog  
42 Road and Piper's Glen Boulevard) is to limit the users of the  
43 commercial pod to residents of this particular PUD. However,  
44 the fact the Master Plan has already approved the commercial  
45 tract at a major intersection having both visibility and  
46 access has eroded the literal intent of this code provision.  
47 Also the fact that one access point is currently approved  
48 onto Piper's Glen Blvd., which is a collector road, which is  
49 a major east/west road that is traveled by people outside the  
50 PUD. If the variance for the additional access point to this  
51 commercial pod is ot approved, the site will still have  
52 visibility, frontage and access to a major collector road,



1 property and its location on a major intersection having an  
2 ingress/egress point onto both Jog Road and Piper's Glen  
3 ensures traffic flow approach, accessing, and traveling the  
4 site will be safe and efficient. Having only the one access  
5 point that is currently approved onto Piper's Glen could  
6 result in traffic stacking onto the road as they try to enter  
7 and leave the site. The applicant has submitted a letter  
8 from a registered Engineer (See back-up material for letter)  
9 stating the two access points will ensure a better site  
10 design. The PBC Engineering Department also recognizes that  
11 the proposed access point onto Jog Road will allow for a  
12 better traffic circulation. Also the Zoning Division staff  
13 has reviewed the general layout of the access point, parking  
14 and building location and agrees that the proposed additional  
15 access point to the site will improve on-site vehicular  
16 circulation.

17  
18 2. SPECIAL CIRCUMSTANCES AND CONDITIONS ARE THE RESULT OF  
19 ACTIONS OF THE APPLICANT:

20  
21 NO. The applicant is requesting a variance to allow an  
22 access point onto Jog Road from this vacant PUD commercial  
23 POD to ensure the overall site design is safe in terms of  
24 vehicles approaching the site off both Jog Road and Piper's  
25 Glen Blvd. As well as maneuvering the site parking lot and  
26 access aisles. The site will comply with all other required  
27 property development regulations. The applicant states that  
28 this is not a self created circumstance since when the  
29 commercial pod was approved by the PBC, Jog Road was not a  
30 major road. Furthermore, when the original approval was  
31 granted, the commercial parcel met all required property  
32 development regulations. With the adoption of new PUD  
33 regulations by the county and the fact this parcel was never  
34 developed it must comply with current regulations. By  
35 applying the literal interpretation to the PUD commercial pod  
36 location criteria (no frontage, access or visibility to a  
37 arterial or collector road) to this site places a burden on  
38 the property owner. Although there is currently an approved  
39 Site plan for this site that shows approximately the same  
40 square footage and site design it is approved for only the  
41 one access point onto Piper's Glen Blvd. The applicant went  
42 to the Board of County Commission in 1999 to delete a prior  
43 BCC condition on the PUD that restricted any access onto Jog  
44 Road to the commercial parcel. The BCC had to approve the  
45 deletion of this condition, which was required prior tot he  
46 Board of Adjustment being able to consider the variance  
47 request.

48  
49 Therefore, the applicant is proposing to design a site that  
50 will support uses that will service the surrounding community  
51 rather than just the PUD. The fact the parcel is located at  
52 the intersection of two major streets places design





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

5  
 6 NO. Historically the Board of Adjustment has had to consider  
 7 other similar variance requests when the conditions were  
 8 consistent with the request. Both county staff, Board of  
 9 County Commission and Board of Adjustment have carefully  
 10 reviewed other PUD's that have had commercial tracts that had  
 11 approved Master Plans showing access onto a arterial or  
 12 collector roads. Special consideration to the variance  
 13 request was given to whether or not there was already one  
 14 access point approved onto a arterial or collector street, if  
 15 there was visibility or frontage onto the major street and  
 16 the types of uses being proposed for the property. In this  
 17 particular situation there is already frontage, access and  
 18 visibility onto Piper's Glen Blvd. Also the uses being  
 19 proposed for the site have been modified by the applicant at  
 20 staff's request to be more neighborhood orientated instead of  
 21 recognized national retail stores. The site plan has been  
 22 carefully reviewed to determine if the currently approved one  
 23 access point would be efficient to ensure safe and efficient  
 24 on-site vehicular and pedestrian circulation. It is the  
 25 conclusion of Zoning staff that the proposed layout with two  
 26 access points will be a significant improvement to ensure  
 27 safe vehicular flow on the site and on Jog Road and Piper's  
 28 Glen Blvd.

29  
 30 Therefore, granting of this variance to allow an additional  
 31 access point onto Jog Road will not grant a special privilege  
 32 to the applicant. If the variance is granted, the applicant  
 33 will be required to receive DRC certification of the revised  
 34 site plan. The proposed site plan with the two access points  
 35 will provide for safer vehicular circulation on-site and  
 36 improve the flow of traffic at this major intersection by  
 37 allowing users of the site to enter the site at two points  
 38 rather than one.

