

PALM BEACH COUNTY
BOARD OF ADJUSTMENT

Thursday, October 19, 2000
9:00 a.m. - 9:30 p.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 Jacobs

Ms. Nancy Cardone

Mr. Raymond Puzzitiello

Ms. Meril Stumberger

David Cuffe, Civil Engineer II, Land Development

Laura Beebe, Assistant County Attorney

Jon P. MacGillis, Principal Planner, Zoning

Joyce Cai, Planner II

Brian Cheguis, Intern/Paraprofessional

Mary Moody, Secretary

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P R O C E E D I N G S

CHAIRMAN BASEHART: Welcome, everyone to the October 19, 2000, Palm Beach County Board of Adjustment meeting. We'll start the agenda off by having roll call.

MS. MOODY: Nancy Cardone.

MS. CARDONE: Here.

MS. MOODY: Mr. Joseph Jacobs.

MR. JACOBS: Here.

MS. MOODY: Ms. Chelle Konyk.

VICE CHAIRMAN KONYK: Here.

MS. MOODY: Mr. Raymond Puzzitiello.

MR. PUZZITIELLO: Here.

MS. MOODY: Mr. Glenn Wichinsky.

MR. WICHINSKY: (No response.)

MS. MOODY: Ms. Meril Stumberger.

MS. STUMBERGER: Here.

MS. MOODY: Mr. Stanley Misroch.

MR. MISROCH: Here.

MS. MOODY: Mr. Bob Basehart.

CHAIRMAN BASEHART: Here. Okay. We have a quorum.

I have before me the proof of publication for this meeting published in the Palm Beach Post on October 1st. Do we have a motion to accept the proof into the record?

VICE CHAIRMAN KONYK: So moved.

MS. STUMBERGER: Second.

CHAIRMAN BASEHART: Okay. We have a motion and a second. All those in favor, say aye?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed.

(No response.)

CHAIRMAN BASEHART: Okay. Next item is remarks of the Chairman. What I'd like to do is for those of you who are not familiar with the way the proceedings of this Board go, the agenda is broken generally into two sections. The first one -- well, we have one today, but from the looks of the size of the audience I think it will end up as two.

The first part is the consent agenda. Items on the consent agenda are those where the staff has recommended approval, with or without conditions. And if with conditions the applicant has indicated that they accept the conditions; where there's been no expression of opposition from the public and where the staff is recommending approval, as I said. Those items, if there are no members of the public here who desire to speak on an item will remain on consent and the Board will vote on those items as a whole.

The second part of the agenda is the regular agenda and that consists of items where either the

staff is recommending denial, the applicant does not agree with the proposed conditions of approval, or where there has been an expression of opposition from the public. Those items will require a full presentation by the staff and by the applicant. The Board will then ask questions. Members of the public who wish to speak on that item will be able to give their opinion on the items, and then we will vote on it individually.

Any item on the consent agenda where members of the public are here and have indicated a desire to speak will be pulled from consent and put on the regular agenda.

Other than that, does any other member of the Board have anything they want to say?

(No response.)

CHAIRMAN BASEHART: Okay. We'll go to the next section of the agenda which is the approval of the minutes. We've all received the minutes from the September meeting. Anybody have any adjustments or corrections?

(No response.)

CHAIRMAN BASEHART: Seeing none, do we have a motion for adoption of the September, 2000, minutes?

VICE CHAIRMAN KONYK: So moved.

CHAIRMAN BASEHART: Okay. We have a motion.

MR. JACOBS: Second.

CHAIRMAN BASEHART: And a second. All those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: The minutes are adopted. Okay. Next is the remarks of the Zoning Director. Jon, do you have anything?

MR. MacGILLIS: No, no comments.

CHAIRMAN BASEHART: No comments. Okay. Then we'll move to the agenda. As I said, the first part of the agenda is the consent agenda, and we'll go through these items one at a time to see if they can remain on or not.

CHAIRMAN BASEHART: The first one is BOFA2000-051, Robert Walker, P.E. Is the applicant here?

MR. WALKER: Yes.

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

MR. WALKER: Yes, sir, I'm familiar with them.

CHAIRMAN BASEHART: Do you agree with them?

MR. WALKER: And I agree with them, yes.

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

(No response.)

CHAIRMAN BASEHART: Seeing none, do we have any letters?

MR. MacGILLIS: There was just one letter and staff addressed the concern.

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

(No response.)

CHAIRMAN BASEHART: Okay. It will remain on consent.

STAFF RECOMMENDATIONS

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

ANALYSIS OF ARTICLE 5, SECTION 5.7.E VARIANCE STANDARDS

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

YES. This is an irregularly shaped legal non-conforming lot, approximately 1.2 acres in size. A single family dwelling was incorrectly sited and constructed onto a Drainage Easement which runs the entire length along the southwest property line. The Drainage Easement encumbers ten (10) feet of the subject property (lot 14, in Parcel 5) within Winston Trails PUD. In order to satisfy Land Development Division's requirements for abandonment of the easement

an Indemnity Agreement was filed between the property owners and the easement beneficiaries. The only outstanding issue to be resolved is the encroachment into the required Side Yard Interior Setback established at seven feet, six inches (7'6") as per ULDC Article 6.5.G.2 and Table 6.5.1. Property Development Regulations Schedule for RS Zoning Districts.

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

NO. The Quiery's purchased the property in October, 1996 and accepted the results of a previously conducted survey that presented inaccurate information. Only after a subsequent survey was prepared for the Quierys were inaccuracies discovered between the survey and actual building placement on the lot. The Quierys then proceeded to apply for abandonment of the Drainage Easement, which was successfully accomplished. Variance relief is now being pursued to insure that in the future, if the home is sold, there will be no inconsistencies.

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 lot is not typical to the lots found within the Winston Trails subdivision (typically rectilinear in shape). Variance relief **is minimal** and **will not** affect property owners to the north (neighboring single family dwellings), or to the east (lake and golf course fairway). The planter wall and privacy wall exist on other homes within the development and are directly tied to the principal structure and considered as part of the Single Family Dwelling.

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 variance request **is the** minimum

necessary to allow the existing Single Family Dwelling including the privacy wall and planter wall to remain in their current location. If the variance is denied the applicant will be forced to remove the privacy wall currently in place along the southwest side of the house and the planter wall located on the front northwest side of the house. They would also have to move the single family dwelling five feet, two inches (5'2") to the east in order to meet the required seven feet, six inches (7'6") required Side Yard Interior Setback.

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 existing Single Family Dwelling located on the subject lot is currently occupied. This variance **is the** minimum that will allow the continued use of the principal residence as it is currently being used and in the location it has been constructed. The privacy wall and planter walls - in this instance - are considered part of the principal residence, therefore must also comply with the required Side Yard Interior Setback requirements established in Article 6.5.G.2 and Table 6.5.1. Property Development Regulations Schedule. The wall structures, if separate would be allowed to encroach into the required Side Yard Interior Setback as they conform to height requirements for such structures.

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 and goal of the ULDC is to ensure structures comply with the underlying setbacks of the zoning district. The incorrect siting and construction of the Single Family Dwelling including the privacy wall and planter wall have not taken away from the aesthetic consistency of this dwelling with neighboring homes. Circumstances that deviate from the uniformity of the regulations specified within the code are allowed to be considered on a case-by-case basis, and the

situation described above warrants such a review. The combination of an irregular shaped lot, combined with improper siting and construction of the single family dwelling on this particular lot have not diminished the overall quality of the property within this neighborhood.

