

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

Thursday, July 20, 2000  
9:05 a.m. - 10:45 a.m.  
100 South Australian Avenue  
West Palm Beach, Florida

Reporting:

Sophie M. (Bunny) Springer  
Notary Public

A T T E N D E E S

Robert E. Basehart, Chairman

Chelle Konyk, Vice Chairman

Mr. Stanley Misroch

Mr. Joseph J. Jacobs

Ms. Nancy Cardone

Mr. Glenn Wichinsky

David Cuffe, Civil Engineer II, Land Development

Laura Beebe, Asst. County Attorney

Jon P. MacGillis, Principal Planner, Zoning

Alan Seaman, Senior Planner, Zoning

Joyce Cai

Brian Cheguis

Mary Moody, Secretary

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CERTIFICATE OF REPORTER:

P R O C E E D I N G S

CHAIRMAN BASEHART: I'd like to welcome everybody to the July 20, 2000 Palm Beach County Board of Adjustment meeting. Let's start with the roll call.

MS. MOODY: Ms. Nancy Cardone.

MS. CARDONE: Here.

MS. MOODY: Mr. Joseph Jacobs.

MR. JACOBS: Here.

MS. MOODY: Ms. Chelle Konyk.

MS. KONYK: Here.

MS. MOODY: Mr. Raymond Puzitiello.

(No response.)

MS. MOODY: Mr. Glenn Wichinsky.

MR. WICHINSKY: Here.

MS. MOODY: Mr. Stanley Misroch.

MR. MISROCH: Here.

CHAIRMAN BASEHART: Okay. We have a quorum. The second item is the entering of the proof of publication. I have a copy of the proof. It was published in the Palm Beach Post.

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

MR. WICHINSKY: So moved.

CHAIRMAN BASEHART: Motion by Mr. Wichinsky.

MS. KONYK: Second.

CHAIRMAN BASEHART: Second by Ms. Konyk. Any objection?

(No response.)

CHAIRMAN BASEHART: Okay. We've accepted the proof of publication.

Under remarks of the Chairman, for those of you that aren't familiar with the proceedings for this Board, I'll explain briefly for you.

The Agenda is broken into two sections. The first section is the Consent Agenda which consists of all the items for variances where the staff has recommended approval where if there are conditions the applicant has indicated agreement with those conditions and where there's been no indication of opposition from the public. The board members have already received their packets a week ahead of time. We've read them.

If there is no objection present at the meeting and all the Board members are comfortable with the staff report recommendation, those items will remain on consent, it will not be necessary to make a presentation and they'll be approved as a group and the staff report entered into the record as justification for the granting of those variances.

On any of those items if there is a member or members of the public here to speak in opposition or if any of the Board members after having reviewed the staff report don't fully agree with the recommendation, then those items will be pulled and they'll be subject to a full hearing and a vote on an individual basis by this Board.

The second part of the agenda are the items where there's either public opposition, there's either a recommendation for denial or only a partial approval for the variances or as I said,

indication of public opposition or if the applicant has not agreed with recommended conditions of approval. Those items will be subject to a full hearing and decision by the Board after that hearing.

Okay. That's I think basically everything I wanted to say. Any other member of the Board have anything they want to say to the public?

Okay. Seeing none, let's go to the next item on the agenda which would be the approval of the minutes. We received the minutes of the June meeting. Any problems with the minutes? Anybody want to make a motion to adopt them?

MS. KONYK: So moved.

MR. JACOBS: Second.

CHAIRMAN BASEHART: Okay. We've got a motion and second. All those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

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

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

MR. MacGILLIS: No comments this morning, Mr. Chair.

CHAIRMAN BASEHART: No comments. Okay. There are no changes to the Agenda?

MR. MacGILLIS: Not at this point.

CHAIRMAN BASEHART: Okay. That takes us to the Consent Agenda. We'll introduce each one individually. The applicant should come forward and indicate his or her agreement with the conditions and we'll see if there's any member of the public that would like to pull the item.

CHAIRMAN BASEHART: The first item is a time extension, Board of Adjustment Time Extension, 2000-035. Jamie Price for Oregon Properties. This is not a public hearing, so this wasn't advertised, right, Jon?

MR. MacGILLIS: That's correct. This is a time extension.

CHAIRMAN BASEHART: Okay. Anybody have a problem with it?

(No response.)

CHAIRMAN BASEHART: Okay. That will remain on consent.

**STAFF RECOMMENDATION:**

Staff recommends of a maximum four month Time Extension from May 20, 2000 to September 20, 2000, consistent with Section 5.7.H.2 of the ULDC, to provide additional time for the petitioner to commence development and implement the approved variances.

The property owner shall comply with all conditions of approval of BA99-33, unless modified herein:

**ZONING CONDITIONS:**

1. The property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application. **(BLDG PERMIT: BLDG) COMPLETED ON SEPTEMBER 16, 1999 PR99-032780**
2. Prior to final Certificate of Occupancy for the Walgreen's Store or by May 20, 2000, whichever ever occurs first, the applicant shall upgrade the size of the trees and shrubs along both Haverhill Road and Okeechobee Blvd, as follows:
  - a. Trees shall be upgrade to 20 feet on-center, if palms are to be used the applicant shall be required to plant 3 palms for each shade tree.
  - b. Hedges shall be upgrade to 36 inches in height. All plant material above shall be number 1 Florida Plant material and native. **(DATE: MONITORING-CO-INSP)**

**Is hereby amended to read:**

Prior to final Certificate of Occupancy for the Walgreens Store or by September 20, 2000, the applicant shall upgrade the size of the trees and shrubs along both Haverhill Road and Okeechobee Blvd, as follows:

- a. Trees shall be upgrade to 20 feet on-center, if palms are to be used the applicant shall be required to plant 3 palms for each shade tree.
- b. Hedges shall be upgrade to 36 inches in height All plant material above shall be number 1 Florida Plant material and native. **(DATE: MONITORING-CO-INSP)**

**ENGINEERING COMMENT:**

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

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

CHAIRMAN BASEHART: The second is also a time extension, BATE 2000-036, also Jamie Price.

Any member of the public? Staff, no problem with it?

MR. MacGILLIS: No.

CHAIRMAN BASEHART: Board members?

(No response.)

CHAIRMAN BASEHART: That will remain on consent as well.

#### **STAFF RECOMMENDATION:**

Staff recommends of a maximum six month time extension from June to December 20, 2000, consistent with Section 5.7.H.2 of the ULDC, to provide additional time for the petitioner to commence development and implement the approved variances. The property owner shall comply with all conditions of approval of BA99-50, unless modified herein:

#### **ZONING CONDITIONS:**

1. By January 20, 2000, the applicant shall apply to the Building Division for a building permit for the proposed 15,120 square foot commercial building. The applicant shall provide the Building Division with a copy of the Board of Adjustment result Letter and copy of the final DRC site plan for this site. **(DATE: MONITORING-BLDG PERMIT) COMPLETED ON OCTOBER 25, 1999 PR99037151**
2. Prior to DRC certification of the final site plan the applicant shall ensure the BOFA conditions are shown on the site plan. **(DRC) COMPLETED ON June 23, 1999. See Site Plan Exhibit 1**
3. By May 20, 2000, or issuance of the Certificate of Occupancy for the 15,120 square foot commercial building, the applicant shall upgrade and install the following landscaping along Military Trail and Summit Blvd.

- a) 16 foot tall native canopy trees planted 20 feet on-center. Palms may be substituted for the shade trees only on a ratio of 3 palms for each shade tree.
- b) 36 inch native hedge to be installed 24 inches on-center. The existing mahogany trees and ficus hedge along the western portion of the Summit Blvd. right-of-way buffer shall remain. **(DATE: MONITORING-LAND:CO)**

**IS HEREBY AMENDED TO READ:**

By **December 20, 2000** or issuance of the Certificate of Occupancy for the 15,120 square foot commercial building, the applicant shall upgrade and install the following landscaping along Military Trail and Summit Blvd.

- a) 16 foot tall native canopy trees planted 20 feet on-center. Palms may be substituted for the shade trees only on a ratio of 3 palms for each shade tree.
- b) 36 inch native hedge to be installed 24 inches on-center. The existing mahogany trees and ficus hedge along the western portion of the Summit Blvd. right-of-way buffer shall remain. **(DATE: MONITORING-LAND:CO)**

- 4. The existing mature mahogany trees along Summit Blvd. shall be preserved and incorporated into the Landscape design. **(LANDSCAPING-ZONING)**

**Note:** One of the three mahogany trees to be preserved along Summit Blvd. was removed by the contractor after consultation with the Landscape Inspector. The tree was damaged and was permitted to be removed and replaced with 3 new 12 foot high native canopy trees. Prior to the final Certificate of Occupancy the applicant and Landscape Inspector shall ensure the 3 additional trees are planted on site. **(CO-LANDSCAPE-BA)**

**ENGINEERING COMMENT(S):**

No comment **(ENG)**

CHAIRMAN BASEHART: Okay. BOFA2000-038, Lois Forgione as agent for Joseph M. & Concetta Benemerito --

MS. KONYK: Et cetera.

CHAIRMAN BASEHART: et cetera. Is the



applicant present?

MS. FORGIONE: Yes.

CHAIRMAN BASEHART: Would you step forward, please?

Staff has recommended approval of your variance subject to five conditions. Are you familiar with them?

MS. FORGIONE: Yes.

CHAIRMAN BASEHART: Do you agree with them?

MS. FORGIONE: Yes, I do.

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

Oh, your name, please?

MS. FORGIONE: Lois Forgione.

CHAIRMAN BASEHART: Staff, any letters?

MR. MacGILLIS: There are five letters, all for approval.

CHAIRMAN BASEHART: Okay. Any member of the Board want to pull this item?

(No response.)

CHAIRMAN BASEHART: Okay. It can stay on consent as well.

MS. FORGIONE: Thank you.

#### **STAFF RECOMMENDATIONS**

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

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

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

**YES.** The subject properties are located approximately 0.35 mile south of intersection of Atlantic Ave. and Jog Rd., within the Floral Lakes PUD in the RM/SE Zoning District (Pet. 91-040). The Future Land Use designation is High Residential 8 (HR-8) compatible with the current Zoning designation. The Pod C where the subject properties are located has 38.40 acres supporting 218 townhouses.

Each of the subject properties supports an existing 1-story townhouse completed in 1998 and 1999. 5 of the 7 subject properties have also constructed a solid-roofed screen enclosure addition to the rear of the house with approximately the same type and size

(13.5' wide. 11' deep with 5' extending from the existing exterior wall). It was recently discovered by the Building Division that the rear setback (14.8 ft. to 15 ft.) was approved inadvertently by the Building Division for these additions resulting in a rear setback encroachment into the required setback of 20 ft. 2 other properties in this application are also applying for a same type of solid roof for the existing screen enclosures in the same location with the same rear setback of 15 ft. (PR99038124 for lot 52 and PR99-38122 for lot 53).

As previously indicated, the subject lots abut the same side of the Rosaire Lane, 4 lots are contiguous while the other 3 lots are several lots apart. Along each of the subject rear property lines is a 12 ft. drainage easement inside the property line and 25 feet buffer with shrubs, trees and palms and 20 feet FP&L easement with 5' max. overlap into the landscape buffer. Further, beyond the easement to the east, is an existing lake which is approximately 400 ft. wide and 450 ft. long.

The applicant is acting with a good faith to apply for a variance for the existing solid-roofed screen enclosures and proposed solid roofs for the existing screen enclosures in order to correct the previous oversights made by the Building Technician and to bring them into the compliance with the code requirements.

Therefore, there **are** existing special conditions and circumstances that are peculiar to the parcel of land, building or structure, that are not applicable to other parcels of land, structures or buildings in the same district.

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

**NO.** The existing solid-roofed screen enclosure additions were issued in error by the Building Division. The rear setback was incorrectly applied to 5 units. The applicant is acting with a good faith requesting for a setback variance in order to resolve the current situation and bring the existing and the proposed structures into the compliance with the code requirements. If the variance is granted, the two permits that have been placed on hold will be able to proceed through permitting and inspection.

Therefore, special circumstances and conditions **are not** the result of actions of the applicant.

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

**NO.** Granting the variance **will not** grant any special privilege on the property owners. To construct a solid-roofed screen enclosure addition to a single family dwelling is permitted in the zoning district where the subject property is located. In addition, both the existing and proposed addition abut an open area which are 25' buffer, 20' FP&L easement and an existing lake to the rear/east property line. This open area to the rear provides an adequate open space buffer to mitigate the 5 to 5.2 feet of setback encroachment to the rear property line.

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

**YES.** A literal interpretation of the provisions of the ULDC **will** deprive the applicants of rights commonly enjoyed by other parcels of land in the same district. The intent of the setback is to ensure a minimum separation, privacy and compatibilities between uses. The requested rear setback encroachment of 5 to 5.2 feet would affect only the open space areas beyond the lots. Therefore, there is a sufficient separation between the existing and the proposed additions and no adjacent property owners will be impacted if the variances are granted. In addition, all the 7 subject properties are located along the same side of the same street. All the existing screen enclosures are also attached to the same side of the identical houses making an uniformity appearance along the same property lines (rear/east). Therefore the existing and the proposed additions will be compatible with the neighboring residential uses and maintain the architectural character of the neighborhood/units.

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

**YES.** This **is** a minimum variance that will ensure a reasonable use of the property. The subject structures are approximately in the same size which are 12.67 ft. to 13.5' wide and 11 ft. deep with 5 ft. extending

from the existing exterior wall. They are all attached to the rear of the houses with similar rear setback of 14.8 feet to 15 feet. As previously indicated, the existing open areas to the rear/east of the 7 lots provides a sufficient open space buffer separation to mitigate this variance request, which is a 5 to 5.2 ft. rear setback encroachment into the required 20 ft. of rear setback.