39  
 40 4. A LITERAL INTERPRETATION AND ENFORCEMENT OF THE TERMS AND  
 41 PROVISIONS OF THIS CODE WILL DEPRIVE THE APPLICANT OF RIGHTS  
 42 COMMONLY ENJOYED BY OTHER PARCELS OF LAND IN THE SAME  
 43 DISTRICT, AND WOULD WORK AN UNNECESSARY AND UNDUE HARDSHIP:

44  
 45 YES. The applicant is seeking an additional access point to  
 46 this PUD commercial pod to ensure the site will function  
 47 properly in the future. When a property of this size is  
 48 located at a major intersection, access to the site is  
 49 critical in terms of how traffic will flow both off-site and  
 50 on-site. The applicant states, and staff concurs, the site  
 51 location currently does not comply with the current ULDC  
 52 provisions since it has both access visibility and frontage



1 the residents of the PUD. However, the Piper's Glen PUD was  
 2 approved in the early 1980s with the commercial tract located  
 3 at Jog Road and Piper's Glen Blvd.

4  
 5 The granting of the variance will allow the applicant to  
 6 design a site plan that addresses the traffic uses that will  
 7 be associated with this use when developed. The additional  
 8 access point will improve how users approach, enter and leave  
 9 the site in a safe manner.

10  
 11 5. THE APPROVAL OF VARIANCE IS THE MINIMUM VARIANCE THAT  
 12 WILL ALLOW A REASONABLE USE OF THE PARCEL OF LAND, BUILDING  
 13 OR STRUCTURE:

14  
 15 YES. The applicant has designed the site to comply with all  
 16 current ULDC requirements with the exception of the access  
 17 criteria. The additional access point will provide for a  
 18 more efficient design layout and traffic flow. The uses  
 19 being proposed by the applicant for this site will be  
 20 utilized by many of the residents of the surrounding  
 21 residential projects as well as those users traveling along  
 22 both Jog Road and Piper's Glen Blvd.

23  
 24 Therefore, the granting of this variance to allow an access  
 25 point onto Jog Road is the minimum variance to ensure the  
 26 site is planned to address safety for motorists and  
 27 pedestrians.

28  
 29 6. GRANT OF THE VARIANCE WILL BE CONSISTENT WITH THE  
 30 PURPOSES, GOALS, OBJECTIVES AND POLICIES OF THE COMPREHENSIVE  
 31 PLAN AND THIS CODE:

32  
 33 YES. The Master Plan for Piper's Glen PUD was approved in  
 34 1980 by the Board of County Commission. The Master Plan is  
 35 consistent with the underlying land use for this area. This  
 36 residential PUD has been site planned and constructed  
 37 consistent with the site plan. The commercial tract is  
 38 currently undeveloped. There is currently an approved Site  
 39 Plan for the parcel showing only the one access point onto  
 40 Piper's Glen Blvd. However, the applicant has consulted with  
 41 traffic engineers and determined that the site in order to  
 42 function efficiently in terms of traffic requires an  
 43 additional access point onto Jog Road. This will accomplish  
 44 several anticipated problems that will occur if only one  
 45 access point is allowed from Piper's Glen Blvd.: Possibility  
 46 of vehicles stacking on Piper's Glen Blvd., as they travel  
 47 west bound, as users try to enter and leave this site,  
 48 congestion at the intersection as users try to enter the site  
 49 from Piper's Glen Blvd., and on-site vehicular conflicts.  
 50 The general intent of the ULDC provision, the applicant is  
 51 seeking a variance from, was adopted after this commercial  
 52 parcel was approved on the Piper's Glen PUD Master Plan, in



1 user outside the PUD.

2  
3 Therefore, the intent of the variance process is to recognize  
4 that when applying the literal intent of a code provision  
5 would place an undue hardship on the applicant and deprive  
6 them of certain rights, this is the situation in this case,  
7 to deny the variance would still allow the same intensity of  
8 the site, same uses, however, would only create possible  
9 traffic congestion both off and on-site.

10  
11 7. THE GRANT OF THE VARIANCE WILL BE INJURIOUS TO THE AREA  
12 INVOLVED OR OTHERWISE DETRIMENTAL TO THE PUBLIC WELFARE:

13  
14 NO. The granting of the variance will not injurious to the  
15 surrounding area. In fact, the granting of this variance  
16 will improve the overall traffic flow both off and on-site.  
17 As previously stated under number 6 above, the use and  
18 intensity of this site is not an issue. The proposed use of  
19 the property for retail is permitted by the ULDC and will  
20 require DRC approval of the final site plan. If the variance  
21 is approved, the applicant will submit an application to DRC  
22 to amend the current site plan, which is generally the same  
23 layout as being presented to the Board of Adjustment, without  
24 the Jog Road access.

25  
26 Therefore, granting the variance for the additional access  
27 will allow for improved traffic circulation.

