

PALM BEACH COUNTY
BOARD OF ADJUSTMENT

Thursday, June 15, 2000
9:00 a.m. - 9:12 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

Mr. Raymond Puzzitiello

David Cuffe, Civil Engineer II, Land Development

Laura Beebe, Asst. County Attorney

Jon P. MacGillis, Principal Planner, Zoning

Alan Seaman, Senior Planner, Zoning

Mary Moody, Secretary

I N D E X

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CERTIFICATE OF REPORTER:

P R O C E E D I N G S

CHAIRMAN BASEHART: I'd like to call the June 15, 2000 Board of Adjustment meeting to order. First Item on the agenda is roll call.

MS. MOODY: Nancy Cardone.

(No response.)

MS. MOODY: Mr. Joseph Jacobs.

MR. JACOBS: Here.

MS. MOODY: Ms. Chelle Konyk.

MS. KONYK: Here.

MS. MOODY: Mr. Raymond Puzziello.

(No response.)

MS. MOODY: Mr. Glenn Wichinsky.

MR. WICHINSKY: Here.

MS. MOODY: Mr. Stanley Misroch.

MR. MISROCH: Here.

MS. MOODY: Mr. Bob Basehart.

CHAIRMAN BASEHART: Here. We've got a quorum.

Next item is the proof of publication. I've got a copy of the proof that was published in the May 28, 2000, Palm Beach Post.

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

MR. MISROCH: So moved.

MR. WICHINSKY: Second.

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

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Okay. Next item is remarks of the Chairman.

Just for those of you who are not familiar with the proceedings of this Board, we generally break the agenda into two pieces, the first being what we call the consent agenda, the second being the regular items although today we don't have any regular items.

The consent agenda is made up of those items which the staff has recommended approval of with or without conditions, and if there are conditions where the applicant has agreed to accept those conditions and where there is no indication of opposition from the public.

If any individual that has an item on the consent agenda and in fact is not in agreement with the conditions recommended, we can pull it and have a full hearing. If any member of the public is here to speak in opposition to any item on the consent agenda, we'll pull it and have a full hearing. And if any member of the Board who's read the staff report has some concerns or doesn't agree with the staff's conclusions, can pull it also and there will be a full hearing.

And then, of course, the second group of items which we don't have any today are those where there's a recommendation of a partial or full denial or there's an indication of public opposition. With that, we'll just move on to --

Well, first, is there any other member of the

Board that has anything they would like to bring forward?

(No response.)

CHAIRMAN BASEHART: Okay. The next item will be approval of the minutes. We have two sets of minutes.

Let the record show that Ms. Cardone is now here.

Last month the May minutes weren't completed, so we have the May 18, 2000, minutes and the March -- I'm sorry, yeah, it was the March that wasn't completed, and we have the March 16th. If everybody's read their minutes, let's start with the March 16th set of minutes.

VICE CHAIRMAN KONYK: Motion to approve.

CHAIRMAN BASEHART: Motion to approve the March 16th minutes.

MR. MISROCH: So moved.

CHAIRMAN BASEHART: Second.

All those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Motion carries.

Then the May 18, 2000, minutes.

VICE CHAIRMAN KONYK: Motion to approve.

CHAIRMAN BASEHART: We have a motion to approve.

MR. WICHINSKY: Second.

CHAIRMAN BASEHART: Second. All those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Okay. Both of those sets of minutes are adopted.

CHAIRMAN BASEHART: That moves us on to the remarks of the Zoning Director.

Jon?

MR. MacGILLIS: There's no comment.

CHAIRMAN BASEHART: Okay. Are there any items to be withdrawn or --

MR. MacGILLIS: No, everything remains on the consent agenda.

CHAIRMAN BASEHART: Okay. We'll move right on to the regular agenda.

The first item on the agenda is, and we'll go through each one individually, and then we'll vote on them if none of them are pulled as a group.

The first one is BOFA 2000-030. Ralph D. Denuzzio, agent for AIMCO Haverhill, L.L.C. C/O. Mr. Denuzzio, are you here?

MR. DENUZZIO: Yes, I'm here.

CHAIRMAN BASEHART: Okay. If you could just step up to the microphone.