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

NO. The encroachment **is minimal** with respect to affecting the overall neighborhood and adjacent properties. The existing house is aesthetically consistent with neighboring dwellings. The encroachment is virtually undetectable due to the shape of the lot and configuration of the principal structure on the lot. There are no residential properties located to the southeast of the property and the variance does not affect the adjacent property owner to the northeast.

ENGINEERING COMMENTS

Since the portion of drainage underlying the house itself has been legally abandoned, the house no longer encroaches on the currently existing drainage easement. Encroachment of the concrete block planter into the existing drainage easement approved by the Engineering Department, subject to a recorded indemnity agreement, in conjunction with the above noted abandonment review.

ZONING CONDITION(S)

1. By October 19, 2001, the property owner shall present to Palm Beach County Land Development Division a copy of the Board of Adjustment Result Letter and a copy of the most recent survey for file update purposes. **(DATE: MONITORING-ENG-BA)**
2. By October 19, 2001, the property owner shall provide the Zoning Division with confirmation that Building Division Records Section of Palm Beach County was provided with a copy of the Board of Adjustment Result Letter and a copy of the most recent survey for file update purposes. **(DATE: MONITORING-BUILDING/ZONING BA)**

CHAIRMAN BASEHART: Next item is BOFA2000-052, Gerald and Joan Lowenthal. The applicant here? If you'll approach the microphone, please? For the record, your name?

MS. LOWENTHAL: Joan Lowenthal.

CHAIRMAN BASEHART: Ms. Lowenthal, the staff has recommended approval of your application with three conditions. Are you familiar with those?

MS. LOWENTHAL: Yes.

CHAIRMAN BASEHART: Do you agree with them?

MS. LOWENTHAL: Yes.

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

UNIDENTIFIED SPEAKER: Yes.

CHAIRMAN BASEHART: Okay. You desire that this be pulled?

UNIDENTIFIED SPEAKER: Yes, please.

CHAIRMAN BASEHART: Okay. We're going to have to pull item number two.

MS. LOWENTHAL: Thank you.

CHAIRMAN BASEHART: Next is a Board of Adjustment time extension, 2000-053, Sarah Lockhart. The applicant's here.

Ms. Lockhart, there are seven conditions. I think they're the original seven conditions. Do you agree with them?

MS. LOCKHART: They are the original conditions and, yes, I agree with them.

CHAIRMAN BASEHART: And this is not an advertised hearing. It's just an extension, so any input from the staff or members of the Board?

(No response.)

CHAIRMAN BASEHART: Okay. We'll leave this on consent.

STAFF RECOMMENDATIONS

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

ANALYSIS OF ARTICLE 5, SECTION 5.7.E VARIANCE STANDARDS

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

YES. This 5.91 acre commercial parcel is located within the Lake Worth Road Corridor Study area, which is part of the Board of County Commissions (BCC) Countywide Community Revitalization Program. The corridor runs along Lake Worth Road between Military Trail to the west and Congress Avenue to the east. The BCC created the Lake Worth Task Team, comprised of various county agencies that have been working for the past several years to implement improvements to the community. These improvements address the infrastructure, crime, drainage, parks, zoning regulations, etc., in order to improve the quality of life and give incentives to encourage redevelopment in this area. This particular parcel is located at the western end of the corridor and supports a food store and retail use that acts as an anchor to help foster the County's redevelopment goals. The Albertson's store provides residents within this area with a needed service. The property was approved for a large scale shopping center in 1977 (Petition 77-129). The building was constructed in 1978. The applicant is proposing to do modifications to the structure and site which will require the site to meet certain current ULDC requirements. The proposed increase in square footage of both existing structures will require additional parking, upgrading landscaping on-site and compliance with current CG setbacks. The

applicant is requesting four variances that will allow the proposed modifications to occur. The modifications will also require the applicant to obtain a Development Order Amendment (DOA) approval from the BCC to amend conditions of approval that limit the overall lot coverage.

The property **has unique** features that warrant special consideration when applying the current ULDC requirements. The property was site planned and developed pursuant to the previous Zoning regulations, ordinance 73-2. These requirements were less restrictive in terms of landscaping along rights-of-way and parking. The proposed modifications to the structures and site landscaping will allow the uses to compete with other similar retail uses in the general vicinity while at the same time meet changing corporate and user demands. The current parking is not fully utilized by the customers and the applicant has submitted a Special Purpose Parking Demand Study that states the proposed increase in square footage to the structures will not result in a deficiency in the number of used parking spaces. The proposed landscape variance along Military Trail is directly related to proposed right-of-way taking. The landscape variance along Lake Worth Road, which is minimal is related to the fact the buffer when installed in the early 1980s was in compliance with the landscape code. The code only required a 5 foot landscape buffer with trees 40 feet on center and an 18" hedge. The current ULDC requires a 20 foot wide buffer, trees 30 feet on center and a 24 inch hedge. The applicant is proposing to widen the buffer to 14 feet along Lake Worth Road while along Military Trail there will be no room remaining to install any landscape strip once the right-of-way dedication occurs. Staff is recommending landscape conditions that will ensure the general intent of the current landscape code is satisfied.

Therefore, there **are** unique characteristics to this property and its prior development approvals that warrant special consideration when applying the literal interpretations of the code provisions the applicant is requesting variances for in this application.

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

NO. The applicant is proposing to upgrade the property and building that was originally approved in the late 1970's by the BCC to support a large scale shopping center. The structures were constructed in the 1980's, pursuant to the 1973 Zoning Code, which has been superseded by the current ULDC 92-20. The proposed improvements to the structures requires the applicant to comply with certain current code requirements, specifically parking and right-of-way landscaping. The applicant is proposing to modernize the Albertson's store and add 3,500 square feet of additional floor space (liquor store) to the south west corner of the building. The applicant will comply with current property and site development regulations to the greatest extent possible considering the site is currently built-out.

Parking Variance: Eliminate 24 required off street parking spaces:

The reduction of 24 required off street parking spaces is justified by the applicant, as parking that is not required by the users of the site. The applicant has submitted a Special Purpose Parking Demand Study, prepared by Pinder Troutman Consulting, Inc. The study was prepared from site surveys performed on December 11, 1998, and December 12, 1998, from 10:00 a.m. to 9:00 p.m. The conclusion drawn from the survey was the existing parking is only currently 50% utilized. The parking demand for the site once the renovations are complete will be 175 spaces, while the site will have a **total of 304** spaces.

R/W buffer reduction along Military Trail from 20 feet required by ULDC to 0 feet:

The landscape variance **is not** self created. Military Trail is to be modified and will result in land from this property being dedicated to the County to realign the road at the intersection (Military Trail and Lake Worth Road). The dedication of land area for road improvements will result in the existing 5 foot landscape buffer being eliminated. This will eliminate the existing landscape

buffer along Military Trail north of the southern entrance.

R/W buffer reduction along Lake Worth Road from 20 feet required by ULDC to 14 feet:

The right-of-way buffer along Lake Worth Road is currently 5 feet in width, the applicant is proposing to increase it to 14 feet. The ULDC requires when intensity (additional square footage) is added to an existing site that was constructed prior to 1992 that the right-of-way buffers shall be brought up to the current 20 foot requirement. Staff is recommending conditions of approval to ensure the final landscaping in the buffer is upgraded to ensure the general intent of the code is met. This will allow flexibility to the applicant in terms of satisfying the code while at the same time addressing on-site constraints.

Therefore, the four requested variances **are not** the results of actions by the applicant. The applicant has an existing site and structures that were constructed pursuant to a code that has since been superseded with the current ULDC. Considering the current ULDC requirements for parking and landscaping have been modified since this site was originally constructed to impose their strict application to this site will result in an undue hardship on the applicant. All four variances can be mitigated with the conditions recommended by staff.