28  
29 ENGINEERING COMMENT

30  
31 No comment regarding the requested variance. However, it  
32 should be noted that in previous discussion with the BCC  
33 regarding addition of an access connection to Jog Road for  
34 the subject commercial tract, the Engineering Department  
35 agreed that a right-in/right-out connection with right turn  
36 lane (north bound) on Jog Road would create a better traffic  
37 circulation situation than access on Piper's Glen Boulevard  
38 only.

39  
40 ZONING CONDITIONS

- 41  
42 1. Prior to January 20, 2001, the applicant shall obtain a  
43 building permit for this site in order to vest The access  
44 point variance onto Jog Road. (DATE:MONITORING-bldg permit)  
45  
46 2. The final site plan presented to DRC for the Piper's Glen  
47 PUD 5 acre commercial tract shall be consistent with the plan  
48 presented to the Board of Adjustment (Site Plan, Exhibit 9).  
49 (DRC-Zoning)

50  
51  
52



1 Next item on regular agenda is SD96 petition of  
2 Meadow Lakes at Boca Raton homeowner's association and Levitt  
3 Homes for a variance from the requirement that the lake  
4 maintenance easement be graded at a slope no steeper than to  
5 eight to one.

6 Staff, want to introduce the item?

7 MR. CUFFE: Thank you for introducing the item.

8 CHAIR PERSON KONYK: Just that first part.

9 MR. CUFFE: This is a variance request for from the  
10 requirement -- the code requirement the lake maintenance  
11 easement be graded at a slope no steeper than eight  
12 horizontal to one vertical in order to allow the existing  
13 lake maintenance easement grading of up to 6.2 to 1 to remain  
14 in place.

15 CHAIR PERSON KONYK: Staff is recommending denial?

16 MR. CUFFE: Staff is recommending denial for --

17 CHAIR PERSON KONYK: We'll wait for that. Yeah.

18 Okay.

19 Anybody going to speak on this item stand and raise  
20 your right hand.

21 (AUDIENCE SWORN BY THE COURT REPORTER.)

22 CHAIR PERSON KONYK: Okay. Go ahead, Bob.

23 MR. BENTZ: Once again, for the record, Bob Bentz  
24 with Land Design South. And I'm here today representing  
25 co-applicants, Levitt Homes, who was the developer of the  
26 Meadow Lakes residential PUD as well as the Meadow Lakes  
27 homeowner's association. And with me today, the three  
28 gentleman would stood up a few minutes ago, you'll be happy  
29 to know are all supporting the project and are actually the  
30 applicants for the project.

31 We have the HOA's attorney, the president of the  
32 HOA for Meadow Lakes Homeowner's Association, as well as Mr.  
33 Sleek, who is the developer's representative from Levitt  
34 Homes. And, once again, they are the co-applicants. I'm  
35 representing them in the request that we have before you  
36 today.

37 I'd like to address two issues at the very  
38 beginning of this variance request. And the reason that  
39 we're presenting it to you is because staff, again, is  
40 recommending against the request. And I believe they're  
41 recommending opposed to it because we do deviate from what  
42 the code says we are required to have. I know it's been an  
43 engineering policy in the past that when you deviate, to  
44 typically recommend opposed to that variance request.

45 The request today that we have before you is two  
46 observations. Number one, it is our opinion that it is a  
47 curable situation. But the cure is worse than the problem  
48 that exists today on the site. And the second issue is that  
49 -- and I know engineering acknowledges the second issue -- is  
50 that it is a private-property-owner matter. The only people  
51 that are effected by it is the private Meadow Lakes  
52 Homeowner's Association. They own this area. They maintain





1 this is a copy of the site plan for the development. It is  
2 in Western Boca Raton, unincorporated Palm Beach County and  
3 Western Boca, off of U.S. 441 and State Road 7.

4 And the variance request that we have before you  
5 today is relevant to the lake maintenance easement slope  
6 which is located around the lake which is owned and  
7 maintained by the Meadow Lakes Homeowner's Association, once  
8 again, the co-applicant in the request.

9 Just to give you a little background knowledge --  
10 and I know the majority of you, if not all of you, are  
11 familiar with lake maintenance easements. But, just in case,  
12 just a real quick overview of what they are. The lake  
13 maintenance easement is an area that is twenty feet in width  
14 that runs around the outside edge of a lake area within  
15 what's called the water management tract. The residential  
16 lots do not encroach on to that area. They typically end at  
17 the lake maintenance easement area.

18 For example, in the two lakes that we have on this  
19 parcel, they have a twenty-foot lake maintenance easement  
20 running around the lakes. And, as the name implies, the  
21 purpose of these easement areas is to provide an access and a  
22 maintenance mechanism to be able to get out there and  
23 maintain the edge of the lake. It is to, not only mow the  
24 grass, but it is also to replace any damage that may happen  
25 or occur to the slope of the bank, any infrastructural  
26 improvements that have to occur. And, again, it is  
27 controlled, owned and maintained by the HOA.