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

**YES.** The variance request complies with the general intent of the ULDC which is to ensure a minimum separation between the proposed addition and the adjacent property. As previously indicated, the variance **will not** have any negative impacts on the adjoining property to the east. The existing and the proposed additions will be in harmony with the residential/architectural character of the neighborhood and will not detract from the unit or open space.

The intent of the Comprehensive Plan is to encourage residential development to improve and maintain the living standards for people to better enjoy their community. The subject solid-roofed additions to the existing townhouses is not an uncommon addition to a house in South Florida. The requested variance will allow the property owners enjoy their enclosure year round and to promote their quality and enjoyment of life while the neighboring property values will be maintained and not be adversely affected, if the variance is granted.

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

**NO.** As previously indicated, there are open areas along the subject rear property lines which provide adequate buffer to mitigate any negative impacts associated with the requested variance.

Therefore, granting this variance **will not** be injurious or otherwise detrimental to the public welfare. The request is compatible with the surrounding uses of the area and approving of the variance will contribute to the promotion of the applicant's quality of life.

**ENGINEERING COMMENT(S)**

1. None.

**ZONING CONDITION(S)**

2. By September 20, 2000, the BA Zoning staff shall administratively amend the certified Final Master Plan (Exhibit 77, Pet. 91-040) and Final Subdivision (Exhibit 78, Pet. 91-040) for lots 41, 44, 47, 48, 52, 53 and 55 in Phase I of Floral Lakes PUD to reflect the approved variance and conditions for the existing and proposed screen enclosures with solid roofs. **(DATE: MONITORING-ZONING-BA)**
3. By March 20, 2001, the property owners shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan presented to the Board, to allow the building permit applications for lots 52 and 53 in Phase I of Floral Lakes PUD for the proposed screen enclosures with solid roofs to be processed. **(BLDG PERMIT: BLDG)**
4. By May 20, 2001, the property owners shall obtain building permits for the two unbuilt solid roofs for the screen enclosures on lots 52 and 53 in order to vest this variance approval to the Development Order. **(DATE: MONITORING-BLDG.PERMIT)**
5. The solid-roofed screen enclosure elevations and layouts shall be consistent with Exhibit 16, 21 & 22 in the BA 2000-038 File in the Zoning Division. **(ON GOING)**

CHAIRMAN BASEHART: Next item is BOFA2000-039, Ralph J. & Judy S. Chackal. Is the applicant here?

MR. MacGILLIS: Mr. Chair, there are some changes to this. Staff had received some calls from concerned neighbors. I don't know, maybe the staff can address some of this stuff, and maybe it would help and it would stay on the consent agenda. If not, we can go back to the audience.

Some of the neighbors were concerned in the applicant's justification -- if you want to turn to the back-up material on page 42.

It was on page 50 of the applicant's back-up material. We've spoken with the applicant and he has no problem with us excluding this material from the public record because it's immaterial to this

case, yet it has bearing on the neighbor's concern that it implies that the street which is dead-ended in front of this property is the exclusive use of this applicant, access to his property, which is not true. It's a dead-end street and it gives access to the surrounding residents with access down to the intracoastal.

So the line, the only purpose of this street extension is to allow the applicant to have vehicular access to the property and effectively the street extension is the driveway for the sole use of the applicant, it does not constitute a street in the sense that it is used in the Comprehensive Plan and in the Code. We would -- staff requests that that be excluded from this back-up material. The applicant has no problem with that.

CHAIRMAN BASEHART: Okay.

MR. MacGILLIS: There's also further reference in his back-up material, "This action was unnecessary as only South Suzanne itself and not this extension should not have been deeded, in paragraph, (the property's northwest corner does not adjoin South Suzanne Street." This is from paragraph two of criteria number two.

Once again, this has to do with a street and having dedicated it to the County for improvements and stuff. Once again, the surrounding neighbors are concerned this could in the future imply that this dead-end street has -- it's the owner's exclusive right to use it.

So that was one of their major concerns when they saw the staff report that they didn't want anyone in the future to rely on this as giving him any special privilege to use that street.

The staff has requested that that be stricken from the record as immaterial.

We'd also like two additional conditions imposed on this petition which the applicant is aware of, which would be the new number six.

"By September 20, 2000, the applicant shall contact the Zoning Division for an inspection to verify that all existing and proposed fences on the subject property comply or shall comply with the Code requirements."

CHAIRMAN BASEHART: Okay.

MR. MacGILLIS: Number 7, "By September 20, 2000, the applicant shall contact the Zoning Division for an inspection to verify that the existing vinyl fence along the south side of the existing driveway in front of the existing residence at 2112 South Suzanne Circle is removed, as well as the required offstreet parking spaces are in compliance."

Once again, this is related to some of the neighbors had concerns that there's parking related to this property on the street. Some of the fences that were put up are obstructing the cars from fully pulling up to the house to keep them on the property. We've spoken to the applicant and indicated that if he removes these fences and pulls them up, he'll be able to park his two required spaces for each one of these units on site.

CHAIRMAN BASEHART: Okay.

MR. MacGILLIS: Those are the only changes to this petition.

If there's anyone from the public who would still like to speak to this, then --

CHAIRMAN BASEHART: Okay. First, let's see, is the applicant in agreement with the additional conditions?

MR. CHACKAL: Yes, sir.

CHAIRMAN BASEHART: If you could step up and give us your name for the record.

MR. CHACKAL: My name is Ralph Chackal. My wife Judy and I own the property, and we agree with the conditions as stated.

CHAIRMAN BASEHART: Okay. And the removal of some of the justification from your application?

MR. CHACKAL: Yes.

CHAIRMAN BASEHART: Is there any member of the public here that would like to speak on this item?

MS. JUDY STAPLES: Can I speak to the procedure?

CHAIRMAN BASEHART: On the procedure?

MS. STAPLES: On how this letter went out.

CHAIRMAN BASEHART: Well, if we're going to have a lot of discussion about this, we're going to have to --

MS. STAPLES: Just one small comment.

CHAIRMAN BASEHART: Okay. Well, step forward and give us your name then.

MS. STAPLES: My name is Judy Staples. My only comment is that this may be just 10% of the time it would ever happen, but I received a letter which I had no idea about this justification.

This was important to everybody on my street because this involves our property. And I feel that somewhere in your procedure in your letter that you send to people, I should have been told that I could ask for this justification that would have told me about this paragraph for the right-of-way. Okay?

CHAIRMAN BASEHART: Thank you. Sir?

Jon, is there a possibility that we can add -- I mean, I'm not familiar exactly with how the notification form reads, but some indication that, I'm sure there's some indication that additional details can be provided if you contact --

MR. MacGILLIS: Yes. I think I indicated to this individual that we can now put reference to this is on the Internet as well, but we also reference in there that if you have questions, contact the project manager.

I indicated to her that we send thousands of letters out and to supply everyone with the back-up material would be next to impossible, but we will look at the language in the letter and maybe make it clearer that if somebody has specific questions that the file is available in the Zoning Division for their review.

CHAIRMAN BASEHART: Okay. Sir?

MR. PAUL BLOCKER: My name is Paul Blocker. I live at 2107 Cold Lane adjacent to the Chackals, and at the present time there's a land dispute on

the boundaries of an overlap which could be considered in this.

And also I'm concerned about the septic system that they have. It's inadequate as it is now. It's overflowing and it smells every so often. And I'd like to see where the swimming pool is going to go. I don't know anything about what's going on with the drawings.

CHAIRMAN BASEHART: Well, are you saying you would like to have the item pulled and have a full hearing?

MR. BLOCKER: I would like to, yes.

CHAIRMAN BASEHART: Okay. We'll have to do that. Let's pull BOFA2000-039 and that will be the first item on the Regular Agenda.

CHAIRMAN BASEHART: Next item is BOFA2000-040, Jack Potrekus.

MR. POTREKUS: Right here.

CHAIRMAN BASEHART: Excuse me. Can we keep it down?

UNIDENTIFIED SPEAKER: Can you turn the volume up because we can't hear you. There is no PA system here.

CHAIRMAN BASEHART: Is it not working?

UNIDENTIFIED SPEAKER: No, we don't hear it.

CHAIRMAN BASEHART: Okay. We'll speak up.

Mr. Potrekus, the staff has recommended approval of your variance with five conditions. Are you familiar with them?

MR. POTREKUS: Yes, we are.

CHAIRMAN BASEHART: Do you agree with them?

MR. POTREKUS: Yes, we do.

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

(No response.)

CHAIRMAN BASEHART: If we're going to be carrying on a conversation, if you could take it out in the hall, please.

Seeing no interest from the public, are there any letters?

MR. MacGILLIS: There's three contacts to the Zoning Division. One of them we couldn't get back. They left a call. And the other one is an adjacent property owner who was just concerned about the future land use.

CHAIRMAN BASEHART: Okay. Any member of the Board have any difficulty with this?

(No response.)

CHAIRMAN BASEHART: Okay. We'll leave it on the Consent Agenda.

MR. POTREKUS: Thank you.



**STAFF RECOMMENDATIONS**

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

**ANALYSIS OF ARTICLE 5, SECTION 5.7.3  
VARIANCE STANDARDS**

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

**YES.** This site is located along the East side of US Hwy. 1, approximately 0.7 miles north of PGA Boulevard. It is a legal non-conforming lot in gross area (at 0.39 acres) and lot depth (at 178.27 feet). The proposed use would correspond well with the unusually small lot size, while the consulting firm would be consistent with other area service-oriented businesses in the area. The property is zoned CG (commercial general) which is outside the special exemption area designated for the adjacent commercial properties to the North, South and West. The zoning and future land use designation for this property are consistent based on written approval from the Director of Planning Division to allow the site to be developed as CH (Commercial High) (Exhibit 27). The proposed development represents infill development for the already well established commercial corridor and is consistent with the County's position that infill development be encouraged in commercial and retailing areas. the site is surrounded by retail and service oriented uses on three sides (North, South and West). Located along the East property line is a canal and across the canal low density single family residential housing (Captain's Key). The surrounding commercial areas to the North, West, and South are designated Commercial General with Special Exemptions. The exemption for the commercial property to the North was to permit a planned commercial development that included an auto service station with repairs and a tire store. Resolution of the submitted petition for the specialized use occurred in March of 1987. The two remaining Special Exemption areas located West and South of the subject site involved the development of large-scale community shopping centers, each larger than 50,000

feet. The resolutions for the Special Exemptions for the properties located to the South and West of the subject site were passed in 1983 and 1989 respectively. The proposed relocation of a consulting firm to this site is appointment-based businesses located in the area include various medical services. General retail and service-oriented businesses in the area include dry-cleaning operators, restaurants, furniture stores, copy center, grocery store, auto repair and sales shop, and flower shop.

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

**NO.** This site is a legal non-conforming lot in gross area (at 0.39 acres) and lot depth (at 178.27 feet). Any proposed infill development would be challenged to meet the unusual circumstances presented by this small site. The proposed use is permitted and a Parking Requirement Study and letter of affirmation provided by the applicant attest to the reduced need for parking for this particular type of specialized business (Exhibits 25, 28 & 29). The future land use designation and existing zoning designation are consistent based on consent from the Director of Planning Division (Exhibit 27). The property is zoned CG (commercial general) and is outside the special exemption area designated for the adjacent commercial properties to the North, South and West. The specialized manner in which the consulting firm currently operates 00 by appointment only -- requires less off-street parking than the minimum number of parking spaces required for other general retail/service businesses accessible to the general public. The requested variance of 20 parking spaces is calculated using Professional office regulations applied to the entire proposed structure as per ULDC Article 7, Section 7.2.B.3. This calculation produces a required parking estimate of thirty (30) spaces. Staff acknowledges that this parking standard is excessive for the size and nature of the proposed business. More realistic calculations, that recognize each use - Professional Office and Showroom/Storage Space -- apply similar parking standards for the unspecified Showroom/Storage use which reduces the required number of parking spaces to fourteen (14). The applicant is proposing ten (10) parking spaces, which would include two handicapped spaces, four employee spaces, and four client spaces. The applicant has indicated current staff levels (four employees) and method of business operation (by appointment only) will remain the same at the proposed new

location (Exhibit 28 & 29). The Parking Requirement Study indicated that the business, over the course of the study, required no greater than five (5) parking spaces.

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

**NO.** The proposed commercial use is consistent with the existing retail and service oriented businesses along the corridor. The applicant has complied with the general intent of the parking code by providing the necessary handicapped parking spaces (2), while requesting a reduction in the number of required regular parking spaces. The spaces being eliminated are deemed to be excessive for the specialized nature of the consultant's work which is conducted on an appointment-only basis. The Parking Requirement Study provided by the applicant indicates that the proposed ten (10) parking spaces would adequately meet the parking requirements of the business and as such should not affect adjacent businesses with overflow parking or traffic generated by the proposed use, as long as the firm operates in the same manner and with the same number of employees as currently exists (Exhibit 28 & 29). The proposed use is permitted within the CG (Commercial General) Zoning District, therefore, special conditions are not being conferred upon the applicant.

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

**YES.** The ULDC does not recognize the special requirements of the proposed business or prescribe parking for the specialized showroom/storage area proposed. The required figure for this space was calculated using the requirements for Professional Office use and applied to the entire proposed structure at 1 parking space/200 feet of gross floor area. The variance to eliminate twenty (20) parking spaces will allow this property to be developed and upgraded from a vacant lot to a viable commercial use. The revised calculation which applies a comparable standard used for warehousing uses calculates parking for this use at 1 parking space/1000 feet of gross floor area. This

more practical revised calculation produces a required parking figure of fourteen (14) spaces. The variance request will allow other site standards to be satisfied including traffic circulation, building setbacks, size, and height restrictions, and landscaping requirements.