The staff has recommended approval of your application with three conditions. Are you familiar with those conditions?

MR. DENUZZIO: Yes, I am.

CHAIRMAN BASEHART: Do you agree with them?

MR. DENUZZIO: Yes, we do.

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

Any letters, Jon?

MR. MacGILLIS: We just had several phone call inquiries which staff addressed.

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

(No response.)

CHAIRMAN BASEHART: Seeing none, you'll remain on consent.

MR. DENUZZIO: Thank you.

STAFF RECOMMENDATIONS

Approved with conditions, based upon the following application of the standard 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. This 20 acre rental community is located on the east side of Haverhill Road between Belvedere Road and Okeechobee Blvd. The project was constructed in the mid 1980's. Access to the project is from Haverhill Road. The applicant is proposing to install security gates to restrict access to the development. The gates were never anticipated when the project was designed in the 1980's, however, current management would like to secure the development for the residents. Prior to

submitting for the variance, the applicant met with County Engineering and Zoning staff to determine how the security gates could be installed without the need for a variance. After careful consideration of existing site improvements and code requirements the applicant limited the variance to only reducing the right-of-way buffer by 10 feet for a 50 foot length of the entrance buffer. The installation of security gates, after a project is completed and received a Certificate of Occupancy, presents a challenge to the applicant. In order to comply with established Engineering road design criteria and stacking for the vehicles site modifications are often required. In certain situations the site constraints prohibit the installation of security gates after the development is approved. However, in this situation, the applicant is limiting the variance to the minimum amount required by code. The proposed landscape around the area of the drive way to be redesigned will mitigate the encroachment while enhancing the overall appearance to the project from Haverhill Road and as residents enter the development.

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

NO. The applicant is proposing to improve the overall security for this rental community which in part requires the installation of security gates. The applicant met with County staff to determine if the gates could be installed without the need for variances. However, after considering the existing site layout and constraints created by the LWDD Canal to the north of the existing driveway the road had to be re-aligned to the west into the buffer/berm. The applicant has limited the encroachment of the driveway into the landscape area. The applicant has also offered to install upgraded landscaping of native shade trees, palms and under story shrubs to mitigate the encroachment from Haverhill Road and to enhance the residents visual experience as they enter and leave the site.

Therefore, the granting of this landscape buffer reduction along Haverhill Road is not the actions of the applicant. It is related to the fact the development requires additional security for the residents. In order to install security gates to control access to the development the applicant is proposing gates. The realignment of the existing driveway to accommodate the gatehouse must extend into the existing buffer/berm.

The fact the applicant has volunteered to install a significant amount of landscape in the area around the encroachment is demonstrating their willingness to comply with code to the greatest extent possible while responding to their residents security 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 granting of this variance to reduce the right-of-way buffer from 15 feet to 10 feet for a 50 foot length of the 500 feet buffer along Haverhill Road will not confer any special privilege upon the applicant. When this rental community was approved in the mid 1980's the code required a 10 foot wide landscape buffer along Haverhill Road. The current buffer with berm is approximately 30 feet in width. The buffer supports a berm and many mature Ficus trees that are well maintained. The existing buffer along Haverhill Road is very attractive and provides the residents and visitors a sense of arrival to the development. This project has one of the most visible buffers along Haverhill Road in the general vicinity. Since there is a mixture of land uses along Haverhill Road there is currently no established buffer scheme. Some properties have natural open yards with stands of slash pines while others have pavement to the edge of the right-of-way. This development has approximately 500 feet of frontage along Haverhill Road with the 30 foot buffer extending along it. The applicant's request to allow the re-aligned road to encroach into only 50 feet of it along the north portion. The applicant is proposing to install significant amount (24 shade/palm trees & + or minus 1,000 shrubs) in the area around the encroachment to mitigate any negative impacts associated with this request.

Therefore, granting this encroachment will not confer any special privilege on the applicant considering the encroachment is minimal and will be significantly buffered by newly installed landscaping.