28 In our particular case and the problem that exists  
29 occurred about five years ago during the development of the  
30 property. During the development of the site, instead of  
31 having not enough fill, our problem was they put too much  
32 fill on each of the home site lot's in the rear yards. And  
33 what happened in the back yards of the residential homes,  
34 they actually filled it a little too much. And, in turn,  
35 that raised the grade where the rear lot line met the lake  
36 maintenance easement six, seven inches in height. And so  
37 that grade, from the rear of these lot lines, where the lake  
38 maintenance edge begins down to the other end of the lake  
39 maintenance easement was off by about six, seven inches in  
40 it's overall vertical height.

41 Please keep in mind this is over a twenty-foot  
42 horizontal distance, so it's a very very very gradual  
43 difference. If you were out there to visually look at it,  
44 you could not visually tell that there is a grade -- at least  
45 I can't visually tell that there is a grade difference over  
46 what was required and what was actually constructed. But,  
47 when you finalize a job and you do your survey cross  
48 sections, of course, the problem arose and was identified on  
49 this project.

50 Just to give you an idea of what the code requires  
51 versus what we have. Once again, it's a twenty-foot-wide  
52 lake maintenance easement on a eight-to-one slope that allows



1 So there's certainly no problem in maintaining and mowing.  
2 Again, it's a very very gradual slope down towards the lake  
3 area. And this is an actual representation of what that  
4 slope is on the overall site.

5 The concern, of course, is that, if you need to do  
6 another things besides mow and maintenance the area, i.e.,  
7 get into the lake to do some repair work, that grading is  
8 what's considered to be the appropriate grading to take care  
9 of those maintenance issues on the rear of the area.

10 The cures that we have are a couple. And neither  
11 one of them, we believe, are good. Again, we think that the  
12 cure is worse than the problem that exists out there today.  
13 One cure, which is really an impossible cure, so I shouldn't  
14 call it a cure, would be to lower the rear lots of all of the  
15 homes that butt up to the lake by that six inches.

16 Now, of course, we cannot do that because they're  
17 all owned by the homeowners out there. And it's a sold-out  
18 community. And we, of course, have no legal right to go in  
19 everybody's back yard and cut out six inches of fill. They  
20 have, of course, pools and patios and play ground equipment  
21 and who knows what in their back yard. Of course, there's no  
22 legal ability to go in the rear yards and drop the  
23 dimensional down.

24 The only other option that we have is to come back  
25 right at this point and do a very -- just a little steep drop  
26 of about, you know, six, seven inches to get that grade back  
27 down from effectively the rear property line and cut that  
28 six, seven inches out of that area and regrade the whole lake  
29 maintenance easement down that dimensional distance, which  
30 you effectively would end up -- or result in would be a  
31 little step off of about six, seven inches from these  
32 people's rear property line down to what is this new,  
33 properly-graded lake maintenance easement area.

34 And, again, it's our belief that that cure, which  
35 is a potential cure to the problem, is worse then the problem  
36 of having it six to seven inches higher than what the code  
37 requires, again, over a twenty-foot dimensional area.

38 In conclusion, we do agree with the all of the  
39 conditions approval that have been recommended by the  
40 engineering department, if you do choose to approve this  
41 request which, of course, we would ask you to do today. As a  
42 reminder, again, this -- all the lake maintenance easement  
43 areas, the water management tracts, are owned by the Meadow  
44 Lakes Homeowner's Association. They have been deeded by  
45 Levitt Homes over to the HOA.

46 The HOA is the co-applicant with Levitt Homes in  
47 this request that we have before you today. They are willing  
48 to accept the grading as it exists today. They understand  
49 the conditions of approval. They, again, are requesting it.  
50 It is a private matter. It is internal to the overall Meadow  
51 Lakes community. Again, it is -- there's no maintenance  
52 obligation that the county has. Again, it's an HOA