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

**YES.** The applicant has provided a Parking Requirement Study and supporting letter of affirmation regarding the non-seasonal nature of the business (Exhibits 25, 28 & 29). The Parking Requirement Study indicated that the maximum parking requirement over the course of the study was five (5) spaces. The applicant has demonstrated the necessary requirements of the firm as it currently operates, and how conditions will remain the same at the new proposed location, due to similar business operations (by appointment only) and a staff of four (4).

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

**YES.** The general intent of the off-street parking provisions, Section 7.2, is to ensure that adequate parking, circulation, queuing, and loading facilities are provided in proportion to the demand created by each use. The proposed business is a permitted use within the ULDC, and has received approval from the Director of Planning for Palm Beach County regarding the future land use designation (Exhibit 27). The intended uses - Office and Showroom/Storage - are consistent with the existing commercial uses located along this corridor and represents an infill development consistent with the Board of County Commissioner's expectation that such properties be effectively developed. Based on the applicant's justification the proposed parking will adequately meet the demand generated by the professional office use operating on an appointment-only basis and maintaining the current number of staff. Less potential impacts can be realized with this intended use for this site in relation to typical service-oriented businesses. Reduced impacts can be attributed to lower traffic generation and parking requirements in conjunction with the compact size of the legal non-conforming lot.

7. GRANT OF THE VARIANCE WILL BE INJURIOUS TO

THE AREA INVOLVED OR OTHERWISE DETRIMENTAL  
TO THE PUBLIC WELFARE:

**NO.** The request for a reduction in the number of required parking spaces will allow for infill development within the corridor. The parking variance will allow the site to be upgraded from a vacant lot to a developed parcel of land to be used for a professional office/showroom use. The proposed use is commercial and consistent with the surrounding businesses located to the North, West and South of the subject property. The existing derelict site is garbage strewn and grown over with non-native plants (Australian pines).

Security for the surrounding commercial establishments would be improved as the site will be upgraded from a vacant lot to a viable commercial use. Property values will increase for adjacent property owners with the construction of a new building and the addition of required landscaping.

Neighboring properties will not be affected by overflow parking from the traffic generated by this particular use while the business delivers services in the same manner and levels of staffing are maintained. The applicant will be able to monitor vehicles parking in the spaces located in the front of the property. Required landscaping will provide aesthetic improvements for the surrounding commercial establishments as well as improve the view from residential properties located across the canal located at the rear of the property.

Adjacent residential property owners have indicated that temporary retail sales occur from time to time on the property causing visual and noise disruption through improper garbage disposal, late hour operations, and use of diesel generators. Introduction of a permanent use on this property would allow for effective stewardship of the site with regard for landscaping and waste removal requirements. The proposed use would be consistent with existing neighboring businesses.

**ENGINEERING COMMENT(S)**

The requirement that the Base Building Line for the west side of the subject property be forty (40) feet beyond the existing right-of-way of U.S. Hwy. No. 1 is hereby waived. Said Base Building Line is hereby established at the existing easterly right-of-way line, being also the westerly property line

of the subject property.

**ZONING CONDITION(S)**

1. To vest this parking variance the property owner shall obtain a Paving/Drainage Permit from Palm Beach County Engineering Division by June 20, 2001. **(PAV/DRAIN PERMIT: ENG)**
2. Prior to DRC certification, the applicant shall ensure the BofA conditions (BA 2000-040) are shown on the approved Site Plan. **(DRC-ZONING)**
3. The property owner shall acquire an Occupational License from Palm Beach County Tax Collector Division specifying the size and type of business exactly the same as indicated in the justification documentation presented in variance application BA 2000-040. The method of service delivery (if applicable) should also be delineated on the occupational license, as outlined below:
  - Interior Yacht Design Firm
  - Total of four staff members
  - Appointment-only method of service delivery **(OCC.LIC.:TAX COLLECTOR)**
4. The applicant shall submit a restrictive covenant to limit the use of the subject property to an interior yacht design firm with four staff members, and operating on an appointment-only basis -- as indicated in the variance application BA 2000-040. This restrictive covenant is to be reviewed and approved by the County Attorney's Office, prior to being recorded in the Public Records of Palm Beach County, Florida. One copy of the recorded document shall be submitted to the Zoning Division for inclusion in the applicable Zoning Petition file. **(RESTRICT.COV.:ATTORNEY'S OFFICE-ZONING)**
5. The variance is approved subject to limited use of the property as an interior yacht design consulting firm in a manner consistent with the provisions of this condition. The business shall be operated solely as an interior yacht design business with no more than four staff members, and on an appointment only basis. The property owner shall adhere to the letters of affirmation identified as Exhibit Numbers 25 and 28 and floor plans (Exhibit 24) filed with variance request BA 2000-040. The variance shall automatically cease if the provisions of this condition are violated. Any future increases in the number of staff members or the size of the structure or modifications of the types of business

services offered or method of business operation will require review by the Palm Beach County Zoning Division and may require a new variance from the provisions of Section 7.2.B of the Unified Land Development Code. **(ZONING)**

CHAIRMAN BASEHART: Next item is BOFA2000-041. David Felton for Chevron Products. Mr. Felton?

MR. FELTON: Good morning.

CHAIRMAN BASEHART: Good morning.

MR. FELTON: David Felton, agent for Chevron Products. Thank you for having us again this morning.

CHAIRMAN BASEHART: You know that staff is recommending approval?

MR. FELTON: Yes, sir. Mr. Basehart, one question, though. In the agenda it calls for a six month extension. We applied for 12. Staff's recommendation is also 12.

I'd like to have that clarified if I could, please.

CHAIRMAN BASEHART: Okay. Jon?

MR. MacGILLIS: It should read 12 months.

MR. FELTON: Other than that, we respectfully request approval.

CHAIRMAN BASEHART: Okay. This is not a public hearing because it's an extension, so we'll leave it on consent.

MR. FELTON: Thank you very much.

CHAIRMAN BASEHART: Thank you.

#### **STAFF RECOMMENDATION:**

Staff recommends of a maximum of **12 month** Time Extension for BATE99-67, Condition #2, **from July 17, 2000 to July 17, 2001**, consistent with Section 5.7.H.2 of the ULDC, to provide additional time for the petitioner to commence development and implement the approved variances. The applicant must implement construction and comply with all BA conditions within this extended time frame since the Board cannot grant any further time extensions for this variance.

The property owner shall comply with all conditions of approval of BATE99-067, unless modified herein:

#### **ZONING CONDITIONS**

1. The property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application. **(BLDG PERMIT: BLDG)**
2. The applicant shall obtain a building permit for the 2,122 square foot convenience store by July 17, 2000. **(DATE: MONITORING-Bldg.)**

**Is hereby amended to read:**

The applicant shall obtain a building permit for the 2,122 square foot convenience store by **July 17, 2000.**  
**(DATE: MONITORING-Bldg)**

3. Prior to July 17, 1999, the applicant shall provide the Zoning Division staff with proof that the Utility Agreement form to allow the existing landscaping in the buffer along Power Line Road has been secured. **(DATE: MONITORING-Zoning-BA) COMPLETED**
4. This variance approval is contingent upon this specific use, convenience store and gasoline sales. **(ONGOING)**

CHAIRMAN BASEHART: Next, BOFA2000-042, Kevin McGinley for Linh T. Huyen Mai.

Mr. McGinley, the staff has recommended approval of your application with three conditions. Do you agree with those conditions?

MR. SEAMAN: Excuse me. There is a modification to condition number three. I'm sorry. Condition number two.

It is on page 88 and condition number two should be modified to read: "By April 17, 2001, the applicant shall obtain a building permit for the landscaping, parking lot, building renovations and the 570 square foot building addition." The April 2001 time certain date would allow sufficient time to process the applicant's rezoning application.

CHAIRMAN BASEHART: Is that acceptable?

MR. MCGINLEY: Yes, it is.

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

(No response.)



CHAIRMAN BASEHART: Seeing none, any letters?

MR. MacGILLIS: No letters.

CHAIRMAN BASEHART: Okay. Does any member of the Board want to pull this item?

(No response.)

CHAIRMAN BASEHART: Forty-two will stay in consent.

MR. MCGINLEY: Thank you.

#### STAFF RECOMMENDATIONS

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

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

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

**YES.** The subject property consists of a 0.21-acre non-conforming lot of record. The applicant is proposing to remove a 570 sf. portion of the existing 1,800 sf. from the north side of the existing building and relocate the same to the south side of the building in order to accommodate parking and restrict customer access to Elmhurst Road. The proposed addition would not encroach any further into the required side interior setback than the existing nonconforming structure. Therefore, the encroachment will not negatively affect the adjacent property owner. The addition will, however, require a rear setback variance but is adjacent to Myla Lane and will not negatively affect the Street. The east property line supports some landscaping and a 6' concrete slat fence and the west property line supports some landscaping and a 6' wood fence. The access and configuration of the site severely limit the design options available to use the property for a Community Commercial use. The subject property is currently unkempt and the proposal by the applicant will eliminate the abandoned appearance of the site. The attempt at making the site useful and safer for traffic access is a positive one and is supported by staff. The setback and incompatibility buffer variances will allow the use of the existing nonconforming structure on the nonconforming site. The Board of County Commissioners has encouraged the

redevelopment of infill of lots along major corridors supporting non-conforming uses. The subject property's proximity to the Military Trail commercial corridor makes the site suitable for redeployment.

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

**NO.** The variances **are not** self created. As mentioned above, the applicant purchased the site in the current configuration and with the existing structures on-site. Granting the requested seven variances are the minimum variances required to bring the site into compliances with the general intent of the ULDC and allow practical commercial use of the site.

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

**NO.** The granting of the variances **will not** grant any special privilege on the applicant. The applicant has unique circumstances surrounding this project that warrant special consideration when applying the literal intent of the code provisions. The subject property presently has a Future Land Use Atlas (FLUA) designation of C/8 and a zoning district classification of RH-Residential High Density. The applicant is preparing to submit an application for an Official Map Amendment (OMA) to rezone the subject property from RH to CC - Community Commercial. The requested variances are necessary since the existing structure (built in 1966) and the .21-acre site (1-acre min) can not meet the minimum ULDC property development regulations for Community Commercial development (specialized retail Oriental food market). To allow lots that are non-conforming in terms of size, configuration, or structures to redevelop, property owners typically need variance relief. The applicant has requested that the least number of variances which will allow the owner to use the site and existing building and meet the general intent of the ULDC. As previously stated, the Board of County Commissioners has encouraged the redevelopment of infill of lots along major corridors supporting non-conforming uses. The subject property's proximity to the Military Trail commercial corridor makes the site suitable for redevelopment.

4. A LITERAL INTERPRETATION AND ENFORCEMENT OF THE TERMS AND PROVISIONS OF THIS CODE WILL

DEPRIVE THE APPLICANT OF RIGHTS COMMONLY ENJOYED BY OTHER PARCELS OF LAND IN THE SAME DISTRICT, AND WOULD WORK AN UNNECESSARY AND UNDUE HARDSHIP.

**YES.** The enforcement of the literal intent of the landscape code would place a significant hardship on the applicant. The applicant has worked with staff to redesign the site to avoid the need for unnecessary variances. The site has a Commercial (C) land use designation and the applicant is not proposing to increase the size of the existing structure or over-utilize the subject property. The existing 1,800 sf. of building floor area is smaller than typical retail stores in the surrounding area. The applicant will install the required landscape buffer along Elmhurst Road, screen the rear property line with a 6 foot fence and hedge, and install the required landscape in the 5 foot incompatibility buffers (reduction from 15 feet to 5 feet with granting of variance).

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

**YES.** The requested variances are the **minimal** variances needed to make possible the reasonable use of the existing site and structure as well as meet the general intent of the ULDC. To allow lots that are non-conforming in terms of size, configuration, or structures to redevelop, property owners typically need variance relief. Approval of the variances will allow the property owner to proceed with an OMA application (rezoning) and undertake the proposed site improvements through the building permit review process. As previously state, the Board of County Commissioners has encouraged the redevelopment of infill of lots along major corridors supporting non-conforming uses. The subject property's proximity to the Military Trail commercial corridor makes the site suitable for redevelopment.

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

**YES.** The subject property presently has a Future Land Use Atlas (FLUA) designation of C/8 and a zoning district classification of RH-Residential High Density. The applicant is preparing to submit an application for an Official Map Amendment (OMA) to rezone the subject property from RH to CC - Community Commercial. The requested variances are necessary since the existing structure

(built in 1966) and the .21-acre site (1-acre min) cannot meet the minimum ULDC property development regulations for Community Commercial development (specialized retail Oriental food market). The applicant is **not proposing** to increase the size of the existing structure or over-utilize the subject property. Granting of the variances will be consistent with the goals, objectives and policies of the Comp Plan and the ULDC.

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

**NO.** The granting of the variances **will not** be injurious to the surrounding area. The site has a Commercial land use designation and the applicant is not proposing to increase the size of the existing structure or over-utilize the subject property. Considering the existing conditions of the site, the proposed site layout will provide for efficient on-site circulation, access, parking, and queuing. The existing 1,800 sf. of building floor area is smaller than typical retail stores. The applicant will install the required landscape buffer along Elmhurst Road, screen the rear property line with a 6 foot fence and hedge, and install the required landscape in the 5 foot incompatibility buffers (reduction from 15 feet to 5 feet with granting of variance).

#### **ENGINEERING COMMENT(S)**

The requirement that the Base Building Line for the north side of the subject property be forty (40) feet beyond the existing right-of-way of Elmhurst Road (a.k.a. Westgate Avenue) is hereby waived in part. Said Base building Line is hereby established at five (5) feet south from the existing north property line of the subject property.