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 applicant is requesting this variance in order to construct a security gates and re-align the existing road for additional security for the residents. Many PBC communities have gates to protect the residents from un-welcomed visitors. In order for the applicant to install the gates the existing road must be re-aligned to comply with established Engineering requirements. The applicant must contend with existing site features and constraints in order to satisfy the Engineering technical requirements. Since the project is existing and the road is the entrance for the development it limits design options available to the applicant. The proposal is to encroach only 10 feet into a 50 foot portion of the 500 foot long right-of-way buffer. As previously stated, the encroachment will be significantly mitigated by newly installed landscaping.

If the variance is denied the applicant would not be able to re-align the existing road into the buffer areas and therefore the gates could not be installed. There is a desire to improve security for the development which begins with controlling who has access to the property. The gates are critical to the overall security program for this rental community. The project is surrounded by a mixture of land uses that attract people to this area and development that would have otherwise no reason to visit the site. The proposed design layout will allow anyone to enter the site off Haverhill Road, however, unless you have permission to access you will have to do a turn around and leave the site. This turnaround feature in the road is what will encroach into the existing buffer area by 10 feet.

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 granting of this minor encroachment into the existing landscape buffer is minimal and a reasonable request. Considering the buffer is currently 500 feet in length along Haverhill Road and supports a berm and mature Ficus trees and the variance will effect only a 50 foot portion the buffer is minimal. The applicant has provide staff with a conceptual landscape program to mitigate the encroachment. The granting of the variances will ensure the Engineering requirements for the gates are complied with and the residents of the development will have the additional security they are seeking.

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

YES. This project has a land use of CH/8 and a zoning classification of RH. This rental project was constructed in the mid 1980's consistent with the county regulations in effect at that time. The overall site landscape is lush and well maintained. There are many mature Ficus trees which are properly maintained and pruned. The ULDC, landscape code requires all projects to provide a buffer along the right-of-way to screen the use from the street and provide visual continuity from the street. The width of the buffer is determined by the width of the adjacent right-of-way. In this particular situation the required buffer must be 15 feet. However, when the project was approved the required buffer would have only been 10 feet. The existing buffer is approximately 30 feet in width and supports a 3:1 berm with mature Ficus and other trees. The literal intent of the code is to ensure all projects maintain a 15 foot landscape buffer along rights-of-way greater than 99 feet in width. However, the applicant can comply with the general intent of the landscape code. The proposal is to encroach only 10 feet into the buffer along a 50 foot length. The remainder of the 500 foot buffer length will remain undisturbed. The area being disturbed will be re-landscaped with new shade/palm trees along with a 1,000 shrubs to mitigate any negative impacts associated with the encroachment.

Therefore, the general intent of the code **will be** complied with by the applicant with the installation of new landscaping, far in excess of what is required by code. Furthermore, the existing 30 foot wide right-of-way buffer is far in excess of what is required by code. The applicant will continue to maintain the buffer with berm and trees in the current stated.

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 variance **will not** be injurious to the surrounding area or residents. In fact, the granting of the variance will improve the security for the residents by allowing for the installation of a guard house to control access to this rental project. The management is proposing to add the security gates to control entrance to the

development to residents and authorized visitors. This type of controlled access is a "typical" amenity for residential communities in Palm Beach County. The controlled entrance gates provide a level of security to the residents.

ENGINEERING COMMENT

No Comment. **(ENG)**

THE HAVERHILL AREA NEIGHBORHOOD PLAN COMMENT

The proposal does not negatively impact the recommendations of the Haverhill Area Neighborhood Plan.

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 Exhibit 9 and the Conceptual Landscape Plan, Exhibit 21, presented to the Board, simultaneously with the building permit application. **(BLDG PERMIT: BLDG)**
2. By June 15, 2001, the applicant shall have obtain a building permit for the security gates and paving/drainage for the road improvements to vest the 10 foot landscape encroachment variance into the right-of-way landscape buffer along Haverhill Road. **(DATE: MONITORING-ENG-BA)**
3. By January 15, 2001 or simultaneously with the submittal of a building permit for the security gates or paving/drainage permit for the road improvements the applicant shall submit a landscape plan for the Haverhill Road buffer. The landscape plan will be consistent with Exhibit 21, Landscape Plan-Entry, in the Board of Adjustment, BA2-030 file in the Zoning Division. **(MONITORING-DATE-LANDSCAPE-BA)**

CHAIRMAN BASEHART: The next item 2000-031,

Charles A. and Bonnie Smith. Is the applicant here?