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 Board of County Commission encourages redevelopment of properties located in the eastern communities of Palm Beach County. The eastern area is often referred to the area east of Military Trail. Many of these properties were constructed 20 to 50 years ago and/or are located in neighborhood that lack upgraded infrastructure (roads, water/sewer, parks, etc.), landscaping, uniformity in architecture, etc. The Board of County Commission is encouraging property owners to reinvest in these areas to help re-establish

once thriving residential and commercial communities. This project is located east of Military Trail within the Lake Worth Corridor. The Lake Worth Corridor study area has been the focus of redevelopment studies and implementation of new infrastructure by the County for the past several years. An effort has been made to make significant improvements to the corridor and surrounding area to improve the quality of life of the residents while at the same time improve the overall tax base and foster redevelopment/reinvestment. The Albertson's site, which is the subject of this variance, is an important property, being located at the western perimeter of the corridor. It acts as a terminus to the corridor redevelopment and can help stimulate redevelopment in this area. The commitment of this regional food chain to invest money to renovate the existing building and improve the property sends a strong signal to the community that this business is here to stay. The applicant is requesting variances that are minor in nature and are the result of the proposed improvements that will occur on site. The variance for parking and right of way buffer reduction can be justified and mitigated to meet the general intent of the code.

The parking reduction of 24 feet off street parking spaces has been justified by the applicant as parking that will not be utilized by the users of the site. The applicant is requesting the Board to allow the existing parking on-site to remain as is and no additional spaces be added. Since the only change to the current site is the additional 3,500 sq/ft of retail (liquor store) being constructed to the Albertson's store, which would require a total of 18 spaces. To support that applicants claim that the 4 spaces are not required for this use, they hired a consultant to prepare a parking analysis study. The study states the existing parking currently is under utilized and will exceed the number required once the renovations to the Albertson's are made.

The variances to reduce the width for the right-of-way buffer along Lake Worth Road and eliminate the buffer along Military Trail are justified when reviewed in the context of the

dedication. The applicant is required to dedicate land for the realignment of Military Trail and the intersection of Lake Worth Road. This will eliminate the existing 5 foot right of way north of the southern entrance to the site. The applicant has submitted a landscape plan to address new landscaping along the foundation of the Albertson's store and parking lot along the west side of the building and right-of-way to mitigate the variance. Staff is also recommending conditions to upgrade the landscaping in the parking lot in this area to reduce two additional parking spaces to accommodate additional trees. The right of way buffer along Lake Worth Road is currently only 5 feet, consistent with the required landscaping at the time the site was constructed. However, with the applicants currently proposal to add 3,500 square feet to the Albertson's triggers the rights-of-way buffer to be upgraded to meet current code of 20 feet in width. The applicant is willing to widen the buffer to 14 feet and install native shade trees in the buffer. Only 14 feet can be provided since any more land area would require loss of parking and possible reconfiguration of the parking lot which is existing.

Therefore, considering the applicant is dedicating land area to accommodate the realignment of Military Trail and the fact that existing Albertson's store will be renovated, no special privilege will be granted to the applicant. Staff is recommending conditions of approval to further mitigate the variance requests and ensure the general intent of the code is 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 AND UNDUE HARDSHIP:

YES. The proposed renovations to the Albertson's store require the applicant to meet certain ULDC provisions. This site was originally site planned and approved under a 1973 Zoning Code, which was less stringent in terms of parking and landscaping requirements.

The site complied with code when it was issued a Certificate of Occupancy for the Albertson's store. The parking and landscaping are currently vested under the 73-2 Zoning Code. However, the applicant is proposing to do improvements to the Albertson's store and add a 3,500 square foot liquor store. The improvements require the parking and landscaping to meet current regulations. This cannot be accomplished since there is no additional land area to accommodate parking and buffers.

Therefore, if the requested variances are denied the applicant would not be able to renovate the Albertson's store, as proposed. Many of the proposed renovations are required by the Albertson's corporation. In order to keep the store competitive and consistent with changes being made by other large food stores (Winn Dixie and Publix), significant changes are being made to the exterior and interior of the store. This site and the users who shop here are critical to the redevelopment efforts of the County is encouraging the Lake Worth Corridor Study Area. If the applicant is not granted the variances they might consider moving further west where land is vacant and they can construct a new store. Other properties that are located on similar type sites and developed 20 years ago have been given special consideration when applying the literal interpretation of the code. Therefore, this application is consistent with similar variances that have been granted in the past to encourage redevelopment and infill.

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 is requesting a parking and landscaping variance, which will allow the proposed renovations to proceed through the public hearing (BCC) and permitting process. The existing parking, according to the applicant's Shared Parking Analysis, is only 50% utilized. The minor expansion in square footage (3,500 sq.ft for liquor store) that is being proposed will not generate an increased demand for parking over what is currently on site. The proposed additional square footage

will not necessarily generate the need for more parking but simply capture users who are already visiting the site. Therefore, the existing parking will meet the future user needs. The existing landscaping along the right-of-way met the code in effect at the time the site was developed in the early 1980s. However, the proposed expansion to the site requires the right-of-way buffers to be upgraded to 20 feet in width. However, Military Trail is to be realigned along this section of the road that abuts the west property line. This will result in the elimination of the existing buffer, trees and hedges along the existing 5 foot buffer will be removed. Staff is recommending conditions of approval that will ensure the overall site, once redeveloped, meets the general intent of the landscape code, which is to ensure adequate buffer from the rights-of-way as well as vegetative cover within the parking lot. The applicant has submitted a Conceptual Landscape Plan, Exhibit 22, that partially addresses the lack of landscaping along Military Trail once the existing buffer is removed. Staff recommends two additional parking spaces be deleted to accommodate another 10 foot wide interior landscape island.

Therefore, the requested variances **are** reasonable and warranted. If the variances are granted, the applicant will be able to move forward with the proposed improvements to the site. Which will be an asset to the corridor as to the users of the site.

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 Comp Plan is to encourage intense commercial uses in the C/8 land use classification. This site provides a need service (grocery store) for residents within a 10 mile radius. There are limited large scale grocery stores within this area that supports the residential communities that were developed in the 1900s to present. There are residential properties to the rear and across Lake Worth Road that utilize this store.

The ULDC recognizes vest rights of a property owner who has a sites and structures constructed pursuant to a early code. that were developed under regulations of a prior Zoning code. The proposed 3,500 square foot addition is triggering the applicant to comply with certain provisions of the ULDC. The right-of-way buffers have been increased from the existing 5 feet to 20 feet in width. The applicant is proposing to meet the general intent of the parking and regulations.

Therefore, the proposed overall improvements to this site **will be** consistent with the intent of the commercial land use and zoning classification.

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

NO. The Parking Analysis Study, submitted by the applicant, indicates that the existing parking is currently under-utilized (only 50% used) and even with the proposed 3,500 sq/ft additional square footage that is being constructed on this site, the parking spaces will meet the future user demand. The right-of-way buffers will be upgraded wherever possible to ensure a minimum buffering is provided between the right-of-way and structure. The proposed setback encroachment along Military Trail will be mitigated with upgraded landscaping in the park lot and around the foundation of the proposed 3,500 sq/ft addition.

Therefore, the granting of the requested variances **will allow** needed improvements be made to these structures and ensure this food store remains as an import service to this community.