#### **ZONING CONDITION(S)**

1. By October 20, 2000, the property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan (Exhibit 9, **revised indicating the removal of the carport and denoting the BOFA conditions**), simultaneously with the building permit application. **(DATE: MONITORING-BLDG PERMIT).**
2. By November 17, 2000, the applicant shall obtain a building permit for the landscaping, parking lot, building renovations, and the 570 sf. building addition. **(DATE: MONITORING-BLDG PERMIT).**

3. By October 20, 2000, the property owner shall provide a copy of the revised site plan, as required under condition number 1, to the Board of Adjustment Staff. **(BOFA-ZONING)**.

CHAIRMAN BASEHART: Item number 43, the last consent item, Eleanor Halperin, agent for D. X. Properties, Inc.

Ms. Halperin, staff is recommending approval subject to three conditions.

MS. HALPERIN: We accept those conditions and just note for the record that the application has been amended. There's been a corporate restructuring and there is a successor company, D.X. Properties, L. P., which is currently the owner, successor by merger.

CHAIRMAN BASEHART: Okay. So noted. Is there any member of the public that would like to speak on this item?

UNIDENTIFIED SPEAKER: Yes, I would like to speak.

MS. KONYK: Pull it.

CHAIRMAN BASEHART: All right. You want to make a comment or you --

UNIDENTIFIED SPEAKER: No, I'd like to speak on it.

CHAIRMAN BASEHART: Okay. Well, then we're going to have to pull the item.

BOFA2000-043 is pulled. That will be the second item on the regular agenda.

That will conclude Consent. I'm ready for a motion.

MS. KONYK: I'll make the motion. Board of Adjustment Time Extension 2000-035, BOFA Time Extension 2000-036, BOFA 2000-038, BOFA 2000-040, BOFA Time Extension 2000-041 corrected with the 12 month extension, BOFA 2000-042 to remain on the consent agenda with the staff report becoming part of the record, and BOFA 2000-039 and BOFA 2000-043 being pulled and reordered to the regular agenda.

CHAIRMAN BASEHART: Motion by Ms. Konyk.

MR. WICHINSKY: Second.

CHAIRMAN BASEHART: Second by Mr. Wichinsky. Is there any further discussion? All those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Okay. Everyone that was on the consent agenda, your applications have been approved and you can leave.

CHAIRMAN BASEHART: Okay. The regular agenda then has two added items. The first one will be BOFA2000-039. That's the pool variance for the Chackals. Is the applicant ready to make a presentation?

Jon, could you introduce the item?

MR. MacGILLIS: This is BOFA 2000-039, petition of Ralph and Judy Chackal to allow for a reduction in the required front setback for a proposed single family dwelling and a reduction in the required side interior setback for a proposed swimming pool. It's located at 2114 South Suzanne Circle, approximately .25 miles north of the intersection of Ellison Wilson Road and PGA Boulevard within the Carleton subdivision, RM zoning district, found on pages 42 through 54, your back-up material.

Staff is recommending approval of the two variance requests for a front setback for a proposed new single family home and rear setback for a proposed swimming pool.

The gentleman down there, I don't know how much of a presentation -- if you want to go through it or if you want to hear what the gentleman's concerns are.

CHAIRMAN BASEHART: Well, why don't we start with that, and if it's something that's not a big issue then maybe we don't need to go through the full presentation.

Sir, if you could step forward. One thing I would like to say before you start though, the Board of Adjustment is empowered to make decisions on requests for variances.

We're not a land use -- we don't decide land use and any issues such as if you have a concern over another issue, like the height of the building or that's not requested for a variance or setbacks that aren't requested for variance or if the septic system isn't legitimately tied to the variance, then those are things that we cannot consider, and we'd appreciate not having to spend a lot of time discussing them, as well as general neighborhood issues.

MR. BLOCKER: Well, I see here on the site plan I just got that he is moving the septic system which is fine. I have no problem with that.

The other thing is --

CHAIRMAN BASEHART: Before you start, I'd like everyone that's going to speak on this item to please rise and be sworn in.

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

CHAIRMAN BASEHART: Okay. Now if you could give us your name again for the record?

MR. BLOCKER: My name is Paul Blocker. I live at 2107 Cove Lane in Juno.

Like I said, I've seen the review plans here, the first time I've seen it. The septic system is going to be removed.

Is this going to be a single family dwelling? I know it's a two-plex lot. Is it going for rezoning for a single family or is it still going to be a duplex?

CHAIRMAN BASEHART: This is not a rezoning. My understanding from the record is that it's going to continue to be a single family home.

MR. BLOCKER: Well, it's a duplex. It's not a single family home. It is a duplex now. It's an RM.

MS. KONYK: What is it going to be?

CHAIRMAN BASEHART: There are two homes on the property; is that correct?

MR. CHACKAL: There are two units on the property.

CHAIRMAN BASEHART: Two single family homes?

MR. CHACKAL: The variance has to do with only one of the units.

MR. BLOCKER: It's a duplex; they're attached.

MR. MacGILLIS: The land use is MR5 and the zoning is currently RM, which is permitted for two units on this property.

MS. KONYK: And it's going to stay two units?

CHAIRMAN BASEHART: Whether they're attached or they're detached, the code allows two units on that property.

MR. MacGILLIS: Correct. There's currently two units on the site. One of them will be demolished where the new house is going up and the other one will remain. But it's all --

CHAIRMAN BASEHART: Okay. But that's not an issue for the variance?

MR. MacGILLIS: No.

CHAIRMAN BASEHART: The variance is for the pool?

MR. BLOCKER: Oh, for the pool? Okay. I have no objection to the pool.

MR. CHACKAL: And also, Mr. Chairman, also for the required front setback.

CHAIRMAN BASEHART: Right.

MR. BLOCKER: I have no problems with that.

MS. KONYK: So we could have left this on the consent?

MR. BLOCKER: Yes. Well, I didn't know who had the plan. I wouldn't have even been here.

MS. KONYK: So do you want to just get a motion to --

CHAIRMAN BASEHART: All right. Is there any other member of the public that would like to speak on this item?

(No response.)

CHAIRMAN BASEHART: Seeing none, is --

MS. KONYK: I'll make a motion. BOFA 2000-039 for approval of the two variances requested

with the conditions agreed upon by the applicant and --

CHAIRMAN BASEHART: There are seven of them now, right?

MR. MacGILLIS: Correct.

MS. KONYK: -- and the wording being taken out of the back-up material and the staff report becoming part of the record.

CHAIRMAN BASEHART: Okay. Motion by Ms. Konyk.

MR. JACOBS: Second.

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

(No response.)

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

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no?

(No response.)

CHAIRMAN BASEHART: Motion carries unanimously. Thank you.

#### STAFF RECOMMENDATIONS

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

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

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

**YES.** The subject property is located at 2114 S. Suzanne Circle approximately .25 miles in of the intersection of Ellison Wilson Rd. and PGA Blvd., within the Carleton subdivision, in the RM Zoning District. The Future Land Use Designation is MR-5. On May, 10, 2000, the applicant received a Planning Confirmation Letter which permitted the applicant to demolish and replace 1 of the 2 units on the subject property.

Currently, the subject property supports 2 single family dwelling units. The application is proposing to demolish the westerly residence with a garage and to replace it with a new 2-story single family residence with a total floor area of 3,500-4,000 Sq. Ft. (footprint: 53' x 46' = 2,431 Sq. Ft.) as well as a new swimming pool (15' x 30'). The easterly residence (1,344 sq.



ft.) will be remained.

As previously stated, the subject lot is the last property along the S. Suzanne Cir. which ends towards the Intracoastal Waterway to the west. The house across the S. Suzanne Cir. faces to another street which is perpendicular to the S. Suzanne Cir. Therefore, the subject residences front on the side of the neighboring resident across the street. The proposed swimming pool will also be sided onto an open space (approximate 250' wide of Intracoastal Waterway). There are no residential properties adjacent to the West property line and at least within 250 ft. from the subject property. In addition, the subject property is narrow in its configuration (73' deep). However, the applicant will redevelop the property with a new westerly residence to both eliminate the existing non-conformity of the rear setback and reducing the existing non-conformity of the front setback by 4.4 ft.

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

**NO.** There are two existing single family residences on the subject property. The applicant is proposing to demolish the westerly residence and replace it with a new building. As indicated in the submitted site plan, the proposal will improve the existing site condition by reducing the and reducing the front setback encroachment by 4.4 feet from the easterly residence. To mitigate the requested setback variances, the applicant agrees to upgrade the landscape material recommended by staff.

Therefore, special circumstances and conditions **are not** the result of actions of the applicant.

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

**NO.** Granting the variance **will not** grant any special privilege on the property owners. The proposed single family residence is consistent with the County's Comprehensive Plan and ULDC. The subject property is allowed to be redeveloped in compliance with Sec. 6.5 of ULDC. Allowing the property owners to replace an existing residence is in keeping with the residential character of the surrounding neighborhood.

4. A LITERAL INTERPRETATION AND ENFORCEMENT OF THE TERMS AND PROVISIONS OF THIS CODE WILL

DEPRIVE THE APPLICANT OF RIGHTS COMMONLY ENJOYED BY OTHER PARCELS OF LAND IN THE SAME DISTRICT, AND WOULD WORK AN UNNECESSARY AND UNDUE HARDSHIP:

**YES.** Granting the requested variances **will meet** with general intent of the code, which is to ensure a minimum separation, privacy and compatibilities of uses as well as to maintain uniformity along property lines, protect adjacent property owners, and protect property values.

The requested front setback encroachment of 10 feet would affect the adjacent property across the street to the north. As indicated previously, the proposed residence will front on the side facade of the adjacent property. In addition, the subject lot is the last property at the end of the local road. Therefore, the separation between the subject and the adjacent properties is sufficient not to impose any adverse impacts associated with this variance request. The most affected are to the proposed swimming pool is a 250' wide intracoastal waterway. No adjacent residential property will be affected by the encroachment of the proposed swimming pool. Therefore, the proposed addition will be compatible with the residential uses and maintain the characteristics of the neighborhood.

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

**YES.** This **is** a minimum variance that will ensure a reasonable use of the property. If the variance request is granted, it would allow the applicant to substantially improve the property conditions, add more amenities, increase the property values as well as keep the architectural characteristics with the neighboring residential area. In addition, the proposed structure will conform to all the code requirements with the exceptions of the 2 variances in this application. As previously indicated, the applicant's proposal will reduce the existing non-conformity by both eliminating the rear setback encroachment and reducing the front setback encroachment by 4.4 feet from the easterly residence.

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

**YES.** The variance request complies with the general intents of the ULDC which are to

ensure a minimum separation between the proposed structures and the adjacent properties. As previously indicated, the variance **will not** have negative impacts on the adjoining property to the north and the west. The proposed structures will be in harmony with the residential character of the neighborhood and will not detract from the area.

The intent of the Comprehensive Plan is to encourage residential development to improve and maintain the living standards for people to better enjoy their community. The proposed residence and swimming pool are not an uncommon request. The requested variances will allow the property owners to promote their quality and enjoyment of life while the adjacent property values will be maintained and not be adversely affected, if the variance is granted.

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

**NO.** Granting the variance **will not** negatively impact the surrounding area. The subject lot is the last property along the S. Suzanne Cir. which ends towards the Intracoastal Waterway to the west. The house across the S. Suzanne Cir. faces to another street which is perpendicular to the S. Suzanne Cir. Therefore, the subject residences front on the side of the neighboring resident across the street. The proposed swimming pool will also be sided onto an open space (Intracoastal Waterway). In addition, there are no residential properties adjacent to the West property line and at least within 250 ft. from the subject property. The applicant also agrees to upgrade the landscape material as recommended by staff in order to mitigate the requested setback encroachments. Therefore, no adverse impacts would be imposed on the adjacent properties associated with the requested variances.

**ENGINEERING COMMENT(S)**

The Base Building Line for South Suzanne Circle (extension) has been established at the north property line of the subject property by Base Building Line Waiver issue on June 9, 2000.

**ZONING COMMENT(S)**

City of Palm Beach Gardens has no objections to this application.

**ZONING CONDITION(S)**

1. By March 20, 2001, the applicant shall provide the Building Division with a copy of the Board of Adjustment Result letter and a copy of the Site Plan (Exhibit No. 23, BA2000-039) presented to the board, simultaneously with the building permit application. **(DATE: BLDG PERMIT-Bldg)**
2. By May 20, 2001, the applicant shall obtain a building permit for the proposed single family residence. **(DATE MONITORING-Bldg Permit)**
3. By May 20, 2001, the applicant shall obtain a building permit for the proposed swimming pool **(DATE MONITORING-Bldg Permit)**
4. By March 20, 2001, simultaneously with the building permit application the applicant shall submit a Conceptual Landscape Plan to include the following material in front of the proposed residence. The specific location to be determined by staff and applicant at time of permitting. **(DATE: MONITORING-LANDSCAPE)**
  - One 14 ft. high native shade tree;
  - Three palm trees with 30 feet measured from the center of the required shade tree;
  - Continuous 36" high native hedge planted 24" on center along the front property line.
5. Prior to issuance of a final Certificate of Occupancy for the proposed SFD, the applicant shall install the landscape material as indicated in condition #4 **(CO-INSPECTIONS:LANDSCAPE)**

CHAIRMAN BASEHART: Next item is the second item that was pulled from consent. Eleanor B. Halperin.

Jon, will you introduce this item?

MR. MacGILLIS: Yes. Joyce will.

MS. KONYK: When it's your turn, we'll let you speak.