1 what the criteria is for Palm Beach County.  
2 If you have any questions, I'd be more than happy  
3 to --  
4 MR. JACOBS: I have a few questions.  
5 CHAIR PERSON KONYK: I think Mr. Wichinsky has some  
6 questions.  
7 MR. JACOBS: I have some questions.  
8 CHAIR PERSON KONYK: Glenn's going to go first.  
9 MR. WICHINSKY: I have three or four quick  
10 questions.  
11 Where the lake maintenance easements are, are there  
12 any walking paths abutting the areas you're talking about.  
13 MR. BENTZ: The majority of the area is around the  
14 homes. Right in this area here, I believe there's a sidewalk  
15 when you first enter that does abut the lake maintenance  
16 easement area. But, other than that, that would be the only  
17 area.  
18 MR. WICHINSKY: Is this a family community?  
19 MR. BENTZ: It's an everything community.  
20 MR. WICHINSKY: Children?  
21 MR. BENTZ: There are children there, yes.  
22 MR. WICHINSKY: Bicycles, tricycles.  
23 MR. BENTZ: Anybody can live in this community,  
24 correct.  
25 Now, the only area where there's public access to  
26 the rear is this small area which is adjacent to the entry  
27 drive when you first come in.  
28 CHAIR PERSON KONYK: Because it's a lake  
29 maintenance easement, it's not open to the homeowners,  
30 correct?  
31 MR. BENTZ: Right.  
32 And for further clarification, the county has a  
33 series of criteria slopes that step down as you get into the  
34 lake. You know, first you have the eight-to-one slope, which  
35 we have a 6.2-to-1 slope, technically. That's a minimum.  
36 When you get to the top of the bank of the lake, it drops  
37 down to a four-to-one slope; and that extends down to two  
38 feet below the surface of the water. And the intent of the  
39 four-to-one slope is if somebody rolled into the lake, that  
40 it doesn't drop off and it's real steep. We do, you know,  
41 basically, meet the criteria of that lake slope.  
42 Then, of course, when you go below two feet in  
43 depth, then you go down to your normal two-to-one, I believe,  
44 slope.  
45 MR. WICHINSY: One other question.  
46 This variance was brought up five years ago and it  
47 was denied.  
48 MR. BENTZ: Right.  
49 MR. WICHINSKY: I'm just curious what sparked the  
50 recent --  
51 MR. BENTZ: The resubmittal?  
52 MR. WICHINSKY: Right.



1 development of the property. Levitt Homes would like to  
2 receive release of their bond because they have completed the  
3 entire project. It cannot receive release of that bond until  
4 we either receive a variance or we correct the slopes for the  
5 lake maintenance easement.

6 But, again, it is a request of both Levitt Homes  
7 and the association, which is different than what we had  
8 several years ago.

9 CHAIR PERSON KONYK: Mr. Jacobs?

10 MR. JACOBS: Yes. If the variance is not granted,  
11 what happens?

12 MR. BENTZ: What happens is Levitt Homes would go  
13 in; and they would regrade the slope and remove, roughly, six  
14 inches of fill at the upper end of that lake maintenance  
15 easement area as identified on this graph. Like, the area  
16 for the solid line would be removed.

17 MR. JACOBS: What does that cost?

18 MR. BENTZ: What is the cost of do that?

19 MR. SLEAK: I have no idea.

20 MR. BENTZ: You have no idea?

21 MR. SLEAK: For the record, I'm Harry Sleak, senior  
22 vice --

23 CHAIR PERSON KONYK: You were sworn in, correct.

24 MR. SLEAK: Yes. I stood up.

25 I'm senior vice president of Levitt Homes. To  
26 answer your question, to begin with, I would say the cost  
27 would be ten to fifteen thousand dollars. What we would have  
28 to do, there are few access points into the lake, one being  
29 right here. We would have to take bobcats along the back of  
30 these yards; basically, load up that six-inches of dirt;  
31 bring the bobcat back to this point and take it out to the  
32 street and put it in there.

33 Keep in mind, we're lowering the grade about that  
34 much right at the rear property line. We would have a little  
35 six-inch step right there.

36 Maybe I should be quiet and let him take over.

37 CHAIR PERSON KONYK: Yeah, that's probably a good  
38 idea.

39 Why don't we hear from staff.

40 MR. CUFFE: Bob actually covered the situation  
41 fairly well. Staff is recommending denial of this variance  
42 based on the failure of the applicant to actually demonstrate  
43 substantial conformance with the standards for granting of a  
44 variance. I think, as Bob has already said, this was a  
45 self-created condition by the developer at the time by  
46 grading -- by having the lake slopes -- or the lake  
47 maintenance easement was designed at the absolute maximum  
48 slope, the absolute maximum slope that's allowed code. And  
49 then it was further steepened by a desire to smooth off the  
50 rear -- or the rear lot grading of the adjacent lots.

51 The property owner's association, as the current  
52 owner, is entitled to these water management tracts, which





1 have not yet been acknowledged as complete. This project is  
2 still under a land development permit. The lake slope  
3 grading and lake maintenance easement was part of the  
4 required improvements. The county cannot acknowledge  
5 completion for something that is nonconforming, that is  
6 obviously nonconforming.

7 This was originally brought up with the developer  
8 -- back if 1995 when the developer was attempting to have the  
9 improvements acknowledged as complete. It's remained in the  
10 same situation. We originally tried to resolve by variance,  
11 which was denied at the time. And, in fact, the same  
12 situation -- continues to exist today.

13 There's nothing unique about this particular  
14 situation except for the length of time that the issue has  
15 been dragged out. The project's no different from any other  
16 recently completed project where the lake maintenance  
17 easement grading has been required to conform to code  
18 requirements. It is a self-created condition, fairly  
19 obviously, from the previous discussion. It was created by  
20 the developer and perpetuated by the owners of the property.