ENGINEERING COMMENT

Note that the parking study referred t is not a "shared parking" analysis based on the same parking spaces serving different users at different times of day, but is a special purpose parking demand study based on the particular commercial uses currently proposed for the site. **(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 presented to the Board, simultaneously with the building permit application for the proposed renovations to the Albertson's. **(BLDG PERMIT:BLDG)**
2. Prior to DRC certification to the Site Plan, the applicant shall ensure the Board of Adjustment conditions are on the final certified site plan. **(ZONING-DRC)**
3. By April 15, 2000, the applicant shall apply for a renovation permit for the Albertson's store. **(DATE:MONITORING-BLDG PERMIT)**
4. By April 15, 2000, the applicant shall install the upgraded landscape in the right-of-way buffers along Military Trail and Lake Worth Road as well as the parking lot as shown on the Conceptual Landscape Plan, Exhibit 22, in the BA File BA99-59. **(MONITORING-DATE-LANDS)**
5. The parking variance is limited to the reduction of 24 spaces for a total of 304 spaces to be provided on site. Prior to final Certificate of Completion of the renovations to the Albertson's Store the required on-site parking shall be confirmed by the Building Inspector. **(CO-Bldg IN)**
6. Prior to July 15, 2000, or issuance of a Certificate of Completion for the proposed renovations to the Albertson's store, the applicant shall contact the Landscape Section to request a final landscape inspection for the site. All required upgraded landscape shall be in accordance with the approved landscape plan and conceptual landscape plan presented to the BA. If the Board of County Commission increases the landscape requirements by conditions of approval they shall take precedent over the Conceptual Landscape Plan, Exhibit 22. The spacing and height of the trees along both Military Trail and Lake Worth Road shall be upgraded to compensate for the reduction in the width of the landscape buffer. **(DATE:MONITORING-LAND INSP)**
7. Two additional off street parking spaces that currently abut Military Trail shall be

eliminated to allow for a 10 foot wide interior landscape island in the parking lot. The island shall include 3 booted Sabal palms.
(LANDSCAPE)

CHAIRMAN BASEHART: Next item on the agenda is BOFA2000-054, Land Design South.

MS. MORTON: Jennifer Morton with Land Design South.

CHAIRMAN BASEHART: Okay, Jennifer, there are three conditions of approval recommended. Are you familiar with them?

MS. MORTON: Yes, I am and we agree with those conditions.

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

(No response.)

CHAIRMAN BASEHART: Seeing none, staff, any letters?

MR. MacGILLIS: No letters.

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

(No response.)

CHAIRMAN BASEHART: Seeing none, we'll leave 2000-054 on consent.

STAFF RECOMMENDATIONS

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

ANALYSIS OF ARTICLE 5, SECTION 5.7.E VARIANCE STANDARDS

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

YES. The subject property is currently vacant and located approximately .5 miles S of Atlantic Ave. on the E. side of State Rd. 441, within Sussman PUD, in the AGR Zoning District (Pet. 00-32). On August 24, 2000, the subject property was granted an approval for Official Zoning Map Amendments from Agricultural reserve (AGR) to Agricultural Reserve Planned Unit Development by Board of County Commissioners. (Resolution R-2000-1236).

Pursuant to Section 6.8.B.8.c(3) of ULDC, a Type 3 compatibility buffer (50' wide) is required between the development area and all adjacent properties zoned AGR, AP, SA or AR. In addition, a minimum of 50% of water management areas is required to be located on the perimeter of the development area. Both requirements are to ensure adequate separation between the proposed development and the adjacent agricultural land uses.

As indicated in the submitted site, the property owner proposed a water management area/lake along the entire north perimeter property line. The requested 25' (50%) reduction in the required 50' landscape buffer will be converted to the lake. Therefore, the distance of the separation between the proposed development and the adjacent agricultural lands to the north will remain the same as the required 50' landscape buffer would be provided. If the requested variance is granted, the separation between the northmost residential lots and the adjacent agricultural lands to the north will be 305 ft., which includes 200' lake area, 25' landscape buffer and 80' LWDD right-of-way. This will meet with the general intent of the code requirement to provide sufficient spatial separation & buffer between the existing agricultural lands & proposed residential land use.

As previously mentioned, the current code does not recognize this unique situation by allowing for a 50% reduction in the buffer width without the need for a variance. The Board of County Commissioners realized this special circumstance at the public hearing and directed the applicant to seek a variance relief reduction in the required perimeter buffer width along the north perimeter

property line.

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

NO. The special circumstances and conditions **are not** the result of actions of the applicant. The ULDC requires a 50' perimeter landscape buffer as well as a minimum of 50% of water management areas to be located on the perimeter of the development area for PUD in the AGR zoning district. Both requirements are to ensure adequate separation between the proposed residential development and the adjacent agricultural areas. As 80' canal right-of-way exists between the proposed development and the adjacent agricultural lands. As previously indicated, the requested variance will not result in a decrease of the separation between the nearest residential lot and the adjacent agricultural lands to the north, but rather converting the 25' buffer to the lake area. Therefore, the requested variance is a result of the unique site layout being proposed.

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 development was approved by Board of County Commissioners on August 24, 2000. (Resolution R-2000-1236). Due to the unique situation created by the lake and buffer, the applicant was directed by the Board of County Commissioners to pursue this requested variance. Upon evaluation of this application, staff concluded that granting the variance will not conflict with the general intent of the code requirement which is to provide adequate spatial separation between the proposed AGR/PUD development and the adjacent agricultural lands. The proposed 175' wide water management area/lake along the entire north perimeter line will serve as an adequate buffer in addition to the requested 25' perimeter landscape buffer and a 80' LWDD right-of-way to the north.

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. Even though the requested variance does not meet with the literal intent of the 50' perimeter buffer width requirement, it meets the general intent of the code which is to provide adequate spatial separation between the proposed AGR/PUD residential development and adjacent agricultural lands. When the AGR provisions were adopted, it permitted PUDs, however, the code provisions were to preserve the agricultural character of the area. The spatial separation and buffers would help preserve the agricultural character by buffering the residential land use from the agricultural uses.

As previously indicated, the requested 25' (50%) reduction will not decrease the distance of separation as the required 50' buffer would apply. In fact, the nearest residential lots could have been located 50' from the north perimeter property line while still meet with the code requirement. The proposal, however, separate the residential lots 175' further away from the north perimeter property line.

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 variance **is** the minimum that will allow a reasonable use of the subject property, while recognizing the unique AGR/PUD layout. As previously indicated, the requested variance will not result in a decrease of separation between the residential units and the adjacent agricultural lands to the north. The 25 feet buffer reduction will be converted to lake area, keeping the same separation distance of 305 feet. In fact, the proposed separation is greater than the code requirement on the AGR-PUD perimeter buffer. The nearest residential lot could be located 50 feet from the north perimeter line while still meet with the code requirement.

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

POLICIES OF THE COMPREHENSIVE PLAN AND THIS CODE:

YES. Grant of the variance **will be** consistent with the purposes, goals, objectives and policies of the comprehensive plan and this code.

The subject development was permitted for 60/40 option, which requires a minimum of 60% of the gross site area to be retained as the Preservation Area. To ensure compatibility with the agricultural character of the land uses along the perimeter property lines, Sec. 6.8.B.8 of ULDC requires a 50' wide compatibility landscape buffer between the development area and all adjacent properties zoned AGR, AP, SA or AR, whether vacant or supporting an existing agricultural land use. The intent for the buffer requirement is to improve the compatibility of land uses in close proximity by providing adequate spatial separation between the development area and adjacent agricultural lands.

As previously indicated, the nearest residential lot could have been located 50 feet from the north perimeter line. However, the developer proposed a 175' wide water management area/lake along the entire north perimeter line in addition to the 25' landscape buffer. Considering the overall separation of 305' including the 80' LWDD right-of-way, the required 50' perimeter buffer, if installed, is excessive to meet the intent of the code.