MS. CAI: Eleanor B. Halperin, agent, for D.X. Property, L.P., a Delaware --

UNIDENTIFIED SPEAKER: We can't hear her. I don't think that mic is working.

MS. CAI: I'll raise my voice.

CHAIRMAN BASEHART: Get a megaphone.

MS. CAI: Eleanor Halperin, agent, for D. X. Property, L.P., a Delaware L.P., to allow a readjustment of allocation of gross floor area for approved uses for the commercial tract in accordance with the Board of County Commissioners' conditions.

It is located at 100 Century Village (sic) on the west side of Haverhill Road, approximately one mile north of Okeechobee Boulevard within the RH Zoning District.

I think this petition is to allow the -- readjust existing square footage to reduce the 8,250 square feet from the existing medical office and convert it to the drug store, and that drug store is going to serve only the internal residents and for medical related items only.

CHAIRMAN BASEHART: Okay. Thank you.

Ms. Halperin? What I'd like to do is everybody that's going to speak on this item, will you please rise to be sworn in?

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

CHAIRMAN BASEHART: Okay.

MS. HALPERIN: Thank you. I'll be brief. I'm Eleanor Halperin, attorney for the applicant, which as I noted due to a corporate restructuring is now D.X. Property, L. P. It is a Delaware limited partnership who will shortly be authorized to do business in Florida. It's not currently, but by Florida law is permitted to own property without being authorized to do business. And I'm mentioning that because I know that was one of the concerns expressed by one of the residents.

When the use of this building was approved by the Board of County Commissioners, the use limitations were very specific as to what uses could be provided to the residents. However, they also added a final condition which allowed the square footage allocation of the uses to be readjusted by a variance anticipating that over the course of time the needs for the use of this building would change, and that's exactly what we're here for.

They're looking to reallocate the use of the building to put a pharmacy on site for the use of the residents only. There is no access into the village by outsiders.

I have been told that I was -- that some of the verbiage in my application was demeaning and I would like to apologize for that in that I noted that this would afford the opportunity as the BCC has strongly supported to internalize vehicular traffic in communities, noting that some of the elderly would not be on the roads. And I apologize for that.

The intent was that vehicular traffic be internalized and that we try and just keep as much traffic off Okeechobee Boulevard as we can.

There were over 250 letters sent out to those within 300 feet of this site, and I believe there were approximately 18 objections, and that was it.

And if you have any questions, I'm ready to answer them or address any of the objections of those present.

CHAIRMAN BASEHART: Okay. Why don't we hear from the members of the public? If you can give us your name?

MR. SPIVAK: Sure. My name is Irving B. Spivak. I'm a resident of Century Village, full time resident.

CHAIRMAN BASEHART: And you've been sworn in?

MR. SPIVAK: And I have been sworn in. I'm a property owner at Century Village.

The comments that I'm going to make have some detail in it, so I've made six copies of it so that the Board can refer to it if they wish.

MS. KONYK: Motion to accept into the record.

CHAIRMAN BASEHART: We have a motion to accept Mr. Spivak's letter into the record.

MR. CARDONE: Second.

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

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: All right.

MR. SPIVAK: I'd like to preface my remarks by the fact that I was not privy to the information that I received this morning which is the staff report and comments on the application. But I would like to read to you what my thoughts are.

The consent form which was provided by the Palm Beach County Zoning Division..., and incidentally I have referred to this as the Zoning Board. Possibly I'm wrong. It's the Board of Adjustment.

The consent form which was provided by the Palm Beach County Zoning Division which was completed and signed by Elaine Haulf (ph) on behalf of D. X. Properties includes the following statement. "I understand that any false, inaccurate or incomplete information provided by me or my agent will result in the denial, revocation or administrative withdrawal of this application request approval or permits."

I have my own personal feelings about introducing a major commercial use into what is essentially a one square mile private property with no public roads owned by 7,854 property owners as tenants in common as stated in Article 12.B.6.C.1 of the Declaration of Condominiums, which is the governing document of Century Village as prepared by Abrams, Anton, Robbins, Resnik & Burke, attorneys for Century Village, Inc. in 1969. This document was filed in book 1764, page 1055, for the particular participating condominium association, Coventry L, of which I happen to be a condominium unit owner.

And in support of what I say, these maps that you see here are really not a correct representation of Century Village. Century Village has no roads. All of the properties in Century

Village abut each other. There is not one public street in the entire village.

It is abutting property owners all of whom are tenants in common in each of the condominium associations that they own.

CHAIRMAN BASEHART: Excuse me. Any resident or any property owner within Century Village can use any one of those roads any time they want.

MR. SPIVAK: That's right, but it is not a community, a neighborhood community, as you would find in any CN zone in Palm Beach County.

The parcel in question is a two acre parcel in the middle of an approximately 640 acre Century Village. This property was retained by the developer under a litany of corporate names, the latest of which is D. X. Properties Corp., and I understand that has now been changed.

And has been in use since its construction as an administration building and referred to as such in your 1994 variance decision, indexed as BCFA [sic] 2000-043 as an exhibit in this current variance application.

I question the logic of a use designation as a CN neighborhood commercial zone by any Zoning Board in an area that is not a neighborhood by any figment of imagination. That has been done, and only you as the Zoning Board have the ability to revisit that decision.

You now have before you an application to compound that 1994 decision by expanding that use to intrude, and I define that as to barge in or thrust yourself without permission, and to intrude into a tightly knit residential community, an 8,200 square foot full service drug store with all of the traffic and trucking and parking problems that in any other location would have to be resolved by an environmental impact study.

As part of your application process you invite the applicant to designate the present and proposed future use of the subject property. The applicant refers to the property and responds to both of these questions as a resident service center. This property is not now and to the best of my knowledge as a condominium owner since 1989, has never been a resident service center.

Another part of your application is a Board of Adjustment seven criteria which invites the response of the applicant to each of seven statements to basically determine if the applicant would be the beneficiary of any special benefits that are not received by owners of similar parcels of property in the same zoning district, and the zoning district is RH.

In the applicant's response to each of these criteria, there is a constant reference to the needs, the evolving needs and the ability to continue to serve the needs of the residents as was originally planned.

I can categorically state that no referendum or survey of the residents has ever been made to determine the relationship between their past, present, evolving and continuing needs and the economic goals of the property owner with the

resulting impact on the lifestyle of approximately 14,000 persons as the owners of 7,854 condominium units.

Finally and most emphatically, I personally as an 82 year old citizen of Century Village, which I proudly call my home and which is the home of many other persons whom I am proud to call my friends, I resent and I feel ashamed of the statement made by the applicant who hides under the designation of an agent of record instead of making the application in his own name as chairman of the board of the applicant corporation and which statement I quote: "The variance poses no threat to the safety of the public. Rather, the reduction in the number of elderly drivers on the public roads could be quite beneficial to the public safety and welfare."

This statement which by virtue of this hearing is a public statement is a significant and non-separable part and parcel of the application, and I wonder if you as a Zoning Board wish to endorse that position by granting the variance.

MS. KONYK: Mr. Spivak?

MR. SPIVAK: Yes.

MS. KONYK: Are you being paid?

MR. SPIVAK: I'm just mentioning this as a resident. My -- my --

MS. KONYK: All right. It says here that you're a business consultant.

MR. SPIVAK: No, my profession is as a business consultant. I've spent 54 years in the real estate and insurance business and now I'm retired, but I am licensed in Florida in Palm Beach County as a business consultant. That's the only thing that I do.

MS. KONYK: Okay. But you're not being paid today?

MR. SPIVAK: I'm not being paid for this.

MS. KONYK: You're here as a resident?

MR. SPIVAK: This is my own personal comments in relation to what is taking place, and it is a situation in which one person who owns a sliver of land in the square mile of dense residency assuming that these are the needs of the residents.

No one has ever asked me and to the best of my knowledge no one has ever asked anyone else in any survey or referendum of whether they want this and whether this is to serve their needs, and I'll leave the rest to you.

Thank you.

CHAIRMAN BASEHART: Any other member of the public like to speak on this item?

All right. If we can have your name?

MR. MORGANBLICK: My name is Louis Morganblick.

CHAIRMAN BASEHART: And you've been sworn in?

MR. MORGANBLICK: I've been sworn in.

I am the president of the Dover Condominium Association which has 240 units. We are directly adjacent to this property in question. Now --



MS. KONYK: Are you speaking on behalf of the 240 residents?

MR. MORGANBLICK: And myself.

MS. KONYK: Do you have a letter that states that you're speaking on their behalf?

MR. MORGANBLICK: I am the president.

MS. KONYK: I know, but you still need a letter.

MR. MORGANBLICK: I have the authorization to carry out the business of that association.

MS. KONYK: Yeah, but when you come before a public hearing --

MR. MORGANBLICK: Then I will speak for myself, okay?

MS. KONYK: Okay.

MR. MORGANBLICK: Either way. But for information purposes, I'm speaking for 240 unit owners.

These unit owners, especially in building A, have received due notice of a change of -- request of a change of variance. They have received no bill of particulars, they have received no disclosure statement as to what it's all about.

After inquiring and investigating, we found out it's a drug store that wishes to come into the administration building. We had a meeting of our board of directors which represents all of the unit owners also, and it was unanimously agreed that we are opposed to this. We are opposed to this installation.

CHAIRMAN BASEHART: Do you have any --

MR. MORGANBLICK: Now I'll give you the reasons.

CHAIRMAN BASEHART: Do you have any record of the meeting that you could submit for --

MR. MORGANBLICK: Yeah, we have minutes of the meeting, but I don't have them with me, okay? Whereas I do not have minutes, then you'll have to say that these are my personal opinions.

CHAIRMAN BASEHART: Okay.

MR. MORGANBLICK: We are located -- the area of Dover and the administration building which is the one in question is located at an intersection of Century Boulevard and South Road. This intersection is controlled by four stop signs. This is the most heavily traveled intersection in Century Village. It depends on the courtesy of the drivers for you to make a right turn, a left turn or go forward. It depends on the courtesy of the drivers.

There is no traffic light there, but it is in continuous operation all day long because it leads to the clubhouse, to the swimming pools and other recreation areas. So practically every car in Century Village must pass that intersection or go through it.

If this variance is given, it would create additional traffic to this intersection. We would get multi-ton trucks in there which don't come in now, multi-ton trucks, 18 wheelers and so forth, trailer trucks making their deliveries. If this is going to be a full service drug store, then there's going to be heavy items there, the deliveries of

Coke and beer and the unloading of these trailer trucks.

They will have to, there is no way, there is no way they can avoid passing this intersection on South Road and Haverhill Drive. And it will create a situation of where an accident is waiting to happen. These are one of the things.

There is a parking situation on that side of the -- on that property. It hasn't been determined how many parking spaces would be available for this drug store. Right across the street of Century Boulevard there is a small little parking field which is owned by the lessor right outside the wall of the Dover Association.

Based on past history of the lessor and his operation, this parking field has never been maintained properly. It's dirty, it's filthy, it's full of leaves, it's never swept and there are no lines or you can hardly see the lines that indicate spaces. How will that be addressed?

Also, the people of the Dover Association have a concern that if there is not enough parking spaces to service the drug store, they will spill over into our parking spaces which are reserved for the guests of the Dover residents. So we would have what's called an impact of density of cars that are unwelcome there because people want to go to the drug store.

Now is there a necessity for this drug store? We were never asked and nobody has ever asked for a drug store in Century Village. The only thing people ever wanted was a luncheonette in the clubhouse itself, and there was one there originally going back over 25 -- going back approximately 15, 20 years. There was a luncheonette. That was taken away and that was the only thing the people missed, a luncheonette.

If they were to put a lunch counter in the drug store, it would not be convenient for the people who are using the recreation area. It would be too far to walk for them. And if they had to take their cars, they couldn't find a parking space once they got there. So this would be the impact there.

Now on the corner of Haverhill Road and Okeechobee Boulevard, Walgreens has invested millions of dollars to put up a drug store, and that's just a short walk away. Actually less than a mile away, a half-mile to be exact from the Haverhill gate is Walgreens drug store, full service, everything you want.

Also, we have transportation in Century Village. We have bus service at no charge to the residents and they can go out, come and go as they please. They can go to Walgreens, they can go to Eckerd's and they can go to every supermarket in the area which has a pharmacy. And all of these pharmacies and all of the installations that I mentioned take HMO plans. So there's no problem with that, even if this new pharmacy would come in and say we will accept HMO prescriptions.

So this is the situation the way it is. Now, like Mr. Spivak said, he went into the

technicalities. I'm going into the personal angle of this here, and I'll tell you that the density and the statement that he read, which was the response which says, "The variance poses no threat to the safety of the public. Rather, the reduction in the number of elderly drivers on the public roads could be quite beneficial to the public safety and welfare."

Well, let me just close with this. They prefer to fence us in and they prefer that we kill each other at this intersection.

Thank you.

CHAIRMAN BASEHART: Thank you. Any other member of the public?

Oh, excuse me, sir, before you start, one of the board members has a question they'd like to ask you.

MS. CARDONE: Yes, if I could ask you a question. You mentioned that you are president of the Dover Association?

MR. MORGANBLICK: Dover Condominium Association, yes. We are located right across a two lane road from the administration building.

MS. CARDONE: Okay. How many other associations are there within Century Village?

MR. MORGANBLICK: 309.

MS. CARDONE: 309 --

MR. MORGANBLICK: 309 associations. But the variances were not sent to them. They did not get any notification of what is happening here. We got the notification in Building A.

In fact, one of our residents sitting in the back, she got the notification of it. She's just here as a witness. And that's why we're here.

MS. CARDONE: Thank you.

MR. MORGANBLICK: Okay? There was no disclosure made anywhere, newspapers or what.