MS. SMITH: Yes.

CHAIRMAN BASEHART: Okay. Staff has recommended approval of your variance with two conditions. Are you familiar with them?

MS. SMITH: Yes, we are.

CHAIRMAN BASEHART: Do you agree with them?

MS. SMITH: Yes.

MR. MacGILLIS: Staff would like to add a third condition. Alan will read it into the record.

The reason that the third condition is on this petition, the site is in violation for a stable in the required setbacks. When they came in to get the variance, the structure was identified as an accessory structure, which you can get a setback variance for. If it's considered a stable, you can't get a variance for a stable because the setbacks fall under 6.4.D. which the Board of Adjustment doesn't have the authority to grant variances under there.

The applicant has agreed because they're in violation with code enforcement not to use this structure as a stable. Staff wants to have the reassurance that this won't happen or the property's sold that since the structure is there we'll have a reoccurring violation.

So we're recommending this restrictive covenant be placed on the property so any future owner when they sell the property will know that you can only use this as an accessory shed, this structure, not a stable. And they've agreed to that to get them out of violation.

MS. SMITH: Yes.

CHAIRMAN BASEHART: Okay. This has been there 12 years, I think I read in the staff report?

MS. SMITH: Yes.

CHAIRMAN BASEHART: Code enforcement is getting fast. Okay. So you agree with the conditions?

MR. MacGILLIS: Well, Alan is going to read it as an additional condition.

CHAIRMAN BASEHART: Okay. You want to do that?

MR. SEAMAN: This will be the third condition and it reads:

"By September 15, 2000, the applicant shall submit a copy of a Restrictive Covenant to the Zoning Division for the County Attorney's review and approval. The Restrictive Covenant shall be recorded in the Circuit Court by November 15, 2000, and a copy of the recorded document provided to the Zoning Division. The Restrictive Covenant shall state the existing accessory structure shall be utilized as an accessory shed and not a stable."

CHAIRMAN BASEHART: Okay. And you agree with that?

MS. SMITH: Yes.

CHAIRMAN BASEHART: Okay. Let the record show that Mr. Puzzitiello is here. I guess the full Board is here.

Okay. Any member of the Board feel this item needs to be pulled?

VICE CHAIRMAN KONYK: No.

CHAIRMAN BASEHART: And there's no member of the public here to speak in opposition?

(No response.)

CHAIRMAN BASEHART: Okay. This item will remain on consent as well.

MS. SMITH: Thank you.

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

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. As previously stated, the subject 25.0' by 42.3' wood shed is located at the northwest corner of the property. The shed is too large for easy disassembly and reconstruction to another site location. The shed was installed on the lot in 1998 by a contractor who advised the property owner that sheds were not required permits or to meet any setbacks. Recently, Code Enforcement Division sent courtesy notices to the property owners who had accessory structures in setbacks in the subdivision. The applicant is requesting a variance in order to address the Code Enforcement Notice and in order to apply for a permit and inspection. The general intent of the code regarding setbacks and separation of structures is met by current setbacks in conjunction with existing buffers. Large pines and shrubs buffer the residence to the west which is 120 foot from the shed. A 15-17 foot hedge-row running 100 foot in length buffers the residence to the north which is 84 foot from the shed. Adjacent neighbors have made no complaints of the shed which has been existing for 12 years.

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

NO. The applicant was confident that no setbacks, permits and inspections for the shed were necessary based on advise by their contractor. The applicant was informed by

Code Enforcement that a permit had not been issued and the shed encroached into the rear and side interior setback contradictory to established codes. Considering the applicant's good faith reliance on the contractor, the variance request is not the result of the applicant.

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

NO. The applicant states that the shed is used for storage. Granting this variance would not confer a special privilege to the property owner since a shed is a typical accessory structure on single family lots and is commonly enjoyed by other residents in the neighborhood. The existing native landscaping provides visual buffering of the structure from adjacent properties. Therefore, the granting of these variances will not confer a special privilege on 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 THE OTHER PARCELS OF LAND IN THE SAME DISTRICT, AND WOULD WORK AN UNNECESSARY AND UNDUE HARDSHIP:

YES. A literal interpretation would not only deprive this property owner the use of a shed, it would cause a hardship in the fact that the applicant relied on a contractor to advise him of the construction requirements, only to find out the contractor misinformed him. The applicant is trying to rectify the mistake by applying for a building permit. He wished to legalize the structure however, the variance for the side interior and rear setback must be granted prior to the issuance of the building permit.