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

NO. The requested 25' reduction in the required 50' perimeter buffer will not decrease the overall distance of the separation between the proposed AGR/PUD and the adjacent agricultural lands to the north. Rather, the 25' reduced buffer will be converted to lake area which is approximately 175' wide running along the entire north perimeter property line. As previously indicated, the nearest residential lot will be separated approximately 305 feet from the adjacent agricultural lands by water, buffer

and canal. As a result, no adverse impact will be associated with the requested variance.

ENGINEERING COMMENT(S)

No comments. **(ENG)**

ZONING CONDITION(S)

1. By December 19, 2000, prior to DRC Certification, the applicant shall administratively amend the final Master Plan to include the notation of the variance (BA2000-054) and conditions. **(DATE: MONITORING:DRC:BA)**
2. This variance is only for the reduction in the required landscape buffer width from 50ft to 25' along the north perimeter property line of the proposed Sussman AGR-PUD. All the plants that are required for the 50ft Type 3 compatibility landscape buffer shall be installed in the remaining 25' wide landscape buffer along the north perimeter property line. **(ONGOING)**
3. This landscape buffer reduction variance shall be vested when the Master Plan is certified by DRC. No time extension will be required. **(DRC:BA)**

CHAIRMAN BASEHART: And our last item, BOFA2000-055, Land Design South again for Centex Homes.

MS. MORTON: Yes.

CHAIRMAN BASEHART: Staff recommends four conditions. Are you familiar with them?

MS. MORTON: Yes, I am.

CHAIRMAN BASEHART: And you agree with them?

MS. MORTON: Yes, I do.

CHAIRMAN BASEHART: Any member of the public

here to speak on this?

(No response.)

CHAIRMAN BASEHART: Seeing none, staff, any letters?

MR. MacGILLIS: I had numerous phone calls from neighbors in the Winston Trails PUD that's the adjacent planned development. Once I explained to them that this was an internal POD that was thousands of feet from them, no one had any concern then.

CHAIRMAN BASEHART: Okay. Any member of the Board have any comment?

(No response.)

CHAIRMAN BASEHART: Okay. This will stay on consent as well.

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 particular variance is for a proposed six unit townhouse in Pod B, NYE PUD. The developer has obtained all the necessary approvals to construct the single family and townhouse units within this development. The development is currently under construction. All units comply with the required setback with the exception of Building 12 within POD B. When the Plat was being prepared a modification was made by the Engineer to the 12 foot wide drainage easement between building 12 and 13 to accommodate the underground infrastructure. The modification to the width of the drainage easement shifted building 12 to the north resulting in the setback encroachment.

There is a 11.29 foot setback remaining, if the variance is granted, in addition to the 15 foot platted landscape tract and then the

recreational tract. There are no buildings to the north of building 12 that would be impacted by this minor setback encroachment. The remaining open space, buffering and separation created by the recreation tract parking lot ample open space will exist to meet the intent of the setback requirement.

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

NO. The developer has obtained all the necessary approvals for this project. It was not until the Engineer preparing the plat made a modification to the site layout that resulted in building 12 encroaching into the required side setback. The modification to the plat was to the 12 foot drainage easement between building 12 and 13. Since the buildings are superimposed on the plat, it would be difficult to notice that this minor modification would result in the need for a variance of building 12. The applicant has met with staff to explore other design options that would eliminate the need for a variance, however, none of the alternative solutions discussed were viable. The encroachment is minor and will be mitigated by the remaining open space and buffer to the north. There are no units immediately to the north that will be affected by this encroachment.

The applicant has acted in good faith to obtain all necessary permits and approvals for this project. The minor modification on the plat that resulted in the need for this variance was not discovered until the building permit plans for building 12 were ready to be submitted by the developer to the County. The applicant immediately met with staff in order to address the setback encroachment. If the variance is granted, the applicant will be able to construct building 12 consistent with the other 6 unit townhouse buildings in the development.

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 general intent of the side setback **will be** met if this variance is granted;

therefore, no special privilege will be granted. The applicant is requesting a minor 3.71 foot setback encroachment for building 12. The remaining setback of 11.29 feet in addition to the platted 15 foot landscape tract and open space created by the parking lot of the recreation tract to the north will all create the openness anticipated by the 15 foot setback. As previously stated, there are no units immediately to the north that will be impacted by this minor setback encroachment. The intent of the variance process is to allow applicants to seek variance relief from a code provision when they can demonstrate compliance with the hardship criteria. In this case the applicant has justified that to redesign the building to accommodate a 3.71 foot encroachment will result in costly delays, a building that does not comply with the architectural character of the other buildings in the Pod and delays to delivering the unit to the property owner.

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 has obtained all the necessary approvals and permits to move forward with this residential development. The units in POD B are already in for permitting. When the permit application was prepared for building 12 it was discovered there was a setback encroachment issue. The applicant explored other options to avoid the delays of having to amend the plat or obtain a variance. The applicant met with Zoning staff and it was determined that amending the plat would not be a viable option and could result in other issues that might need variances. Considering the fact that this is only a 3.71 foot variance and there is 11.29 foot setback remaining and there is a 15 foot buffer beyond the setback the general intent of the setback can be met. To require the applicant to redesign this particular building 12 to simply accommodate a 3.71 foot setback variance is not a reasonable request. The open space to the north and buffer will mitigate the encroachment.

Therefore, to deny the variance would deprive the applicant of rights enjoyed by other applicants under similar demonstrated hardships and circumstances.

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 is requesting a variance of 3.71 feet in order to accommodate building 12 which was shifted to accommodate a wider drainage easement between building 12 and 13. The applicant hired professional planners and engineers to prepare the site plan and plat. When the plat was prepared and modified the Engineer failed to impose the footprints of the units on the lots to ensure they would comply with the required setbacks. Therefore, it was not until the building permit for unit 12 was prepared that it was discovered that it could not comply with code. The remaining 11.29 foot setback and 15 foot buffer will provide the separation requirement anticipated by the 15 foot 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 applicant has obtained the necessary approvals for this PUD and secured all site plan and plat approvals. Permits have been applied for and units are being constructed. The general intent of the required 15 foot setback between townhouse units is to ensure a minimum distance and open space between units. In this particular situation there is no building to the north of building 12. There will be a 11.29 foot setback and then the 15 foot platted landscape tract. This land area and buffer **will ensure** the general intent of the code is met, if this variance is granted.

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

NO. This POD B, supports townhouse units which are currently under construction. The applicant is requesting a variance on only building 12 which is encroaching into the side interior setback by 3.71 feet. The granting of the variance **will not be injurious** to the surrounding developments (Winston Trails PUD) or the other townhouse units in POD B. The encroachment is minor and will not be visible to the property owners once the unit is constructed. The separation created by the remaining setback in addition to the 15 foot landscape tract will provide the separation needed to mitigate this minor setback encroachment.

ENGINEERING COMMENT

No Comment **(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 presented to the Board, simultaneously with the building permit application. **(BLDG PERMIT:BLDG)**
2. By March 19, 2001, the applicant shall apply for a building permit for building 12, unit 258 within POD B, NYE PUD. (PCN00424502000005050). **(DATE:MONITORING-BLDG PERMIT-BA)**
3. By July 19, 2001, the applicant shall obtain a building permit for the six unit townhouse, building 12, unit 258, POD B, NYE PUD, to vest the side interior setback variance. **(DATE: MONITORING-BLDG-PERMIT-BA)**
4. This variance is limited to townhouse building 12, unit 258, within POD B, NYE PUD, PCN 00424502000005050 for a 3.71 foot side interior setback (north encroachment). **(ONGOING)**

CHAIRMAN BASEHART: And that completes the items that we have before us, so I guess we're ready for a motion to adopt the consent agenda, which is items number 1, 3, 4 and 5.