MR. JACOBS: May I ask a question, please?

MR. MORGANBLICK: Yes, sir?

MR. JACOBS: What is the present use of the building in which the drug store is proposed to go?

MR. MORGANBLICK: Very good question. There were in the last two or three years, it was leased to doctors, doctors who could only take residents of Century Village. No outsiders were allowed to come in to use the doctors' services.

Now with this new variance, with this new plan to bring the drug store in, which means a lot -- which is a bigger deal, let's call it that, the doctors were evicted. And those patients who were using these doctors now have to travel to Flagler Drive to see their doctor. In back of it there's a small real estate office.

MS. KONYK: I think the applicant should address that.

MR. MORGANBLICK: I'm sorry?

MS. KONYK: I think the applicant should be addressing what the prior uses were.

If we could move on to the next person that wants to speak?

MR. MORGANBLICK: Those were the prior uses, a doctor's office.

MS. KONYK: Okay.

CHAIRMAN BASEHART: Sir, give us your name, please, for the record.

MR. HIRSCHMAN: My name is Mr. Hirschman, Melvin Hirschman. I'm president of the Sussex C Condominium Association, and I also represent 14 buildings. I'm elected vice president, as an area vice president for 14 condominium complexes.

CHAIRMAN BASEHART: Okay. Do you have anything for the record to document that you represent --

MR. HIRSCHMAN: I'm speaking for myself at this point.

CHAIRMAN BASEHART: Okay. And you've been sworn in?

MR. HIRSCHMAN: Yes, I have, sir.

CHAIRMAN BASEHART: Okay.

MR. HIRSCHMAN: Thank you.

I was just reviewing the initial application by, I guess, this corporation at this time was the -- this application was signed by another gentleman. I think it was the first one by a Mr. Brian and this was back in 1994.

And he indicated that the proposed following uses, one was an office for 14,000 square feet, a general retail for 7,000 square feet, medical offices for 2,000 square feet, elderly day care 2,000 square feet, a restaurant for 2,000 square feet, a convenience store for 2,000 square feet and personal services for 2,800 square feet.

When I discovered this issue over here I spoke with Ms. Cai. She was very, very helpful and faxed me over some information here. I was most appreciative and she was quite courteous.

And what I did as I went through our 14 corporations in the Sussex from A to M, I made an inquiry and I wanted to know if anybody was aware of the proposal. They were not. I took a consensus of 70 people and I said what do you think of it? Do you want a drug store? Do you want this? Do you want that? And so forth. And I will say that it was 68 negative and two positive. That was the vote.

Anything else that I might offer has already been said. I will not take the Board's time, but I'm just indicating that I feel that we were entitled to know what's going on. Nobody ever told us.

Mr. Levy has an auditorium that has 1,100 seats. He could have invited us and said, hey, look, I'd like to have a drug store over here, I'd like to have a small store or whatever have you if somebody wants to go out and get a bottle of milk or what have you, and I could fathom that. But to go out and take 8,000 square feet, I mean, you're going to have a very, very big store in there and I don't think -- then of course they also can in the future have the elderly day care because you already authorized this, and you authorized a restaurant. It's never come to fruition.

So my suggestion is over here is that if they want a little pharmaceutical, I have no objection to that, but to get into this thing over here, we have doctors right at the gate on the west

gate. We have Humana, we have private doctors here. We have a wonderful transportation system over here. People can walk to it, people can get the bus to it.

We have drug stores who will deliver. We have Eckerd's delivery. We have Walgreens who will deliver, and so they have the opportunity, you see. The buses will take them to wherever they want to go, to the doctors, to the shopping malls and whatever have you.

So actually they're not taking their cars if they have them. They get on the bus and they travel, a whole bus load of people and so forth, and I think it's great. But this business of expanding, and as I said, I got a vote from 70 people and they were against it.

MS. KONYK: Okay.

MR. HIRSCHMAN: And I thank you very, very much for your time.

MS. KONYK: When -- you all got letters within 250 feet. The people that live within --

MR. HIRSCHMAN: 300.

MS. KONYK: -- 300 feet got the letters. Also, they put up yellow signs. The yellow signs were up, right?

MR. HIRSCHMAN: Yes, for a time, and then they were torn down and then they were put up again.

MS. KONYK: Yeah, okay, because that's how they notify everybody within the whole area. People within 300 feet are required to get a letter.

Everybody else is assumed to drive by and notice the signs, and then if they want to investigate it they can.

MR. HIRSCHMAN: Yes, that's true, that's true. Unfortunately, I think it should have been-- it could have been done in a different way.

I mean, if Mr. Levy or the corporation were there to just tell us in plain English, okay, if you look at all of --

MS. KONYK: Usually, what happens with something like this is if there's a lot of opposition within the community, then the people that are bringing the application forward would be aware of that because it would have been brought to their attention, and then they would usually try to work it out with the people that are involved.

I don't know, we haven't heard from the applicant yet how much opposition they did hear from. So why don't we hear from the applicant now, I guess.

MR. HIRSCHMAN: Again, thank you very, very much. I appreciate it.

CHAIRMAN BASEHART: Okay. Thank you. Is there any other member that has not yet spoken that wishes to speak on this item?

(No response.)

CHAIRMAN BASEHART: Okay. Seeing none, then we'll go to Ms. Halperin.

MR. HIRSCHMAN: Thank you very much.

CHAIRMAN BASEHART: We'll close the public portion.

MS. HALPERIN: Thank you. And I'll try and be brief.

The representative, the owner of the property did meet. There's an umbrella organization in Century Village called UCO and they had met with UCO to determine the uses of this building. And obviously, you know, as business people it's their risk to put in a tenant that may not survive.

If the residents do not need this facility, then obviously the lease will fail and it won't last very long. But from dealing with the umbrella organization, it was their feeling that this was an appropriate use to meet the needs of the residents.

The parking situation is mitigated in fact by their internal bus system. The same bus that they can take outside to the drug store they can take internally. And the use allocation was permitted in the conditions of approval anticipating that the movement of these uses hopefully would be satisfied with the -- as far as parking situations, by the internal bus system since that's primarily how people move around.

The prior use was -- there were physicians and they vacated. They were not evicted.

CHAIRMAN BASEHART: The question is that some of the concern expressed by the members of the public that spoke were that, you know, you're going to have beer trucks and Coke and all kinds of stuff. My understanding from what I read in the staff report is that this would be limited to medical items, pharmacy items only, no general --

MS. HALPERIN: It's the same general retail use and unfortunately I don't have my reading glasses, but it's pharmaceutical, drugs, health aids, health related which are to the exclusive use of the residents of Century Village, and newsstand and gift items. This is not beer and milk and soda and anything that requires --

CHAIRMAN BASEHART: So it won't be a convenience store?

MS. HALPERIN: No, this is exclusively medical related uses.

MR. WICHINSKY: Mr. Chairman, I have two questions.

MR. SPIVAK: Is it possible to make a comment in relation to what was said or is it closed because there was a misrepresentation in the statement, a major misrepresentation.

CHAIRMAN BASEHART: All right. I'll let you make one comment, but this isn't going to be a debate.

MR. SPIVAK: No, not a debate. I happen to be a member of the Executive Board --

COURT REPORTER: Wait, can you come to the microphone?

CHAIRMAN BASEHART: Yes, you need to come to the microphone.

MR. SPIVAK: Oh, I'm sorry.

CHAIRMAN BASEHART: Restate your name.

MR. SPIVAK: Yes, my name is Irving B. Spivak. I happen to be a member of the Executive Board of the United Civic Organization.

An announcement was made at our last meeting that they wanted to put in a drug store. No mention was made at the Executive Board meeting of the size or the impact or anything else. There was no discussion. The Executive Board of the United Civic Organization was not aware of the details. I only became aware of it after actually investigating here. I had a meeting with Ms. Cai.

The fact that when they say that the United Civic Organization which represents everybody was in favor of it, there was no comment whatsoever to the individuals in the United Civic Organization which consists of all of the residents in relation to this. So it was something that was just put over on us.

CHAIRMAN BASEHART: Thank you.

MS. HALPERIN: Unfortunately, I can only relate what's been told to me, which was that the president of UCO was in support of that. And maybe it was individually and not as a representative of the entire umbrella organization.

CHAIRMAN BASEHART: Okay.

MR. WICHINSKY: Yeah, I just have two short questions. What is the term of the lease?

MS. HALPERIN: I don't think it's been finalized yet. It's still in negotiation.

MR. WICHINSKY: Okay. And in terms of the residents' concern about shipments and trucks and whatever, I'm sure an arrangement could be worked out where it's time sensitive to them?

MS. HALPERIN: Oh, absolutely. Just like any deliveries are made. I mean, there are things that are obviously going to have to be delivered just like furniture gets delivered and other things get delivered around. With safety concerns, they're more likely than not earlier rather than later.

MR. WICHINSKY: Thank you.

CHAIRMAN BASEHART: Okay. Any other questions from members of the Board?

MR. JACOBS: I have one. Is there anything in the application which limits the use of the drug store to purely pharmaceutical items? Is that a specific condition?

MS. CAI: Yes, I can answer that. Based on the condition approved back in 1994 by BCC, there's a condition to restrict retail specifically -- let me read this to you --

MS. HALPERIN: That was the language that I just read.

MS. CAI: Okay. Let me read that again. It is according to the condition I.1. General Retail. "Limited to a maximum of 1500 square feet of gross floor area per use and shall be limited to the sale of prescription and over-the-counter pharmacy drugs, health aids, durable medical goods and other items which are health related and which are for the exclusive use of the residents of the Century Village, and newsstand and gift shop."

Yeah, that's how the whole sentence is.

CHAIRMAN BASEHART: Okay. No Michelob? Okay.

MR. JACOBS: So the restrictions would be in

place but in a larger store?

MS. CAI: Right, so the use is permitted, but however the square footage --

MR. JACOBS: The store would be larger?

MS. CAI: -- is over the maximum allowed. That's why they are here to apply for the variance. And there's another condition in the same item I. It's .5. At that time, the BCC approved these conditional A use. They also recognized that -- I mean, they knew that the applicant would come back to readjust his square footage in the future, and that has been reflected in this condition which reads as, "The CN regulations require certain limitations of square footage per use. The petitioner may seek variance relief from CN Code Requirements regarding square footage limitations per use. In no event shall the cumulative square footage exceed the proposed 31,800 square feet of the accessory commercial development."

That's why when they came back to readjust existing square footage, which is allowed by this condition.

CHAIRMAN BASEHART: All right. For the record, the staff recommendation is for approval with --

MS. CAI: I have one modification. I want to add one sentence. The condition number 3.

I want to put, "Prior to DRC certification, the applicant shall obtain a concurrency equivalency determination for the modification to the square footage allocation for the approved uses." So I want to add, prior to DRC certification, you know.

CHAIRMAN BASEHART: Any problem with that?

MS. HALPERIN: No, no problem.

CHAIRMAN BASEHART: Any other questions from members of the Board?

(No response)

CHAIRMAN BASEHART: Any discussion? Any motion?

MS. KONYK: You're in negotiation right now with the respective tenant?

MS. HALPERIN: It's almost to signature, but I do not know the term of the lease.

MS. KONYK: Obviously if the residents of Century Village do not want this drug store there and it is approved, it will probably fail because they will not frequent it.

My only concern is that if this is granted and then subsequently the drug store isn't able to thrive in that location, I wouldn't want to open up a door that would allow someone else to come in using that number of square feet, et cetera.

CHAIRMAN BASEHART: I think the issue here is size. The use is already something that's been approved.

MR. SPIVAK: No. Who approved it?

MS. HALPERIN: Excuse me.

CHAIRMAN BASEHART: The Board of County Commissioners.

MS. HALPERIN: The Board of County Commissioners has approved specific uses within this building.



MS. KONYK: Right.

MS. HALPERIN: The only thing that we can come before you and probably will on a continuing basis is to reallocate the square footage of those uses.

MS. KONYK: Okay.

MS. HALPERIN: That's the only thing we're allowed to do.

CHAIRMAN BASEHART: I think the problem with this whole situation is based on the age of the community, not the residents, the community itself.

This project was approved way back in the early '70s or late '60s before there was a PUD ordinance. So we have a conventional zoning situation that was trying to be developed like a planned community. I mean if this project was approved under the PUD ordinance like we have now, we wouldn't be here because there would be a commercial pod allowed and all these things would be just regulated by the code.

I think what the developer of Century Village tried to do was maybe like fitting a round peg in a square hole, trying to use conventional zoning scenario to develop a planned community. I remember when this all went before the Board of County Commissioners because that building was the original administration building for the development.

I mean, it's a big development, and that administration building housed the corporate headquarters of the developer and the utility company before they sold the utility to Palm Beach County.

As time went on and the development became complete, then they identified a need for some services that would normally be found within a PUD if this was a PUD, and they went to the Board of County Commissioners and got that approved. All the uses that were -- well, this particular use and others were approved by the Board and I guess they recognized that over time needs would change and they assigned the responsibility to determine the allocations of the square footage to this Board.

So I think that this whole awkward situation that we're faced with here is just basically as a result of trying to fit a community and flexibility into a conventional zoning scenario.

MS. HALPERIN: Thank you.

MS. KONYK: Okay. BOFA 2000-043, I'm prepared to make a motion for approval with the conditions as amended, and the staff report becoming part of the record.

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

MR. WICHINSKY: I'll second it with a comment.

CHAIRMAN BASEHART: Okay. Second by Mr. Wichinsky.

MR. WICHINSKY: As established, we don't determine on this Board the use of the property. We're dealing with the variances only.

And in terms of the business operations, as Ms. Konyk said and I'll affirm that, if the

business is not successful, hopefully the tenant doesn't have a long term lease and they'll be out of there very shortly. I would hope that the -- excuse me?