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

YES. Approval of the side interior and rear setback variances of 8.44' and 8.4' respectively, would allow the existing structure to remain on the lot. The applicant would be required to obtain all necessary building permits and inspections to ensure the structures meet the building code. Therefore, the 8.4 foot setback variances are the minimum necessary in order for the owner not to have to demolish the shed.

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

YES. The intent of the side and rear setbacks is to ensure light and air can move between structures and that a minimum separation between properties and structures is maintained for visual separation, privacy, and noise reduction. The general intent of the code regarding setbacks and separation of structures is met by current setbacks in conjunction with existing buffers. Mature pines and shrubs buffer the residence to the west which is 120 foot from the shed. A 15-17 foot hedge-row running 100 foot in length buffers the residence to the north which is 84 foot from the shed. Adjacent neighbors have made no complaints of the shed which has been existing for 12 years.

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

NO. The structure has existed for 12 years and the applicant was only recently notified of the encroachment by Code Enforcement after a general inspection of the neighborhood. Granting the variance will therefore not be detrimental to the public welfare.

ENGINEERING COMMENT

No comments. (ENG)

THE LOXAHATCHEE NEIGHBORHOOD PLAN COMMENT

The proposal does not negatively impact the recommendation of the Loxahatchee Neighborhood Plan.

ZONING CONDITION(S)

1. By September 29, 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 & 10) presented to the Board, simultaneously with the building permit application for the shed. **(DATE: MONITORING-BLDG PERMIT).**
2. By October 29, 2000, the applicant shall obtain a building permit for the shed. **(DATE: MONITORING-BLDG PERMIT).**
3. "By September 15, 2000, the applicant shall

submit a copy of a Restrictive Covenant to the Zoning Division for the County Attorney's review and approval. The Restrictive Covenant shall be recorded in the Circuit Court by November 15, 2000, and a copy of the recorded document provided to the Zoning Division. The Restrictive Covenant shall state the existing accessory structure shall be utilized as an accessory shed and not a stable." (**DATE: MONITORING-COUNTY ATTORNEY-ZONING-BA**)

CHAIRMAN BASEHART: The next one is just simply a time extension, Board of Adjustment time extension, 2000-032. Is the applicant here?

MR. WEST: Brian West on behalf of Gaeta Limited Partnership.

CHAIRMAN BASEHART: Okay. The staff has recommended approval of this extension with six conditions. Are you familiar with them?

MR. WEST: Yes, I am.

CHAIRMAN BASEHART: They're pretty much the conditions that were initially imposed?

MR. MacGILLIS: Correct.

CHAIRMAN BASEHART: And this is a six month extension?

MR. WEST: Correct.

CHAIRMAN BASEHART: Any member of the Board want to pull this? These aren't -- notice is not sent out on these, right?

MR. MacGILLIS: That's correct.

CHAIRMAN BASEHART: There should be no members of the public. Okay. We'll keep this on consent.

STAFF RECOMMENDATION:

Staff recommends of a maximum **six month** Time Extension for BA99-65 condition #2, from June 19, 2000, to December, 19, 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 BA99-65, unless modified herein:

ZONING CONDITIONS FOR BA99-65:

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 IN NOVEMBER 1999**

2. By June 19, 2000, the applicant shall obtain a final landscape inspection for the landscaping in order to vest the landscape right-of-way buffers along Northlake Blvd. and I-95 southbound on-ramp (east property line). **(DATE: MONITORING-CO-LANDSCAPE)**

is hereby amended to read:

By December 19, 2000, the applicant shall obtain a final landscape inspection for the landscaping in order to vest the landscape right-of-way buffers along Northlake Blvd. and I-95 southbound on-ramp (east property line). **(DATE: MONITORING-CO-LANDSCAPE)**