VICE CHAIRMAN KONYK: Okay. I'll make the motion to accept BOFA2000-051, BATE2000-053, BOFA2000-054, BOFA2000-055 on the consent with the staff report becoming part of the record, and BOFA2000-052 being moved to the regular agenda.

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

MR. PUZZITIELLO: Second.

CHAIRMAN BASEHART: Second by Mr. Puzzitiello. Any comments, any discussion?

(no response.)

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

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no?

(No response.)

CHAIRMAN BASEHART: The consent agenda is adopted.

CHAIRMAN BASEHART: That will take us to our one regular item, BOFA2000-052. Jon, do you want to introduce that?

MR. MacGILLIS: Yes, this is Item 2 on your agenda, Gerald and Joan Lowenthal, to allow a proposed addition to an existing single family dwelling to encroach into the required separation between two design cluster units.

The location is at 13890 Cross Pointe Court, approximately one mile west of Florida Turnpike and south of Donald Ross Road within the Eastpointe subdivision in the RE Zoning District (Petition 80-28) found on pages 10 through 18 in your back up material.

I'll just give the Board some background on

this petition. If you turn to page 10. This housing concept was in the zoning code for approximately 15 years. It's no longer in the zoning code. A design cluster does not have setbacks. It has separation between units, so rather than the typical seven-and-a-half foot setback from a house to a property line, in this case it's actually a separation between the buildings.

When the Lowenthals proposed to do this 8 by 16 foot room addition to their house, they came in and met with the zoning staff on call. They showed them what they were doing. The zoning staff assumed it was single family, and some of the staff were new and didn't realize it was such a housing concept that used to be in the old zoning code which has been superseded with the current ULDC.

They didn't pull the mylar to see that it was a design cluster. They let the Lowenthals understand that they were only having to meet a seven-and-a-half foot setback which they could do because they were showing 8-1/2 on the drawing they presented to staff. They proceeded to go to their architect, have the plans drawn up.

When the plans were brought back to the Building Division and submitted, the Building staff pulled out the controlling site plan and said these are design clusters. You actually need a 15 foot separation between the proposed room addition and the unit on lot 9 to the south. They're proposing 8.6 foot separation. So they came to the zoning staff and said what do we do? We had all the plans drawn up. So that's where we are.

Staff sat down and analyzed it and staff still feels after going through the seven criteria on the uniqueness of the development, the intent of Design Cluster Concept is for the developer to cluster the units around common open space whether it's preserves or lakes or amenities and do away with the lots.

The concept really didn't work because what was happening was the first person who came in to put the house in could have put his house further over on the unit forcing the other house over, so it was a nightmare for the Building Division for implementing design clusters, that it just really didn't take off. And there were a lot of benefits to it, but you could have hierarchy and road systems, parking tracks and stuff.

After analyzing all the problems that were coming up for the ones that were built, the County decided to take it out of the code. So it's no longer in the code. We still have developments out there that
h a v e t h e s e

So the Lowenthals went to the Architectural Review Committee originally sometime earlier in the spring, showed them their drawings. The architectural review board approved it.

I asked the Lowenthals after they submitted their application when I got calls from the neighbors saying that they had gone to them with a petition saying do you have a problem with it, and a lot of the neighbors signed it, and the Architectural Review Board had approved their original drawing. So I said are you clear that your neighbors and the Board understood that you also are applying for a separation variance?

Some of the neighbors after I explained to them said they were not clear on that and any letter of support they did, they wanted to rescind it. So some of those people are here obviously to state why they object to it, and a lot of them think it's a change in the zoning, which I've tried to explain to them it's not a change in the zoning. It's just a relaxation on the separation requirement.

And the HOA, I spoke to the president yesterday, he did submit a letter. They did have an emergency meeting. He did submit a letter and it wasn't clear, so I called him again yesterday. This letter was dated October 18, 2000, to the Lowenthals from Richard Kates, architectural control committee chairperson.

He states, "The architectural review control committee has re-reviewed your application to add an 8 x 12 structure on the south side of the home, and our original approval stands."

And I asked him, I said, if the Board asks me questions tomorrow morning, are you clear they're applying for a variance as well and would your approval still stand, and after a half-hour conversation with him, he said yes.

VICE CHAIRMAN KONYK: I want to ask a question real quick. The cluster design that they're living in, that means that every piece of-- every home in that community has to abut a common area, correct? Isn't that basically --

MR. MacGILLIS: Typically it's around the back. When you look at some of the exhibits in your back-up material --

VICE CHAIRMAN KONYK: This addition isn't going to affect that at all?

MR. MacGILLIS: It's on the side of the house. Really where the cluster and open space is on the back area where there's a golf course. In this case these design units were clustered on the golf course on the back so they allow flexibility on orientating them around to give vistas towards the golf course.

VICE CHAIRMAN KONYK: Okay.

CHAIRMAN BASEHART: Actually, I mean, I think the design cluster concept was a really good concept. The problem -- and actually it requires-- it's a fee simple concept -- it requires that at a minimum the land beneath the building be dedicated -- be owned by the property owner. You could have some additional lot area or a lot of additional lot area or no additional lot area depending on the original concept.

I think where the concept failed was that it really requires that the developer pre-plan the whole cluster. You know, and the problems started coming in with these -- when people moved in and then their needs changed and they needed to do additions, they wanted to put a pool in or something like that in, they often ran into trouble. But it's obviously the situation here.

VICE CHAIRMAN KONYK: I have one more question. The nearest thing in the code today that this community would conform to would only require a 7-1/2 foot setback; is that correct?

MR. MacGILLIS: Correct. I mean, that's why staff when they came in without pulling the site plan, if you looked at the PUD, if you looked at the zoning approval on this, it was RS. If you looked at the controlling regulations in the planned unit development section, you would apply its -- it refers you to apply the RS setbacks, which are 7-1/2 on the side.

She was showing staff 8-1/2 to the property line and that's why staff looked at it and said it's fine.

CHAIRMAN BASEHART: While we're -- if there are any other questions, why don't you -- to make things more efficient, go through your evaluation of the seven criteria for us and then we'll hear from the applicant if she wishes to speak.

MR. MacGILLIS: Okay. On page 13 is the staff findings. Staff feels first of all, number one, that they've met the seven criteria necessary to justify the granting of this separation variance. There are unique circumstances surrounding this and the one being that we just explained that these are designed cluster units, and the intent of the design clusters is to preserve the intent of the open space surrounding the units.

In this case with the encroachment, you can still see in this little thumbnail sketch to the right of this number two here on page 13, there's still going to be an 8.2 foot setback actually on this property. Then the actual wall of the unit on lot nine to the south actually runs right on that property line because there's zero on the opposite side. There are no windows on that side, but I mean, the intent of this design cluster is the common open space to the rear, not so much to the side. And that will still be

adhered to.

So we feel like what's unique about the design cluster unit and stuff will still be preserved, even with the granting of this variance.

We don't feel it's self-created in the sense that the property owner did make every effort to in good faith do due diligent work before going to the architect to seek the room addition. They came to staff. Unfortunately, staff gave them the wrong information. They spent considerable money having the plans drawn up.

The room has just several small windows on the top and then considering there's a blank wall on the unit on lot nine where this addition is going to face, and the unit is only 8 by 6, the room addition. Staff feels that even with the granting of this variance and based on the hardship of what the applicant has gone through as far as all their architectural drawings and their dependency on this room, we feel they meet that criteria.

This is the minimum necessary variance. They're only asking for the 6.8 foot variance, and even with the granting of this variance with the condition recommended by staff with the hedge and the fact that there's a blank wall on the other house and there's only windows on the top of this wall that you can see on page 12. It's the south elevation where the windows will appear on that wall.