UNIDENTIFIED SPEAKER: They could sell their lease. If it's undesirable --

MS. KONYK: Excuse me. The public portion of the hearing is closed.

UNIDENTIFIED SPEAKER: Okay. He asked -- (inaudible).

MR. WICHINSKY: Anyway, I second the motion.

CHAIRMAN BASEHART: We have a motion by Ms. Konyk, a second by Mr. Wichinsky.

Any further discussion?

MS. CARDONE: Can I ask one more question? Joyce, on page 97 of our back-up material you've got a table there with approved gross floor area and proposed gross floor area, and the proposed area comes up to 25,750 and I can see where you arrive at that because the numbers add up. Over on "Approved" those numbers just don't add up to 31,800.

MS. CAI: Because there is still some square feet that has not been built up yet.

MS. CARDONE: Okay. So they'll be building?

MS. CAI: Yeah, the 31,800 is a maximum allowed, but existing is 25,750 square feet.

MS. CARDONE: Okay.

MR. MacGILLIS: Just for your clarification -- when the project was built there was an existing building there in '94 when they came to the Board to get this conditional use A approved for commercial on the site, there was an existing building. They asked for additional square footage, which they've never built to today, so the Board approved what was there plus additional square footage to be built for a total of 31,800 square feet.

So what Joyce said is that additional square footage they're entitled to has not been built yet. They could build it at a later time.

CHAIRMAN BASEHART: Right, but it doesn't have anything to do with the pharmacy use?

MR. MacGILLIS: Correct.

MS. KONYK: Or the pharmacy because it's using existing square footage?

MR. MacGILLIS: Correct.

CHAIRMAN BASEHART: Okay. Does that answer your question? Any other questions or comments?

(No response)

CHAIRMAN BASEHART: All right. Why don't we do a roll call vote?

MS. MOODY: Ms. Nancy Cardone?

MS. CARDONE: No.

MS. MOODY: Mr. Joseph Jacobs?

MR. JACOBS: Yes.

MS. MOODY: Ms. Shelly Konyk?

MS. KONYK: Yes.

MS. MOODY: Mr. Glenn Wichinsky?

MR. WICHINSKY: Yes.

MS. MOODY: Mr. Stanley Misroch?

MR. MISROCH: Yes.

MS. MOODY: Mr. Bob Basehart?

CHAIRMAN BASEHART: Yes.  
Okay. The motion passes 5-1.

#### STAFF RECOMMENDATIONS

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

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

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

**YES.** The subject property is located at 100 Century Blvd. and on the West Side of Haverhill Rd., approximately 1 mile N of Okeechobee Blvd., within the High Density Residential zoning district (RH) (Century Village "Residents Center", Pet. 93-040). The subject property has supported an Administration Building with the parking lot since the early 1970s. Previously, Section 6.6.A.12. of the ULDC (Supplement 1, effective Feb. 16, 1993) allowed a limited amount of commercial development in a residential development which was developed prior to the establishment of Planned Unit Development regulations in Ordinance 3-57 (1969).

The initial residential phase of Century Village was constructed prior to 1969. Pursuant to the Code, the applicant could add 60,996 to 87,063 sq. ft. of commercial space to the development. However, the applicant requested an approval of 31,800 sq. ft. for the Residential Service Center -an addition to the existing 28,640 existing Administration Building which required a Conditional Use "A" approval according to the ULDC.

As indicated by the applicant in this application, there are 2 types of existing uses within the administration building, the Medical Office/Dental Clinic and Administrative Offices. More specifically, the Medical Office/Dental Clinic includes doctor's offices, examination rooms, home health care offices, rehabilitation clinic space dental clinic and dentist office with a total of 15,750 Sq.Ft. The Administrative offices include legal, accounting and real

estate services with a total of 10,000 sq.ft.

As previously stated, the Board of County Commissioners (BCC) approved Petition 93-40 on Jan 27, 1994, for a Class A Conditional Use to allow a 2-acre accessory commercial development pursuant to Section 6.6.A.12 of the U.L.D.C. The approval was for 31,800 square feet of commercial which included, but not limited to, general retail, business, professional and medical offices, medical and dental clinic and day care for the elderly.

At the time this Petition went before the Board of County Commissioners, Petitioner knew that it would readjust the square footage for the approved use. Therefore, the following condition was added to the Petition (Condition 1.1.f, Resolution 94-111)

"The CN Regulations require certain limitations of square footage per use. The Petitioner may seek variance relief from CN Code Requirements regarding square footage limitations per use. In no event shall the cumulative square footage exceed the proposed 31,800 square feet of the accessory commercial development."

Consequently, in September 1994, the applicant requested a variance (BA94-64) from Section 6.4.D.60(a) to allow the subject property to exceed the required square footage for medical office/dental clinic from 8,000 sq. ft. to 31,800 sq. ft. for a variance of 23,000 sq.ft. and further agreed that in no event should the cumulative square footage exceeded 31,800 square feet of accessory commercial development. This variance request was approved by the Board of Adjustment without conditions.

Presently, the applicant is requesting a similar type of variance related to square footage limitations and reallocation between uses. The requested variances are based on the similar circumstances as the prior variance which there is a change in the demand for the allocation of square footage for approved uses. Currently, the residents need for additional 6,750 Sq.Ft. retail and 2,000 Sq.Ft. business/professional offices. The proposed retail will only serve the residents of Century Village while the expanded administrative offices are needed by the management of the development.

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

**NO.** The Palm Beach County Board of County Commissioners approved Petition No. 93-40, for a Class A Conditional Use in 1993 to allow accessory commercial pursuant to Section 6.6.A.12 of the U.L.D.C. The proposed commercial uses were limited by conditions of approval and the threshold in the CN District Regulations of the U.L.D.C. Two of those limitations were that General Retail and Business and Professional Office shall not exceed 1,500 and 8,000 square feet of gross floor area, respectively. At the time this Petition went before the Board of County Commissioners, the Petitioner for the project knew that it would require flexibility in the allocation of square footage between the various uses. Therefore, the following condition was added to the Petition:

The CN Regulations require certain limitations of square footage per use. The petitioner **may seek variance relief** from CN Code Requirements regarding square footage limitations per use. In no event shall the cumulative square footage exceed the proposed 31,800 square feet of the accessory commercial development.

The applicant is, therefore, simply requesting to be permitted by the Board of Adjustment to shift the approved square footage for the retail and professional offices to meet their current needs.

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

**NO.** The subject building is supporting Medical Office/Dental Clinic (15,750 Sq.Ft.) and Business & Professional Office (10,000 Sq.Ft.). The proposed uses are permitted within the subject commercial tract approved by Board of County Commissioners, pursuant to Petition 93-040 (R-94-111). Furthermore the proposed 8,250 Sq.Ft. general retail will only serve the residents of Century Village of which the majority were elderly and retired (median age 72 yrs.). As justified by the applicant, the residents are in need of a medical facility within the complex which will provide a direct benefit to those residents. By granting the variance relief requested, there will be no adverse impacts on the residents' parking and general traffic generation within this community parcel. The variance request will facilitate the leasing of additional retail (limited by BCC conditions) and professional offices.

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

**YES.** Granting the requested variance **will meet** the general intent of ULDC. This variance is consistent with the BCC condition of 1.1.f of Resolution 94-111, which allows the petitioner to seek variance relief from Cn Code Requirements regarding square footage limitations per use. In no event, however, shall the cumulative square footage exceed the proposed 31,800 square feet of the accessory commercial development.

Century Village commercial tract land helps capture internal trips that would otherwise impact Haverhill Road and Okeechobee Blvd. The general retail and the administration offices only serve the residents of the Century Village. The overall square footage is less than the maximum allowed of 31,800 Sq.Ft. In addition, a previous variance (BA94-64) was approved to allow for the entire 31,800 Sq.Ft. to be allocated to Medical Office/Dental Clinic. However, at this time, the residents need additional retail and professional office space. This variance request, if approved, will ensure that the commercial trips to internally captured.

Since the proposed uses have not changed, there will be no significant change in activities nor any negative impact on the residents' parking or traffic level in the area.

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

**YES.** This **is** a minimum variance that will ensure a reasonable use of the property. The total gross floor areas for the uses within the subject commercial development currently being utilized is 25,750 Sq.Ft. less than the maximum allowed of 31,800 Sq. Ft. by 6,050 Sq. Ft. The proposed general retail is for the exclusive use of residents of Century Village, as well as the administration offices.

The applicant is not requesting variance relief from any other use limitations of the CN District. Therefore, the relief sought is the minimum variance that will make possible the reasonable use of the parcel of land for approved uses. The granting of the

variance relief requested will provide the need of allocation of square footage for these two uses as needed to serve the elderly residents of Century Village.

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

**YES.** The granting of the variance will be compatible with surrounding uses and will be served by adequate public facilities. It will benefit not only the residents of Century Village, but will also benefit all citizens of Palm Beach County because the subject property will capture trips internally. The proposed square footage allocation will provide much needed services to the elderly residents of Century Village.

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

**NO.** When the project was originally approved in 1993, the BCC granted the Board of Adjustment the authority by conditions of approval, to alter the allocation of square footage for the various uses within the commercial tract. It was envisioned that the 2 acre commercial tract would provide uses/services that would allow elderly residents to remain within their development and thereby reducing traffic onto Haverhill Road and Okeechobee Blvd. The applicant is requesting simply to shift 6,750 square feet to retail for a total of 8,250 square feet and 2,000 square feet to business/professional offices for a total of 10,000 square feet. This request is predicted on the residents' needs. The general retail and the administration offices only serve the residents of the Century Village. The proposed use would promote health and safety by providing a safe and easy access to the medical good or items for the community residents (particularly for the subject community of which the majority are elderly and retired elderly people). Therefore there will be no adverse impacts on the parking requirements and general traffic circulation in the area. In addition, this variance request is consistent with the previously approved variance for the similar requirement.

**ENGINEERING COMMENT(S)**

No comments.

**ZONING CONDITION(S)**

1. All future modifications to square footage allocation with the 2-acre commercial tract may be done through a variance to the Board of Adjustment. The cumulative square footage will not exceed 31,800 square feet of accessory commercial development. **(ON-GOING)**
2. Prior to certification of the revised Site Plan for the Residence Center of the Century Village from the Development Review Committee (DRC), the applicant shall place both the approved zoning tabular data regarding square footage allocation for each use (Exhibit 22, BA2000-043) and Board of Adjustment conditions on the revised Site Plan. **(DRC-ZONING)**
3. The applicant shall obtain a Concurrency Equivalency Determination for the modification to the square footage allocation for the approved uses. **(CONCURRENCY-DRC:ZONING)**

CHAIRMAN BASEHART: Okay. The next item on the agenda. Why don't we give the room a couple of minutes to clear here?

MR. SPIVAK: They don't realize Century Village is no longer only seniors. Every year a 1,000 units change hands to young people, 55, 60. And you're not even thinking of it in terms of those things.

MS. KONYK: Mr. Spivak, I just would like to say I would have thought you to be 55 or 60 years old, until you told us on the record that you're 82.

MR. SPIVAK: What I'm saying is is that you people are not considering the fact that this is not a community of people who don't have the ability to do the same things that you do, and Mr. Levy who is at least 80 years old, is doing on the outside.

We're not a captive community. We're people -- I've spent 54 years in the commercial real estate business. I'm still active and I have an active real estate office that I still maintain up in New York State. And this community is full of vibrant, active people. You don't have to treat us as if we're a bunch of people that are doddering around and don't know what to do.

You made your decision, but I certainly think that you've made it on a false premise that you don't realize -- as a matter of fact, I don't know how familiar any of you people are with Century Village, it's a vibrant community that we have. We're not a bunch of old people that need a pharmacy inside our place.

I bought in Century Village because it was a beautiful place. I could have gone anywhere.



CHAIRMAN BASEHART: We understand.

MR. SPIVAK: You've made your decision.

UNIDENTIFIED SPEAKER: You made a commercial enterprise out of a residential community.

CHAIRMAN BASEHART: We'll take a short break.

(Whereupon, a short recess was had.)

CHAIRMAN BASEHART: All right. I think we're ready to get back in session. We've got one more item on the agenda which is subdivision application number 97, Petition of James Dawson, Elizabeth Herold, John Isaacs and Margaret Hugus requesting subdivision variances.

Who's going to -- Dave, are you going to introduce this item?

MR. CUFFE: Yes. This agenda item SD-97, variance request from the provisions of a subdivision regulation. The petition of James A. Dawson, Elizabeth S. Herold, John G. Isaacs and Margaret I. Hugus, requesting the following variances for a 2 lot subdivision: 1) a variance from the -- well, I'll use A, B, C and D actually because that's the way they're presented.

"A" is a variance from the requirement for standard local street access; "B" would be a variance from the requirement that the sidewalks be constructed on both sides of the street; "C" a variance from the requirement that a complete fully functional secondary stormwater system be provided for subdivision drainage; and "D", a variance from the requirement that each lot be provided with a service connection to a central sewage collection/transmission system, and to allow instead use of individual septic tanks.

These requirements are set forth in the Unified Land Development Code, Section 8.22.A.2, Chart 8.22-2, Section 8.22.B.1, Section 8.24.A and Section 8.25.A. The property is located on the north side of Donald Ross Road immediately west of the Intracoastal Waterway in the RS Zoning District.

The request itself or the four variances are to allow a subdivision of an existing property and the two lots to allow access to the proposed lots by a 30 foot wide private access easement instead of a local street constructed to county standards as required by Code, to eliminate the requirement for sidewalks, to allow the drainage be provided by each lot with no street drainage or common drainage system provided except as currently exists, and to allow the use of individual septic tanks for subdivided lots.