3. By May 19, 2000, the applicant shall submit a Landscape Plan for the entire site to the Board of Adjustment staff. The plan shall outline where the required trees that would have been required in the reduced right-of-way buffers along the north and east property line have been relocated on-site. There shall be no reduction in the number of trees and shrubs for this site as a result of the variance approval. **(DATE: MONITORING-ZONING/BA) COMPLETED IN FEBRUARY 2000**
4. Prior to applying for a building permit the applicant shall administratively abandon the Special Exception, 77-170, R-77-14414, for new/used vehicles. **(BLDG.PERMIT-ZONING)**

NOTE: PRIOR TO CERTIFICATE OF OCCUPANCY THE APPLICANT SHALL ENSURE THE ZONING DIVISION HAS APPROVED THE ABANDONMENT OF THE TWO RESOLUTIONS.

5. By May 19, 2000, the applicant shall apply for a building permit for the 10,015 sq. ft. retail building. **(DATE: MONITORING-BLDG PERMIT) COMPLETED PERMIT B00012106 ISSUED MAY 2000**
6. By August 1, 2000, the applicant shall obtain the building permit for the 10,015 sq. ft. retail building. **(DATE: MONITORING-BLDG PERMIT-Zoning) COMPLETED PERMIT B0012106 ISSUED MAY 2000**

ENGINEERING COMMENT:

No Comment (**ENG**)

CHAIRMAN BASEHART: And the last item, BOFA 2000-033, Chuck Millar.

MR. MILLAR: Good morning. Chuck Millar with Moyle, Flanigan representing MBS Spec Properties. We accept your conditions of approval as written and we're here to answer any questions you have.

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

CHAIRMAN BASEHART: Seeing none, any letters, Jon?

MR. MacGILLIS: I received several phone calls from surrounding property owners, and I addressed their concerns.

CHAIRMAN BASEHART: Okay. Any member of the Board feel this matter needs to be pulled?

VICE CHAIRMAN KONYK: No.

CHAIRMAN BASEHART: Okay. Seeing none, this will remain on the consent agenda.

MR. MILLAR: Thank you, and thank you, staff.

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. This legal non-conforming .73 acre commercial lot is located south of Belvedere Road, at the southwest intersection of Military Trail and Evans Lane. The property currently supports the Jewish Thrift Store. The site has many conformities in terms of

setbacks, parking, landscaping, loading, etc. The proposal is to demolish the existing building and redevelop the site to support a 8,000 square foot retail building. the site will be brought into compliance with current Unified Land Development (ULDC) requirements. The owner is being forced to relocate from their present site at the north west corner of Military Trail and Southern Blvd. as a result of the Southern Blvd. widening. This particular parcel of land is located along the Military Trail commercial corridor in the Airport Overlay District. There is currently a trend for redevelopment in this area. Properties are either being improved or redeveloped to support new or existing uses. As in this case, the existing use will cease and the site will be redeveloped to support the new commercial retail use. The applicant will comply with all code requirements with the exception of the ULDC landscape buffer widths along Evans Lane and the western property line. The non-conforming size of the lot places a hardship on the applicant in terms of comply with all code requirements. Furthermore, this being a corner lot with access onto both Military Trail and Evans Lane increases the on-site area dedicated to vehicular circulation. With the landscape conditions, recommended by staff, the two landscape variances will be mitigated.

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

NO. The applicant purchased the property in June, 1999 in order to move his business, currently located at Military Trail and Southern Blvd. The applicant states MBS Spec Properties, Inc. ("MBS") has been in PBC for approximately 45 years. MBS currently provides all types of western wear and accessories to their large client base. The business located at Southern Blvd. and Military Trail will be demolished with the road improvements that are to begin later this year. The applicant would like to remain in the same vicinity in order to continue to serve their customers. The applicant is proposing to relocated to 725 North Military Trail and redevelop this site for the new business. The improvement will result in the demolishing of the existing building and the construction of a new 8,000 square foot retail business. Parking will be located along the east, north and west side of the building. The applicant is proposing to comply with all code requirements with the exception of the landscape buffer width along both the north and west property line. The applicant is