We feel it meets that criteria, meets the general intent of the comp plan and the ULDC. Once again it's a design cluster and by the granting of this variance you're not going to circumvent that intent of that provision.

We feel it will not be injurious to the surrounding neighborhood or devalue any property values that the Architectural Review Committee that was important to staff -- I understand that they were going to approve this. They've reviewed it. They feel it will have no impact on their community.

Staff has pictures here that we can send around. There's heavy vegetation between the properties and there's a blank wall on the lot to the south; therefore it would be a diminuous impact created by it, with the granting of this variance.

Therefore, staff has recommended approval with the three conditions on page 16.

CHAIRMAN BASEHART: Okay.

VICE CHAIRMAN KONYK: I just want to make a suggestion that we maybe vary from our normal order today and let's go ahead and hear from the public first because I think that Jon's done a great job explaining this, and then if the applicant then wants to rebut what the homeowners say then we can hear from her. If

the applicant's okay with --

MS. LOWENTHAL: That's fine.

CHAIRMAN BASEHART: Works for me. Okay. This is a public hearing. Any member of the public here to speak in opposition to this, please rise. We need to have you all sworn in by the reporter.

VICE CHAIRMAN KONYK: If you're going to speak, you need to be sworn in as well.

CHAIRMAN BASEHART: Anybody that might speak on this item, please be sworn in.

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

CHAIRMAN BASEHART: Okay. When you speak, please give us your name and address for the record.

DR. NESERKE: I'm Dr. George Nesperke. I live at 13900 Cross Pointe Court.

VICE CHAIRMAN KONYK: Could you spell your last name for the --

DR. NESERKE: N-E-S-E-R-K-E. Basically, the problem is the variance. We live in an area that is not poor. There are 18 houses on that street and all 18 people could afford it, this building. If so, then we're going to have 18 seven-foot alleys alongside our houses, and they will be visible from the golf course.

That does not help the property values. And it's just there. The people have the money to do it. This is not a poor place. Okay.

The repeat of that same statement is you're opening up a huge can of worms, and I do think the property values will go down if you open up this can of worms. Thank you.

CHAIRMAN BASEHART: Thank you. Next speaker, please?

MR. FELDMAN: My name is Sidney Feldman. I'm the property that's being affected actually. It's my house they're going -- I want to say one thing. We were never informed about this variance.

It is now ten months or more that we first found out about a variance, and what I can say to you is that it's also going to lower my property value and I think that I should have been told what's happening all this time. Nobody has told me a thing about it. Eight months went by.

CHAIRMAN BASEHART: If you've got a notice of hearing --

MR. FELDMAN: I mean, ten months, I'm sorry, ten months.

CHAIRMAN BASEHART: You did get a notice of this hearing?

MR. FELDMAN: Yes, I got the notice. That's the first time I've heard that there's a variance or

anything of that sort. And so I say to you that I wrote this to you when I said no.

"With reference to the variance request of B --", and so forth, "...this is to advise that Sidney Feldman and Beatrice Feldman, 13880 Cross Pointe Court, oppose the zoning change proposed by Gerald and Joan Lowenthal. Prior to this proposal, we received a letter from the East Lakes Property Owners dated November 23, 1999, stating that Mr. and Mrs. Lowenthal were planning this 8 x 12 addition to their home."

By the way, we were told it's going to be more than 8 x 12. Now it's back to 8 x 12. We didn't know a thing about this at all.

"There was no mention that a variance was necessary to permit the addition to their house. We oppose the zoning change now and would have opposed it from the outset had we been informed at any time during the more than 10 months that elapsed between the initial letter dated November 23, '99, and the recent letter received September 29, '00, when we learned of the variance request for the first time."

So I tell you, when he said there's lower property value, I was a builder and I built apartment houses and I built one-family houses, and by god, it will be lowered and not just for me, for the whole street.

CHAIRMAN BASEHART: I'd just like to clarify something for the record.

MR. FELDMAN: Yes.

CHAIRMAN BASEHART: I don't know what the by-laws of your homeowners association are with respect to notifying residents of anything they're discussing --

MR. FELDMAN: They didn't tell me a thing.

CHAIRMAN BASEHART: But as far as the County is concerned, you know, when a variance application is submitted, and what is it, three weeks prior to the hearing, certified mail notices are sent out. So within three weeks or four weeks of the time the County got this application you were notified.

MR. FELDMAN: No, no, we were never notified till now. In other words, I can see all these plans here that it was in 1999 that you've got these. I never heard a thing about it. I never knew anything about it and neither did Nesperke.

VICE CHAIRMAN KONYK: Mr. Feldman, originally when they were planning on putting in their addition, they weren't aware that they were going to need a variance. That just came up recently.

MR. FELDMAN: I realize that. That's --

VICE CHAIRMAN KONYK: Well, wait, let me finish. So when they were making the plans to put this addition on, there was no communication with this Board or any of this staff because they did not know that a

variance was going to be required. You are required to be notified once they apply for a variance, and you were notified at that time.

MR. FELDMAN: When? When was I notified?

VICE CHAIRMAN KONYK: Thirty days ago by certified mail.

MR. FELDMAN: Yeah, but I'm talking about -- what they're talking about was ten months ago, not 30 days ago.

VICE CHAIRMAN KONYK: Okay. I understand that and that's not something that we can consider here.

MR. FELDMAN: I mean, this was placed upon-- all of a sudden. We knew nothing about this, nothing. Nobody told us anything. It's ten or more months that this occurred.

CHAIRMAN BASEHART: The fact is neither did we. We didn't know about it either because --

MR. FELDMAN: All right now, now I'm going to go again. This lowers property values. There's no doubt about it that this is going to lower property values.

VICE CHAIRMAN KONYK: Do you have any statistics or data to support that?

MR. FELDMAN: I was a builder. I built these things. I know what's going to happen. Now this is very unfair that they should do this when they can do something else. There are people who have extended their patios and have a roof over this patio, and they can do the same thing and they know that.

But what they want is they want the view, and so they're going to impose themselves upon us. We bought something with space between us and I think it's very unfair that this goes through.

Thank you very much.

CHAIRMAN BASEHART: Thank you. Is there any other member of the public that wishes to speak on this item?

(No response.)

CHAIRMAN BASEHART: Seeing none, we'll close the public hearing and we'll give the applicant an opportunity to say anything.

MS. LOWENTHAL: There's really not very much we --

CHAIRMAN BASEHART: You need to go to the microphone.

MS. LOWENTHAL: There's really not very much for me to say because Mr. MacGillis was so thorough.

I want to build a small art studio where I can work, just 8 x 12, and have a little place for me without taking away the view of the house. The only reason I purchased this house was for the view. And to take it away would be, to me, no sense in staying, you know, where I am. That's all.

And thank you for your time and your consideration.

CHAIRMAN BASEHART: Thank you. Okay. The public hearing is closed.

Now I want to open it up for questions or discussion amongst the Board. Any Board members have any questions that they would like to ask of staff or the applicant?

(No response.)

CHAIRMAN BASEHART: Seeing none, any discussion?

(No response.)

CHAIRMAN BASEHART: Seeing none, is there a motion?

MS. CARDONE: Mr. Chairman, I move that we accept -- let me find the number here -- BOFA2000-052 with the conditions that staff has placed upon them.

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

MS. STUMBERGER: Second.

CHAIRMAN BASEHART: Motion [sic] by Ms. Stumberger. Anybody want to put on the record -- I assume that your motion is based on meeting the staff's conclusion and staff report that documents that the seven criteria have been met?