The -- do you want me to complete the staff report now?

CHAIRMAN BASEHART: Sure.

MR. CUFFE: Okay.

MS. BEEBE: Do you want to go ahead and put everybody under oath?

CHAIRMAN BASEHART: Okay. Bunny?

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

MR. CUFFE: Comments on our staff -- comments on the variance from zoning.

The Zoning Division comments that are stated right now in the staff report I just received a request to delete the comments, the three comments or four comments actually, as stated in the staff report, in the written staff report and to instead replace the zoning comments with a single comment, but by July 20, 2001, the applicant shall receive approval from the Board of County Commissioners for the Land Use Amendment and rezoning.

That would be in lieu of the comments as written in the staff report.

CHAIRMAN BASEHART: Okay.

MR. CUFFE: Based on the staff report itself on the land development divisions evaluation of the seven criteria as applied to these four requested variances, the Engineering Department is recommending denial of variance requests A, B, C & D based on the applicant's failure to demonstrate substantial conformance with the standards for granting of the variances.

The Engineering Department would note that if the Board of Adjustment decides or determines that the variances are -- that any of these variances are to be granted, that they be conditioned on limiting the subdivision to a maximum of two lots.

CHAIRMAN BASEHART: Okay. Mr. Hearing?

MR. HEARING: Good morning, Mr. Chairman and Board members. For the record, my name is Donaldson Hearing. I'm here today on behalf of Mr. James Dawson and their estate.

With me today are a number of guests, including the distinguished attorney Ron Kolins, Mr. Hank Gonzales who represents the Dawsons, he's their Florida representative, and the contract purchaser, Mr. Robert Gomez.

To give you just a quick overview, I'd like to point out this is a relatively simple case. There's a number of variances that we're looking for, but it's a relatively simple case. And I would also tell you that I believe that this case is consistent with the directive of the Board of County Commissioners regarding infill parcels and it's largely consistent with the requirements of the Comprehensive Plan while a number of deviations are required.

I have three exhibits in front of you this morning. I'd like to identify them. First is a preliminary subdivision plan which is located on the top board. The second is an aerial photograph and down directly below it, you might not be able to see it, is a survey and we can use those all for reference.

To give you a little bit of perspective, this is located in the north county. It's located on Donald Ross Road. It's at the northwest corner of Donald Ross Road and the Intracoastal waterway. This site is located immediately north of and contiguous to the newly constructed Donald Ross Road Bridge, and it is part of what is commonly referred to as the Paradise Port subdivision. It's an unrecorded subdivision that was done prior to 1973. This particular parcel was not subdivided at

the time that the balance of that area was.

To give you -- the site is located right here (indicating) in this location. There are 28 existing homes that are on this existing 30 foot private access road. The site is 4.22 acres in size, so it's one of the largest properties in there. Even after being subdivided, it would be larger than any of the other lots within the subdivision.

It's important for you to note that there are currently two houses that exist on this piece of property, two houses, two structures that are on this piece of property. We're simply requesting to be able to subdivide so that we can build two new houses and there is a 30 foot private access drive.

The simplicity of this case is such that we're simply trying to build out, develop this property consistent with the existing Paradise Port subdivision. There are 28 existing homes. We simply want to build out consistent with the existing development pattern.

There's an existing 30 foot private drive accessing, providing access to all of these homes. These homes are currently all on individual septic systems. We would propose to do the same. There are no sidewalks within this particular subdivision. We would just propose simply to do the same, but again we believe this is consistent with the built environment.

I think Dave briefly went through the variances. Item numbers A, B, and C are really are related. It's basically that the Unified Land Development Code requires access from a 50 foot local street. A 50 foot local street includes drainage and includes sidewalks. There's an existing 30 foot private drive. We would like to have the ability to subdivide off of that 30 foot private drive.

Then the last variance was item D, the use of an individual septic system. This particular property does not have ready access to a sewer force main. We are requesting a variance from that. I think the staff report acknowledged that the applicant would be required to connect at any such time that sewer would be available. The new homes to be constructed would certainly be built and constructed with sewer clean outs to readily connect at any such time that that would occur.

The staff report also indicated that perhaps an additional variance would be required because there's currently not a property owners' association that maintains this particular road. Basically the way the lots have been created is they own out to the middle of the road.

I will tell you that the neighborhood is organized. I will also tell you just recently the neighborhood organized themselves and repaved the road at the time that Donald Ross Road was paved, and my client, Mr. Dawson, not only contributed to that endeavor, but he contributed for two lots, for two homes because there are two homes that exist on that road. We were unaware of the fact that an additional variance would be required. We're

certainly willing to and perhaps that could be advertised for the August 17th meeting and come back before you.

As you are aware, we did meet with the Zoning Division, and the Zoning Division believes that moving forward with this request is appropriate. They support it.

We are in agreement with the condition that was just recently read into the record, as we would also be in agreement with the condition that the Engineering Department proffered that we would limit the subdivision of this property to two lots.

Interesting though for you to know that the Planning Division would prefer that we build four lots on this site just in the spirit of infill.

With that I'm not going to go ahead and belabor each of the individual merits of this case, but I will conclude with telling you again that it's consistent with the built environment. It's consistent with the Board of County Commissioners' policy on infill. There's two houses on the lot, so the development pattern is consistent.

We're not changing the road. There's not sidewalks there now. We're not affecting the drainage. The road is there. The drainage is there. Adherence, strict adherence to the requirement, I would tell you would be inconsistent with the built environment, building sidewalks to nowhere.

We would request your approval for the four variances that are before you today. We're happy to live with the conditions. The Engineering Department has indicated that they would like some further substantiation of my client's right to utilize the 30 foot access road. Our attorneys and title companies are getting that information right now should you need to make a condition. We would support that. I think he's correct in his review of that.

With that I will conclude my presentation and be happy to answer any questions that you have. Attorney Ron Kolins is here. Mr. Gomez, there is a resident who is here in support of this request should you wish to question him.

Thank you very much.

CHAIRMAN BASEHART: Thank you. Any other member of the public that would like to speak?

UNIDENTIFIED SPEAKER: I think Don covered it.

CHAIRMAN BASEHART: Okay. Is there any member of the public here to oppose this application?

(No response.)

CHAIRMAN BASEHART: Okay. Seeing none, any questions from the Board? Comments? Motion?

MR. CUFFE: Excuse me.

CHAIRMAN BASEHART: Dave.

MR. CUFFE: May I just make one clarification, I want to make sure that it's understood on this that with regard to the question of the property's current legal accessibility or the legal access via the 30 foot ingress/egress easement that exists.

The right to use -- any express right to use that property or that 30 foot ingress/egress easement by this property is still in question and the variance itself is not addressing the question of the accessibility of the property, just whether or not a 30 foot ingress/egress easement would be suitable in lieu of a standard local street.

CHAIRMAN BASEHART: So if the Board chose to approve the variances, you'd want an additional condition?

MR. CUFFE: It doesn't have to be a condition, just understood that that's not saying that the Board is implying that there is in fact legal access via that easement.

CHAIRMAN BASEHART: We'll let the record reflect that and then I think the applicant has already acknowledged that they know that they need to provide documentation to that effect before he can move forward with the subdivision. Okay.

Anybody?

MS. KONYK: I thought he said Ron Kolins was going to say something.

CHAIRMAN BASEHART: Are you going to say something, Ron?

MR. KOLINS: I'm not sure I need to say anything more. I'll see what happens.

MR. HEARING: He does need to earn his fee, though.

MS. KONYK: I'm going to testify that he was reading a book.

Dave, will you tell me why you're opposed to these things again? They're already using the 30 foot access, but you're not sure if it's legal; is that it?

MS. CUFFE: Yes. Well, this is in regard to the seven criteria as far as meeting the criteria, okay. The question of whether or not this property has -- actually even has the legal access to that 30 foot easement is still in doubt, but the property itself as far as the staff report indicates is for the -- as far as the individual criteria go, this essentially is predicated, is all predicated on a particular -- on the developers or the owners' desire to subdivide this property rather than use it as is and has been used all along.

So the question of uniqueness, of hardship, of self-creating conditions essentially falls into the category of not being met because this is a particular -- or the developer's request to do a particular type of development when there are other alternatives.

CHAIRMAN BASEHART: Now see what you've done? You've gone and made Ron want to talk.

MS. KONYK: I'm still going to testify that he was reading a book.

MR. KOLINS: Ron Kolins for the record, attorney for the seller, and I was hoping not to say anything, believe me, but I do need to address, I think, the point that was just made by staff, Mr. Chairman, if I may do so.

There are seven criteria that you need to meet whenever you apply for a variance. We're all

familiar with that. I would respectfully suggest to you that clearly, clearly we meet all seven. The ones that are most often discussed are the question of legal hardship and the question of whether a situation is self-created or not. Let me take them in reverse order.

Any time someone wants to do something with property that the strict letter of a code or an ordinance would prevent them to do, they come in or they have the opportunity to come in for a variance. It is the very fact that they want to do something with the property that triggers the need for the variance. And it is not the mere wanting to do something with your property that makes it self-created, yet that's what staff's interpretation would have you believe.

My client, the seller, and the buyer is doing nothing to create the hardship here. And what are the hardships, the legal hardships? The fact of the matter is that a strict reading of the code would require certain things, sidewalks connected to a central drainage system, things of that nature, which are not reasonable or possible given the configuration of the land as it presently exists and the entire subdivision as it presently exists. So there is clearly a legal hardship that is not self-created.

The applicant here did not create the kind of subdivision that this property is in, and it is that that calls for the variances we're asking for. And I would ask you to remember just one thing to put this in the most simple context. What we are asking to do here is draw a line. That's all.

We're not changing anything here, except drawing this line which creates two lots out of one. There will be the same number of houses when it is over. There will be the same kind of drainage when it is over. There will be the same kind of waste removal system when it is over. Nothing changes except to improve the property by allowing the buyer to put newer structures here by drawing this line.

So I think clearly we have met the criteria for a variance. Thank you.

CHAIRMAN BASEHART: You know, one comment I'd like to make. I've bumped into this same kind of a problem on a number of occasions. The subdivision code contemplates the development of vacant property in a rather large scale. I know even one simple split requires you to plat, but I think all the regulations have been written around taking a big piece of property and creating a new community out of it and it sets the standards for road right-of-ways and it sets the standards for drainage and it sets the standards for a number of other things.

I don't think it contemplates an infill kind of a situation like we have here. Like I said, I bumped into it in a lot of other situations where you've got a completely developed community with an isolated lot like this that's basically out of character with what's been established because all those other lots are much smaller and they create

the pattern, they create the character of the development.

When you go to try to do an infill situation like this which is encouraged by the Comprehensive Plan, it's been encouraged by the Board, you run into these -- what appear to be insurmountable problems.

I think it looks like a lot of variances here, but basically all they want to do is make -- in my opinion they're trying to make this subdivision that's proposed conform to the basic character that's been established for the development, and it's not going to create any new homes or increase the density or the population of the area, and it's not going to change the access and drainage situation that's been prevailing for this lot and all the surrounding properties for many, many years.

I think the Board of County Commissioners, I know I was involved in an application off of Summit Boulevard where the Board of County Commissioners actually directed the Engineering Department to look into modifying the subdivision code to address situations like this.

I don't know that anything has been done about that yet. I haven't heard about any proposed changes to the code. I know you don't want to do the changes to the code in spite of what the Board said.

MR. CUFFE: That's not my decision to make if you really want to know.

CHAIRMAN BASEHART: I know. That's all I have to say.

MR. JACOBS: Mr. Chairman, do we have a motion on the floor?

CHAIRMAN BASEHART: No, we don't. We're ready.

MR. JACOBS: I'll make one. I move we accept the variances.

CHAIRMAN BASEHART: Motion by Mr. Jacobs. Do we have a second?

MS. KONYK: Well, let me suggest that we add to that motion, if it's okay with the maker, that agenda item number SD-97 with the conditions as recommended by Dave if this were to be approved and the staff report becoming part of the record, and I'll second the motion.

CHAIRMAN BASEHART: Okay. With that explanation, the motion has been seconded by Ms. Konyk. Do we have any further discussion?

(No response.)

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

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no?

(No response.)

CHAIRMAN BASEHART: Carries unanimously.

While we still have a quorum, do we have a motion to adjourn?

Oh, I'm sorry. The attendance report in the June meeting. It looks like we had a full Board. So there's really nothing to do except to accept this into the record. Okay.

MS. CARDONE: Can I ask you one quick question before we leave? If we have an agenda like we did last month that was just so, so, so short and we were here for nine minutes, is it possible to carry that over or is that not a possibility? Not a possibility?

MS. KONYK: No, they have a time frame that they have to work with.

MR. MacGILLIS: No, they're publicly advertised and it's required by --

CHAIRMAN BASEHART: It would be unfair to the applicants, too, to have to --

MS. KONYK: To postpone their projects 30 days. Time is money.

CHAIRMAN BASEHART: Do we have a motion to adjourn?

MS. KONYK: Motion to adjourn.

MS. CARDONE: Second.

CHAIRMAN BASEHART: Motion and second made. All those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: We're adjourned.

(Whereupon, the meeting was concluded at 10:45 a.m.)

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C E R T I F I C A T E

THE STATE OF FLORIDA )

COUNTY OF PALM BEACH )

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

DO HEREBY CERTIFY that the above-entitled and numbered cause was heard as hereinabove set out; that I was authorized to and did report the proceedings and evidence adduced and offered in said hearing and that the foregoing and annexed pages, numbered 4 through 65, inclusive, comprise a true and correct transcription of the Board of Adjustment hearing.

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

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 4th day of August, 2000.

\_\_\_\_\_  
Sophie M. Springer