21 There would be no undue hardship that -- in  
22 correcting this situation because it's not within the  
23 individual lots. It's in the common area to begin with. The  
24 regrading would require, essentially, minimal earth work  
25 within the upland portion of the maintenance berm. And the  
26 work can be accomplished solely within the common area. No  
27 individual lot need be disturbed. Because, as far as the  
28 code, the standard is not met. And the intent of the code is  
29 to provide a flat, open perimeter berm for safe access in  
30 maneuvering a maintenance vehicle, not just for the  
31 maintenance of the berm by lawn mowers, but the purpose of  
32 the berm is to provide for maintenance access toward the  
33 water management tract for reconstruction. Regrading is  
34 necessary to repair erosion in the water management tract, to  
35 access the out-falls. That's the purpose of it. The fact  
36 that the grass can be mowed is really kind of incidental.

37 This is particularly critical in this area because  
38 of the tight turns of the lake corners and the proximity of a  
39 residential unit, it doesn't allow for any additional  
40 maneuvering room for vehicles. And, there again, the  
41 existing slopes already exceed the maximum allowable  
42 steepness and any further erosion or sluffing or settling  
43 along the shore, the berm would further increase the  
44 nonconformity.

45 MR. PUZZITIELLO: The six-inch step at the property  
46 line, you don't see that as a hazard more than the six-inch  
47 additional slope? I see more people tripping off that  
48 six-inch step and rolling into the lake than the way it is  
49 now.

50 MR. CUFFE: The cure on that, it may be a six-inch  
51 step. If you're talking a six-inch drop, the upper -- the  
52 last foot of the maintenance easement you can create a



1 the question of conformance of the code --

2 MR. BASEHART: But the variance is whether or not  
3 there's justification to deviate from the code.

4 Is this one of your soft denials or hard denials,  
5 Dave?

6 MR. CUFFE: It's a recommendation for denial because  
7 the conditions for -- we don't feel the conditions for  
8 granting the variance have been met.

9 CHAIR PERSON KONYK: Do you feel all seven  
10 conditions haven't been met or specific ones?

11 MR. CUFFE: We would agree that it's the minimum  
12 variance and the public welfare is not in danger.

13 CHAIR PERSON KONYK: And the other ones?

14 MR. CUFFE: The other ones, in accordance with the  
15 staff report as spelled out in the staff report, we don't  
16 feel have been met. There again, as Bob mentioned, if in  
17 fact the Board determines that a variance is justified, then  
18 we would recommend that it be made conditioned on the hold  
19 harmless agreement and the addition of Palm Beach County as  
20 additional insured, as specifically outlined in the staff  
21 report.

22 CHAIR PERSON KONYK: Over time, you know, ten  
23 years, five years, whatever I mean, let's say that that  
24 particular slope was eight-to-one when it's constructed and  
25 then, you know, approved, et cetera. Ten years from now  
26 would that still be eight-to-one or will it have changed? Is  
27 it going to stay eight-to-one just because it was  
28 eight-to-one when it was built the -- the reason I'm asking  
29 that question is that, in the past, we've had communities  
30 that have come forward for variances because they were  
31 completed, you know, twenty years ago. I realize this is ones  
32 from the beginning. And the lake slopes aren't correct  
33 because maybe at the time that they were completed, it was  
34 correct; but erosion, et cetera, has change the slope. Even  
35 if they were to bring this to an eight-to-one slope today,  
36 what's to say it's going to still be an eight-to-one slope in  
37 ten years?

38 MR. CUFFE: There's no way to say unless they  
39 maintain it at an eight-to-on slope.

40 CHAIR PERSON KONYK: Mr. Jacobs.

41 MR. JACOBS: The whole thing, as I understand it,  
42 comes about because Levitt wants to cash in their completion  
43 bond. That's, essentially, this whole problem.

44 CHAIR PERSON KONYK: They want to finalize the  
45 community.

46 MR. BASEHART: The permit wouldn't be final until  
47 this is resolved.

48 MR. JACOBS: Right. If this cure is implemented,  
49 who pays for it?

50 CHAIR PERSON KONYK: The developer.

51 MR. BENTZ: Levitt Homes would pay for it.

52 MR. SLEAK: Levitt Homes would pay for it and not



1 estimate include resodding and all of that type of thing.

2 CHAIR PERSON KONYK: Well, I mean, that's an  
3 insignificant amount of money. I don't think the fifteen  
4 thousand dollars as far as bringing Levitt forward. I think  
5 they want this project final.

6 MR. BENTZ: Just an observation for the rest of the  
7 members here?

8 CHAIR PERSON KONYK: Sure.

9 MR. BENTZ: It might help answer some of these  
10 questions you have and confusion about why it wasn't done, so  
11 this is an observation.

12 CHAIR PERSON KONYK: Just for the record, I'm not  
13 confused.

14 MR. EISEN: My name is Dave Eisen. I'm the  
15 president of Meadow Lakes. I've been there since the  
16 inception.

17 CHAIR PERSON KONYK: Your a homeowner?

18 MR. EISEN: I'm a homeowner at present. I've been  
19 there since the inception. And this has been going on for a  
20 long time.