MS. CARDONE: Absolutely.

CHAIRMAN BASEHART: Okay.

VICE CHAIRMAN KONYK: And I would assume that the staff report should become part of the record as well?

CHAIRMAN BASEHART: Yes.

Okay. Any further discussion? All those in favor indicate by saying aye?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no?

(No response.)

CHAIRMAN BASEHART: Show the motion carries unanimously.

MS. LOWENTHAL: Thank you very much.

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 property in question, lot 10, is located within POD 51, in Eastpointe PUD. The PUD is located south of Donald Ross Road and west of Florida's Turnpike in the RE zoning district. POD 51 was site planned in 1987 to support 19 design cluster dwelling units. The POD has an irregular shape and is surrounded by a golf course to the east, Donald Ross Road to the north, street to the west and POD 30 to the south. Access to the 19 dwelling units is from a 30 foot access tract off Cross Pointe Ct. The 19 units are located on the east side of the access tract and all back onto the golf course. The units are design clusters, a unit type that was permitted in PUD's until the adoption of the ULDC in 1992. The design cluster has no minimum lot size or setbacks. Only separations apply to the units. The design concept is to encourage the clustering of dwelling units around common open space and encourage preservation of common open space. All the 19 units were constructed by the developer in the late 1980's and comply with code requirements. The applicant purchased lot 10 in 1989 and is proposing to construct a 16' by 8' room addition along the south side of the unit. The required 15 foot separation cannot be complied with by the applicant. The proposed separation will be 8.2 feet for a 6.8 foot separation variance. The proposed room will have three small windows on the wall facing lot 9 to the south. There will be adequate room between addition and lot 9 to allow for residents to pass between the units and maintain the general intent of the design cluster concept of openness.

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

NO. Prior to the applicant seeking an architect to design the layout of the 16' by 8' room addition they met with the Zoning staff to ensure the layout would comply with code. Staff had informed the applicant that based on the preliminary design concept, it would comply with the RS-single family

setbacks. It was not until the architectural plans were submitted to the Building Division was it discovered this property was within POD 51 within Eastpointe PUD and designated as design clusters. This housing type has separations rather than setbacks. The applicant was originally told by staff that a 7.5 foot setback was required between the addition and the south property line. However, in actuality a 15 foot separation between the addition and the unit on lot 9 is required. The applicant is proposing an 8.2 foot separation for a 6.8 foot separation variance. The applicant states in the justification that the room will be used as a hobby room. Due to arthritic pain she suffers in her hands, she needs the therapy afforded by her hobbies of painting, hooking rugs, weaving and playing the piano. This room will allow her to display her work and room to accommodate the various materials. The applicant also indicates that she spends considerable time indoors due to her alignment and the room would allow her to enjoy her home environment to the maximum.

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 6.8 foot separation variance **will not** grant a special privilege on the applicant. The proposed 16' by 8' room will allow adequate open space for residents to travel between the units as well as maintain the open concept intended by the design cluster housing unit. The applicant states there are only three small windows on the proposed addition south elevation. There are no openings on the unit on lot 9 to the south where the encroachment occurs. This is the zero lot line wall with no openings permitted by code. The width of the proposed room is only 8' wide and cannot be reduced in size to accommodate the separation requirement. There are no other locations on the property where this addition can be located in order to accommodate the separation. The addition cannot be seen from the street due to an existing privacy wall and plant material.

Therefore, granting this separation variance **will not grant** a special privilege to the applicant. Since the general intent of the code is to cluster units and maintain open space between units. The encroachment will still allow residents walk between the units and with the hedge, recommended by staff, the general intent of the design clusters housing concept will be maintained.

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. Prior to the applicant planning for the room addition they consulted with Zoning staff to ensure the room addition could be constructed. Staff informed the applicant that in the RS zoning district a 7.5 foot setback applied to the addition along the side property line. The proposal is setback 8.2 feet from the south property line. However, a 15 foot separation applies between the unit on lot 9 and the room addition. The applicant had an architect prepare the plans and submit them to the Building Division. Until a variance is granted the applicant's plans will not be accepted by the Building Division. The applicant states time and money has been spent to develop the plan for the room addition. The room is needed to accommodate her arts and crafts that she performs as therapy for her arthritis.

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 is proposing a 128 square foot room addition on the south side of the house. The addition will allow room to accommodate the applicant's arts and crafts. The room is only 8 feet in width and therefore cannot be modified to accommodate the separation requirement. There is no room to the rear of the house to accommodate the addition. The applicant has gone to considerable effort and expense to design the room addition. Acting on feedback from Zoning

staff with respect to the required setback, she had the room designed to meet what she was informed was a 7.5 foot setback. The remaining 8.2 foot separation and proposed landscaping will ensure the general intent of the design cluster separation is maintained. As previously stated the property owner on lot 9 to the south has no windows that abut where the room addition is being proposed. Furthermore, the addition can not be seen from the street or other properties and therefore will not obstruct views in the development.

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 Comp Plan and ULDC will be maintained, if this variance is approved. The overall Eastpointe PUD was approved, consistent with the LR-2 land use designation. The Master Plan and site plans are both consistent with respect to total number of units, density and housing type. The units in POD 51 are design clusters and have been constructed consistent with the code in effect with the Site Plan was approved in 1987. The design cluster housing type was permitted in PUD from 1973 to 1992. The currently PUD regulations no longer reference this housing type. This housing type permitted units to be cluster around common open elements (lakes, ponds, preserves, etc.). There was no minimum lot size or setbacks, only separations were applied between the units and rights-of-way. The proposed 128 square foot room addition to the unit on lot 10 will not circumvent the intent of the design cluster concept. There will still be 8.2 feet of separation between the unit on lots 9 and 10 thereby maintaining the openness intended by the PUD provisions.

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

NO. The room addition on lot 10 is proposed on the south side of the unit. Lot 9 to the south has no window facing the new construction. The addition cannot be seen from the street due to an existing privacy

fence and landscaping. Therefore, the room addition **will not** be injurious to the adjacent neighbor or development.

ENGINEERING COMMENT

No comment. **(ENG)**

ZONING CONDITIONS

1. By April 19, 2001, the applicant shall apply to the Building Division for a building permit for the 8' by 16 foot room addition for lot 10. The applicant shall provide the Building Division with a copy of the Board of Adjustment Result Letter and copy of the Site Plan, Exhibit 9, presented to the Board at the October 19, 2000, hearing. **(DATE:MONITORING-BLDG PERMIT)**
2. By August 19, 2001, the applicant shall obtain a building permit for the room addition on lot 10. **(DATE:MONITORING-BLDG PERMIT)**
3. Prior to the final Certificate of Occupancy for the room addition on lot 10(PCN00424127230000100), the applicant shall install a 3 foot high native hedge planted 24 inches on center, along the 16 foot length of the room addition. **(CO-BLDG inspect)**

CHAIRMAN BASEHART: Next item on the agenda -- that concludes our regular items. The last item on the agenda is the approval of the attendance which shouldn't be a problem because everybody was here last month.

The only missing person was Mr. Misroch and that's because he wasn't called because all regular members were in attendance. So we'll just file that for the record.

Do we have a motion for adjournment?

MS. STUMBERGER: So moved.

CHAIRMAN BASEHART: Okay. I think it was a unanimous motion. I assume a unanimous second.

VICE CHAIRMAN KONYK: Second.

CHAIRMAN BASEHART: Therefore, we're adjourned.

(Whereupon, the meeting was adjourned at 9:30 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 41, inclusive, comprise a true and correct transcription of the Board of Adjustment Meeting.

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

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 3rd day of November, 2000.

Sophie M. Springer, Notary Public.