willing to upgrade the plant material in these 5 foot wide buffers in order to meet the general intent of the code. There is currently no landscaping along Evans Lane or the western property line. Evans Lane is a dead-end road that provide access to the commercial business on Military Trail and the single family/multi-family residents to the west. There is currently no established uniform right-of-way buffer along Evans Lane. The business across Evans Lane to the north is deficient in landscaping, while the sites further to the west are either undeveloped or are single family residence and require no right-of-way buffers. To the west of this site is an existing single family residence that supports a CBS wall along the common property line. The applicant will be required to remove the prohibited Australian Pines that currently exist along the wall and replace them with upgraded landscaping. Staff is recommending conditions to upgrade both the north and west property line buffers to mitigate the buffer reduction.

This is a non-conforming commercial lot that restricts the owner from complying with all code requirements. If the two landscape buffer widths are approved, the applicant will be able to move forward with the re-development of this 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 applicant has demonstrated compliance with the variance criteria necessary to be granted the two landscape variances. This site is a legal non-conforming .73 acre commercial lot. The lot has a land use designation of C/L with a zoning classification of CG. The property will be developed in accordance with current property development regulations. The site currently has many non-conformities in terms of: lot size, setbacks, parking, landscaping, etc. This site was developed many years ago and with the various widening that has occurred Military Trail over the years has made it non-conforming. The proposed redevelopment will eliminate the majority of these non-conformities. The applicant had originally proposed 4 variances: three for landscape buffers and one for parking. However, after consulting with staff the variance to reduce the landscape buffer along Military Trail and reduce off-street parking were resolved. The

applicant is requesting the minimum variances that will allow this re-development project to move forward. It is the intent of the BCC to encourage the redevelopment and infill of properties along the major commercial corridors in PBC. There is a growing trend along Military Trail to revitalize or redevelop properties along Military Trail. This proposed 8,000 square foot retail business (Country attire) provides a needed service to the many customers who have shopped at this business over the years.

The granting of the 10 foot landscape buffer reduction along Evans Lane and western property line **is a reasonable** request considering all other property development regulations will be satisfied.

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

YES. A literal interpretation of the landscape code would deprive the applicant of rights enjoyed by other applicants who have been granted similar type variances for non-conforming lots. The ULDC currently does not have infill regulations that address non-conforming lots and a relaxation of the literal terms of the code. The applicant is proposing to make improvements to this site that will reduce the existing non-conformities. As many properties located along the major commercial corridors in the county, due to right-of-way expansion the size of the lots have been reduced. This places a hardship on the property owner in terms of complying with code requirements established for a 1 acre conforming commercial lot. The applicant is proposing a 8,000 square foot building with a split floor plan. This was done in order to ensure the minimum number of variances would be requested. The applicant reduced the variances from the original 4 to 2. Staff encouraged the owner to comply with the 20 foot buffer along Military Trail and off-street parking requirements. Staff concluded these two variances, if granted, would have a negative impact on the site and surrounding businesses. The buffer along Military Trail will be installed at 20 feet, consistent with other properties currently being redeveloped. The off-street parking requirements have been met by the applicant therefore staff will not have to limit the use as previously thought if a variance was being

contemplated.

The granting of the landscape buffer reduction **can be mitigated** with an increase in the number and size of plants within the remaining 5 foot buffers. The overall proposed landscape improvements to this site will be a significant improvement to what currently exists on this site.

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 two landscape buffer width reductions along the north and west property line will allow this redevelopment project to move forward to permitting. The applicant is proposing to invest considerable money in the property to redevelop it to support the proposed 8,000 square foot retail use. The applicant is being forced to leave their current location of business due to right-of-way expansion at Southern Blvd./Military Trail that will result in the demolishing of the building. The applicant would like to remain in the general vicinity in order to continue to provide the customers with the best service.

With the landscape conditions, recommended by staff, the general intent of the landscape code **will be** met and the property owner will have the best use of this property.

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

YES. The land use designation of this property is C/L with a zoning classification of C/IND. The land use encourages commercial or industrial uses for this property. This property is located within the PBC Airport Overlay District, which also encourages low intense commercial or industrial uses. Military Trail is one of the counties major commercial corridors having business being developed over the past 75 years. In this particular section of Military Trail (between Southern Blvd. and Belvedere Road) there has been a trend to demolish smaller existing buildings and replace them with new buildings on larger properties, bringing the site into compliance with current code requirements.