21 To go back when this variance was denied, Levitt  
22 Homes did come in and try to regrade the lake. The  
23 homeowners were in an uproar and basically chased them out  
24 because they didn't want they're back yards torn out at that  
25 time. The overall contention of the community feels that  
26 this six inches is going to be a safety issue more than the  
27 way it is now, and they don't want that because they're going  
28 to have -- plus, they don't want their back yards dug up.  
29 They have pools. They have decks.

30 Heavy equipment comes in and starts digging this  
31 place up, what's going to happen? Besides the fifteen  
32 thousand dollars they're going to spend, what's going to  
33 happen when the individual homeowner starts having problems  
34 with his pool or deck or what have you?

35 And as far as the way we see it now, we maintain  
36 the lake. We have boats come in there, water company. They  
37 drive a truck in there all the time. They put their boats  
38 in. They don't have a problem the way the it is.

39 MR. BASEHART: Because of the six inches, nobody's  
40 tipped over?

41 MR. EISEN: No.

42 MR. GELFAND: I'm Michael Gelfand of Gelfand and  
43 Arpe, counsel for the homeowner's association.

44 The homeowner's association desires this variance  
45 because it does facilitate the goals of the code. The  
46 association agrees to the conditions and is willing to  
47 provide and has previously provided certificate of insurance  
48 to show that it is obtainable for the parcel or parcels in  
49 question.

50 As personally the Chair of a Board of Adjustment  
51 for another municipality, I understand the position that the  
52 Board members are in. You have a report or recommendation



1 within the community. And they, generally, have other things  
2 that they want to do rather than dedicate all their time to  
3 be unpaid managers of their community.

4 Turnover started, stopped, started, stop; and, now,  
5 a number of years down the line, this Board wants to bring  
6 this to completion. One of the difficulties with completing  
7 turnover is they want to make certain that all the county  
8 requirements are taken care of.

9 The purpose of this easement is to maintain that  
10 lake. There has been confusion in the past as to whether  
11 we're talking about the slopes in the lake. This is not  
12 that. It's just as Mr. Eisen had mentioned, to allow the  
13 association to maintain the lake, to have the trucks come in.  
14 In the five years this has been done, there have been no  
15 problems at all. They have had the settling. And it works.  
16 It meets the goal of the code.

17 The homeowner's association has not perpetuated  
18 this problem. We were, in essence, given this situation. If  
19 this had been taken care of before any homes had been sold,  
20 obviously, no one would have been here right now. The  
21 problem is is that you have all of these individual  
22 homeowners around the lakes who have bought in good faith  
23 that they could enjoy the land.

24 I understand there's a show called what? American  
25 Home Videos -- America's Funniest Videos. Imagine the scene,  
26 a child running out in the back of their yard and all of a  
27 sudden the kid disappears. All right. First thought you  
28 sort of laugh. But then you sort of think about it. That's  
29 what's going to happen here if this variance is not allowed.  
30 You are literally going to have that six-inch step almost off  
31 of the counter there. If this was a building, if this was  
32 the step in front of this building, you would have to have a  
33 yellow line on it to protect people, to let them know. That  
34 is not the situation you want to have in a homeowner's  
35 association community.

36 We don't have bikes and trikes out there because  
37 that is a grassed area. Kids are not on there playing above  
38 the ground. And when they do play out there, we don't have  
39 any incident reported at all of any problems with anyone  
40 being hurt in the five years that the families that occupy  
41 the area have been using it. And they have been using it  
42 very successfully.

43 Any questions?

44 (NO RESPONSE.)

45 CHAIR PERSON KONYK: Well, I have a comment. I  
46 feel that, even if Levitt were to come in here and do this  
47 grading and move the sod and resod, et cetera, I would feel  
48 that the individual homeowners would probably bring dirt in  
49 and regrade it so they have a flat surface again.

50 So I think it's kind of a futile remedy because I  
51 know that, if it was in my back yard and it dropped, I would  
52 certainly want to correct that problem.





1 in existence for five years and nothing terrible has  
2 happened. And there would be a serious dislocation to the  
3 community if the variance isn't granted, so I would be  
4 disposed to grant the variance.

5 MR. BASEHART: Is that a motion?

6 MR. JACOBS: I'll make that motion.

7 CHAIR PERSON KONYK: You want -- okay, with how  
8 many conditions staff's recommending.

9 MR. CUFFE: Three conditions.

10 CHAIR PERSON KONYK: Three conditions.

11 Would you have the three conditions staff is  
12 recommending be part of your motion.

13 MR. JACOBS: Yes, I would.

14 MR. WICHINSKY: Madam Chair?

15 CHAIR PERSON KONYK: Uh-huh.

16 MR. WICHINSKY: If that's his motion, I'd like to  
17 second his motion with a comment.

18 CHAIR PERSON KONYK: Okay. Well, we have a motion  
19 for approval for SD96 with the three conditions that staff  
20 will read into the record being part of the motion.

21 And I'm assuming that you've already heard these  
22 three conditions.

23 MR. BENTZ: Yes, a they agree with them.

24 CHAIR PERSON KONYK: Why don't you read the three  
25 conditions.

26 MR. CUFFE: That a hold harmless and indemnity  
27 agreement acceptable to the county attorney must be submitted  
28 by the Meadow Lakes of Boca Raton Homeowner's Association,  
29 Incorporated, releasing the county from any and all liability  
30 that may arise due to the nonconforming lake bank slopes.  
31 Number two, a letter setting forth the terms and conditions  
32 of the variance must be attached as Exhibit A to the hold  
33 harmless and indemnity agreement. And number three, that  
34 Meadow Lakes of Boca Raton Homeowner's Association,  
35 Incorporated, must add Palm Beach County as an additional  
36 insured on the homeowner's association's general liability  
37 insurance policy.

38 CHAIR PERSON KONYK: Okay. We have a motion by  
39 Mr. Jacobs with the three conditions being read. We have a  
40 second by Mr. Wichinsky. And he has a comment to make.

41 MR. WICHINSY: I just like to respond to Bob and  
42 Mr. Gelfand. The basis -- the direction of my initial  
43 questioning was a safety issue, as you know. And, normally,  
44 my position on this Board after ten years would take a more  
45 serious look at a situation where a variance was brought  
46 forth a second time that was denied in the past and not  
47 rectified. And most times, more times than less, the Board  
48 usually goes along with a denial recommendation.

49 But in this case, as Mr. Gelfand has pointed out, I  
50 believe a six-inch step down would create a much greater  
51 safety hazard than the one that I had contemplated.

52 So based upon that, that's the basis of my second.



1 CHAIR PERSON KONYK: You should be able to do it by  
2 tomorrow.

3 MR. BENTZ: Sixty days is acceptable.

4 CHAIR PERSON KONYK: So we have a fourth condition  
5 that there's a sixty-day.

6 MS. BEEBE: Within sixty days --

7 CHAIR PERSON KONYK: Within sixty days, the first  
8 three conditions have to be met.

9 Okay. We have some discussion.

10 MS. CARDONE: I'm going to vote no on this. I'll  
11 be quite honest with you. I think you could also raise the  
12 other end. You bring out two options. I see more than two  
13 options.

14 I'm really rather disappointed that when this came  
15 forward years ago and the approval was denied nothing was  
16 done. I certainly understand that you have homeowners there;  
17 but when codes are created, they're created for a reason.  
18 And I do believe in upholding them and being uniform in that  
19 for all communities, not being backed up by saying, we  
20 haven't done it for so long an now we want this approval to  
21 go forward.

22 And the amount of money it would take to correct  
23 the situation that was imposed is not one of the criteria.  
24 So, although to fill it in would be expensive, that just  
25 didn't enter into the criteria that we have before us. I  
26 understand you have the support you need, but I am going to  
27 vote no.

28 CHAIR PERSON KONYK: The applicant doesn't end up  
29 paying the expense.

30 MS. CARDONE: We are --

31 CHAIR PERSON KONYK: The applicant isn't using  
32 that for justification.

33 I personal feel that fifteen thousand dollars, in  
34 the scheme of things, isn't that much money anyway.

35 MR. BENTZ: It's not feasible to raise the other  
36 side of that berm.

37 CHAIR PERSON KONYK: So we have a motion and a  
38 second. Let's go ahead and do a pole of the board members.

39 MS. MOODY: Mr. Robert Basehart?

40 MR. BASEHART: Yes.

41 MS. MOODY: Mr. Joseph Jacobs?

42 MR. JACOBS: Yes.

43 MS. MOODY: Ms. Nancy Cardone?

44 MS. CARDONE: No.

45 MR. MOODY: Mr. Raymond Puzzitiello?

46 MR. PUZZITIELLO: Yes.

47 MS. MOODY: Mr. Glenn Wichinsky?

48 MR. WICHINSKY: Yes.

49 MS. MOODY: Mr. Stanley Misroch?  
50 Yes.

51 MS. MOODY: Ms. Chelle Konyk?

52 CHAIR PERSON KONYK: Yes.



1 CHAIR PERSON KONYK: Second by Mr. Jacobs.  
2 All those in favor?  
3 (PANEL INDICATES AYE.)  
4 CHAIR PERSON KONYK: Motion carries unanimously.  
5 Motion to adjourn?  
6 MR. PUZZITIELLO: So moved.  
7 MR. MISROCH: Second.  
8 CHAIR PERSON KONYK: Second by Mr. Misroch.  
9 All those in favor?  
10 (PANEL INDICATES AYE.)  
11 CHAIR PERSON KONYK: Meetings adjourned.  
12 (Thereupon, the proceedings were concluded at 12:14  
13 o'clock p.m.)  
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