The literal intent of the landscape code is to establish minimum width for buffers to accommodate increase plant material to mitigate the use on adjacent properties. In this particular situation, the north property line is adjacent to Evans Lane, a dead-end

road. There is currently no established right-of-way landscape buffer along this road. This is in part due to the fact that the mixture of commercial and residential uses located along this street that were developed pursuant to different landscape codes. The proposed 5 foot landscape buffer will be required by condition of approval to be upgrade in terms of quantity and size of plant material. Along the western property line there is an existing CBS wall that is located on the adjacent residential property. There are only several prohibited Australian Pine trees in the buffer on this property. Staff is also recommending a condition of approval that the landscape material be upgraded and the CBS wall be stuccoed to present a finished look.

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

NO. Granting the landscape variance **will not** be injurious to the general of surrounding area. This property is currently deficient in the required perimeter and on-site landscaping. The proposed site improvements will significantly improve the appearance of this site in terms of landscaping. The site will comply with all other code requirements in terms of building setbacks, lot coverage, loading, ingress/egress.

ENGINEERING COMMENT

No Comments (**ENG**)

ZONING CONDITIONS

1. The property owner **shall** provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan, Exhibit 22, presented to the Board, simultaneously with the building permit application. (**BLDG PERMIT: BLDG**)
2. By June 15, 2001, the applicant **shall** obtain a building permit for the 8,000 square foot retail building in order to vest the north and west property line landscape buffer reduction. (**DATE: MONITORING-BLDG PERMIT**)
3. Prior to the issuance of the Final Certificate of Occupancy for the 8,000 square foot retail building the applicant shall install the following landscaping in the north and west landscape buffer:

North Buffer (Along Evans Lane)

- a). Native 14 foot tall shade trees
planted 20 feet on center
- b). Native 36 inch tall native hedge
planted 24 inches on center

Western Buffer

- a). Native 14 foot tall shade trees
planted 20 feet on center
 - b). Native 36 inch tall hedge planted 24
inches on center (**MONITORING-
INSPECTIONS-CO**)
4. Prior to the Final Certificate of Occupancy on the 8,000 square foot building, the applicant shall stucco the eastern side of the existing CBS wall located along the western property line. The stucco and finish shall be in-keeping with the proposed building materials and color. (**MONITORING-INSPECTIONS-CO-BA**)

CHAIRMAN BASEHART: Okay. That makes us ready for a motion.

VICE CHAIRMAN KONYK: I make a motion to approve BOFA 2000-030, 2000-031, BOFA time extension 2000-032, and BOFA 2000-033 with the staff report becoming part of the record.

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

MR. JACOBS: Second.

CHAIRMAN BASEHART: Was that Mr. Jacobs?

MR. JACOBS: Um-hum.

CHAIRMAN BASEHART: Okay. Second by Mr. Jacobs. Any 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.

CHAIRMAN BASEHART: One other item on the agenda is the attendance report. Last month all members were here with the exception of Ms. Cardone who, I believe, had a business reason for not being here.

Does everybody agree that should be an excused absence?

MR. PUZZITIELLO: Yes.

CHAIRMAN BASEHART: Okay. That's just a unanimous decision and that takes care of that.

We're ready for a motion for adjournment.

VICE CHAIRMAN KONYK: Motion to adjourn.

CHAIRMAN BASEHART: We've got a motion by Ms. Konyk.

MR. PUZZITIELLO: Second.

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

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no?

(No response.)

CHAIRMAN BASEHART: Motion carries. A new record.

VICE CHAIRMAN KONYK: Is it?

CHAIRMAN BASEHART: Yes.

VICE CHAIRMAN KONYK: I don't think so. I think I was ten minutes.

CHAIRMAN BASEHART: Twelve -- no, no, no.

VICE CHAIRMAN KONYK: Did anybody write that down?

CHAIRMAN BASEHART: Remember, we started three minutes late.

(Whereupon, the meeting was adjourned at 9:12 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 25, 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 _____ day of July, 2000.

Sophie M. Springer